

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 403 OF 2000

BEATRICE KATHURE MUGUNA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an Appeal against Conviction and Sentence in Criminal Case No. 1577 of 2000 of the Resident Magistrate's Court, Mombasa – Anne Ngugi)

JUDGMENT

The Appellant was charged and convicted for the offence of Creating Disturbance in a manner likely to cause a breach of the peace contrary to Section 95(1)(b) of the Penal Code. She was sentenced to serve 3 months imprisonment.

She preferred an Appeal against both conviction and sentence. At the hearing of the Appeal, she and her counsel were absent since the Appellant had served sentence. The State Counsel supported both conviction and sentence. I have evaluated the evidence and no doubt agree the offence was serious and the evidence adduced did support the charge. However I find the sentence that had been preferred to be harsh. She was a first offender with a young child. The law has provided for other noncustodial sentences which are meant to ease congestion in prisons and also rehabilitate offenders. These should have been taken into consideration first. However since sentence has been passed it is of no consequence now. The Appeal on sentence would however have succeeded to the extent of being substituted from a custodial one to community service for a similar period.

Dated and delivered this 11th day of May, 2001.

P.M. TUTUI

COMMISSIONER OF ASSIZE