



**SWP v Republic (Criminal Revision E001 of 2024)
[2024] KEHC 8146 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 8146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL REVISION E001 OF 2024**

DK KEMEL, J

APRIL 8, 2024

BETWEEN

SWP APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant herein has lodged the present revision seeking for reduction of the sentence imposed by the trial court. He had been charged with six counts under section 13 (1) and 13 (2) (a) as read with section 246 of the *Children’s Act* No. 29 of 2022 *vide* Webuye MCCH CR No. E006 of 2023 and sentenced to serve one year imprisonment on each count and which were to run concurrently.
2. For brevity purposes, it is noted that the Appellant and another who is his spouse faced three counts of infringing a child’s right to Education Contrary to section 13 (1) as read with section 246 of the *Children’s Act* No. 29 of 2022. The particulars are that on diverse dates and time at [Particulars withheld] village in Webuye West Sub – County jointly being parents to EZ, JM and DM aged 9,6 and 6 years respectively, negligently denied them a right to education by failing to enroll them in school.
3. The Appellant also faced three other counts of failing to protect a child from neglect contrary to section 31 (2) (a) as read with section 246 of the *Children’s Act* No. 29 of 2022. The particulars are that on diverse dates and time at [Particulars withheld] village in Webuye West Sub County of Bungoma County, jointly being parents to EZ, JM and DM aged 9, 6 and 6 years respectively willfully neglected them by failing to provide basic necessities namely food and clothes.
4. The Appellant pleaded guilty to all the charges and was subsequently convicted on his own plea of guilty and sentenced to serve one-year imprisonment on each count which were ordered to run concurrently.
5. The Appellant filed several grounds of review as follows:-



- a. That the Appeal is not against conviction and sentence but merely seeking review of sentence.
 - b. That the court also order for an option of a fine to run alongside the sentence.
 - c. That he is the family's breadwinner and hence the prolonged sentence will subject them to severe suffering.
 - d. That the sentence imposed is too harsh and excessive and which should be reduced on humanitarian grounds.
 - e. That the sentence be substituted with a non – custodial sentence.
6. The revision was canvassed by way of oral submissions .
 7. The Appellant submitted that he has other children who completed school last year who require him to assist them. That his wife deserted him and left him with sole responsibility of caring for the children. That the children are now suffering at home. He finally urged the court to grant him an option of a fine.
 8. Miss Kibet for the Respondent opposed the revision application. She submitted that the court should consider the lives of the minors who are now in jeopardy after being abandoned by the Appellant and his wife. She submitted that it was not right to for the Appellant and his wife to bring forth children and fail to care for them. Learned Counsel urged the court to uphold the sentence of the lower court.
 9. I have considered the oral submissions as well as the lower court record. It is not in dispute that the Appellant does not challenge his conviction. His main concern is that the sentence is excessive and harsh and should be reduced. It is not in dispute that the Appellant being a parent is under obligation to provide the said children with food, shelter and clothing as well as ensure that they access free and compulsory basic education as provided for by section 13 of the Children's Act No. 29 of 2022 which provides that every child has the right to free and compulsory basic education in accordance with Article 53 (1) (b) of the *Constitution*. The same further provides that it shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to basic education institution. This is meant to achieve the best interest of the child in order to achieve the right to survival protection, participation and development above other considerations and rights under Article 53 (1) of the *constitution* and section 8 of the *Children's Act*. The right of the child are aptly captured in Article 53 of the *Constititon* as follows:-
 1. Every child has the right
 - (a) To a name and nationality from birth
 - (b) To freedom compulsory basic education
 - (c) Basic nutrition, shelter and health care.
 - (d) To be protected from abuses neglect, harmful cultural practices, all forms of violence inhuman treatment or punishment and hazardous or exploitative labour.
 - (e) To parental care and protection which includes equal responsibility of the mother and father to provide for the child whether they are married to each other or not and
 - (f) not to be detained except as a measure of last resort, and when detained to be held
 - i. for the shorter appropriate period of time and
 - ii. separate from adults and in conditions that take a court of the child's sex and age.



2. A child best interest are of paramount importance in every matter concerning the child.

It is also not in dispute that the Appellant was sentenced in line with the provisions of section 246 of the said *Children's Act* 2022 which provides that a person convicted of an offence under this Act for which no other penalty is presented shall be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred thousand shillings or to both.

10. From the foregoing deductions, i find the only issue for determination is whether the appeal on sentence (revision) has merit. The record of appeal confirms that the appellant only pleaded guilty to the various charges and was subsequently convicted thereby. The Appellant being a parent or guardian, abandoned his children who are still young and failed to enroll them in school or even provide shelter and protection. The social enquiry report presented to the lower court revealed the Appellant and his wife as very irresponsible as the children were found poorly malnourished due to lack of food and medication and who were found traumatized and weak. The report also revealed that the girl aged 9 years had been defiled twice, the six years old boys had also been sodomized by unknown perpetrators. It is therefore quite clear that the Appellant and his wife have caused their children great suffering under their watch. I find the conduct of the Appellant to be abhorrent in that he abdicated his parental responsibilities and left the children on their own yet they are vulnerable. The Appellant has not even taken steps to find the perpetrators who have defiled and sodomized the children. The Appellant has projected an attitude of don't care, yet the law places on him the duty to protect the children. The Appellant must be brought to heel and should now understand that he cannot abdicate his parental role as there is nobody else to do it for him. It matters not that he is a person of less means since he chose to sire children and therefore he must be prepared to bring them up as by law demanded. The children have been taken through untold suffering while the appellant and his wife led a carefree life.
11. As regards sentence, it is noted that the learned trial magistrate imposed the appropriate sentence of one year on each count. I do not find the sentences to be excessive in the circumstances. Even though the statute provides for an alternative order for imposition of a fine, i find the trial court's reluctance to impose the same to have been proper as the Appellant deserved a custodial rehabilitation before being released back to the society. I do not see any reasons why i should interfere with the sentence.
12. In the result, it is my finding that the appeal on sentence (revision) lacks merit. The same is dismissed.

DATED AND DELIVERED AT BUNGOMA THIS 8TH DAY OF APRIL 2024.

D Kemei

Judge

In the presence of:-

Samson Wamalwa Pepela... Appellant

Miss Kibet for Respodnent

Kizito Court Assistant

