



**Cherono v Republic (Criminal Petition E040 of 2024)
[2024] KEHC 12508 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12508 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL PETITION E040 OF 2024
JK SERGON, J
OCTOBER 17, 2024**

BETWEEN

MERCY CHERONO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of neglecting a child contrary to section 152 (1) (b) of the Children's *Act No. 29 of 2022*. The particulars of the offence are that on diverse dates between the month of December 2023 and the 27th day of February, 2024 at Chepseon Trading Centre in Londiani Sub-County within Kericho County, being a mother of E.K.R aged 8 months she willfully abandoned and refused to provide basic needs to him.
2. The applicant pleaded guilty, and was convicted for the offence and sentenced to a fine of Kshs. 200, 000/= in default to serve 3 years imprisonment on 24th March, 2024 by Hon. F.M Nyakundi (P.M).
3. It is against this background that the applicant has moved this court for sentence review vide a notice of motion and a supporting affidavit sworn by the applicant herein.
4. The applicant avers that she was charged and convicted for the offence of child neglect and that she did not file an appeal against the finding of the trial court.
5. The applicant avers that this application is premised on article 165 (3) (b) of *the Constitution* of Kenya which empowers this Court to entertain applications for sentence review.
6. The applicant avers that her son has a severe case of severe cerebral palsy and was recently diagnosed with meningitis and is currently admitted at the Kericho County Referral Hospital. The applicant avers that she is not in a position to engage in rehabilitative care as her son needs special attention. The applicant therefore urged this court to consider her application in light of her ailing son.



7. In this application, the applicant does not challenge conviction. She merely asked this court to reconsider the sentence and urged this Court to award a more lenient definite sentence in article 50 (2) (p) (q) of *the Constitution* of Kenya.
8. The matter came up for inter partes hearing and the Learned Prosecutor stated that he was not opposed to the application as the sentence meted upon the applicant was harsh and excessive and more so in light of the medical condition of her son who is ailing from cerebral palsy and therefore requires constant medical attention. The Learned Prosecutor stated that there is a letter from Kericho Women's Prison supporting the applicant's application.
9. This Court has considered the letter from the Officer in Charge Kericho Women's Prison dated 22nd August, 2024, she confirmed that the child who is incarcerated alongside the applicant suffers from cerebral palsy and was recently diagnosed with meningitis and is currently admitted at Kericho County Referral Hospital and that the prison has incurred significant costs in a bid to cover the medical expenses of the minor. The Officer in Charge stated that the applicant had gone through counselling sessions and that she talked to the family members about the child's condition and urged them to support the mother once she is out of prison.
10. The Office in Charge urged this court to take into account the best interests of the child by dint of article 53 (2) of *the Constitution* and request that the government take up and provide for the child's medical needs or in the alternative grant a non custodial sentence for his mother to be able to take care of him.
11. There are circumstances under which the court can vary or decline to vary the sentence meted out. That is entirely at the discretion of the court. I have gone through the record of the court's decision in the criminal trial, the judgement and sentence. I have noted the sentence was harsh and excessive and therefore warranting this court's intervention by way of sentence review.
12. This Court In exercise of its supervisory power of revision under Section 362 of the Criminal Procedure Code can call for an examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence order recorded or passed.
13. I have perused the record of the trial court and it is apparent that the applicant herein was sentenced to a fine of Kshs.200,000/= in default to serve three (3) years imprisonment. Under Section 152 (1) (b) of the Children's *Act No.29 of 2022*, the offence the Applicant was sentenced for attracts inter alia a sentence of a fine not exceeding Kshs.500,000/=. The trial magistrate ordered the applicant to serve a default sentence of 3 years.
14. The default sentence pronounced by the trial court goes against the provisions of Section 28 (2) of the Penal Code. The default sentence for a fine exceeding Kshs.50,000/= is a maximum of 12 months. The default sentence therefore is not correct or legal. In the circumstances, this court is entitled to interfere with the sentence by way of revision.
15. It is also apparent that the fine imposed appears to be harsh and excessive. The circumstances of the case seem to suggest that a fine of Kshs.50,000/= was the most appropriate.
16. In the end, this court in exercise of its supervisory power of revision, I hereby set aside the fine of Kshs.200,000/= and substitute it with a fine of Kshs.50,000/=. The default sentence of three (3) years is set aside and is substituted with a default sentence of 6 months. The sentence pronounced upon revision to commence from the date of sentence i.e. 24th March, 2024. The record shows that the applicant has served 7 months of the default sentence.



17. Consequently, the applicant namely:- Mercy Cherono is hereby set free from prison having fully served the prescribed default sentence of six (6) months.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 17TH DAY OF OCTOBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Prosecutor – Taslima

Applicant – Present in Person

