

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

Criminal Appeal 207 of 2003

(From the Original Conviction and Sentence in Criminal Case No. 431 of 2003 of the Senior Resident Magistrate's Court at Kajiado: Ndungu H. N. (Miss) on 9.7.2003

HELLEN NANYAKAI APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G E M E N T

The appellant was charged before Kajiado Senior Resident Magistrate's Court in Criminal Case 431/2003 with two offences. The first charge is that of Theft Contrary to section 275 of the Penal Code and the second is neglecting a child contrary to section 127 (1) (a) of the Children's Act. She pleaded guilty to the charges and was sentenced to serve 24 months on each count and they were to run concurrently.

The appellant was dissatisfied with both conviction and sentence.

The appellant's grounds of appeal are that she did not have time to explain that the child was not hers and that the sentence was harsh.

The State Counsel conceded the appeal on grounds that the plea was equivocal. I have perused the record of appeal. I find no problem with the way the plea was taken. The two charges were read to the appellant and she admitted. The appellant contends that the said child was not hers but the section under which she is charged, it is only necessary to prove that the child was under her care. The facts as read by prosecution supported the 2 charges and the appellant was properly convicted on the two counts.

The only anomaly I find is that the prosecutor was not accorded a chance to state whether or not the appellant was a first offender. Similarly the appellant was not given a chance to mitigate. May be with mitigation she may have stated something that might have affected her plea or the sentence. The magistrate merely asked for a probation officers report and when it was found to be unsuitable sentenced the appellant to prison. That anomaly notwithstanding the conviction is safe and it is hereby confirmed.

As regards sentence, due to what was observed above, the court finds that the sentence so far served is sufficient and the appellant is set at liberty forthwith unless otherwise lawfully held.

Dated, read and delivered at Machakos this 14th day of October 2004.

R. V. WENDOH

JUDGE

