



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. CRIMINAL APPL. NO. 68 OF 2018**

**ELIZABETH NEKESA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[An appeal from Ruling by Hon. E. Mwenda – SRM dated 28.9.2018]***

**RULING**

The appellant/Applicant Elizabeth Nekesa was on 22.6.2005 charged with the offence of causing Grievous harm Contrary to Section 234 of the Penal Code.

The particulars of the offence were that on the 12<sup>th</sup> day of May, 2015 at Syombe Sub-location in Kimaiti Location Bumula District within Bungoma County unlawfully did grievous harm to Roselyne Nasambu.

After full trial, the applicant was found guilty and on 4.1.2018 committed to serve Two (2) years imprisonment of Community service at Syombe Primary School. She was expected, as terms of the Community Service Order, to perform unpaid public work at Syombe Primary School; under the supervision of the supervisor and overall monitoring by the District Community Service Officer.

On 20.9.2018 the Community Service Officer approached court and informed court that the applicant had failed to comply with the Community Service Order in particular by failing to report to her workplace. The applicant in response informed court that she was hit by a cow and therefore would not be able to work and produced Medical documents showing she was directed to have bed rest for one week which was later extended for another one week. She however did not report to the workplace after the bed rest prompting the application for revocation of the order, which was substituted with 3 years imprisonment.

Mr. Anwar for the applicant sought review of the order on the grounds that the applicant did work and she produced documents to show she was unwell. He tendered a worksheet/attendance Register from the work place to confirm the same. Mr. Oimbo opposed the application contending that the applicant did not perform community service as required and that the worksheet only shows the days she worked.

I have considered the application and Response by state. A perusal of the work Recording Sheet tendered by Counsel for the applicant shows;

***1. February 2018***

*1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, From 7<sup>th</sup> – 29<sup>th</sup> she did not report to work excluding weekends.*

***2. March 2018***

*She only report on 26, 27, 28, 29.*

*1<sup>st</sup> – 22<sup>nd</sup> - Not reported to work excluding weekends.*

***3. April 2018***

*She reported only on 3, 4, 5, 6<sup>th</sup> and 31<sup>st</sup>.*

**4. June 2018**

*She reported only on 27<sup>th</sup> 28<sup>th</sup> – 29<sup>th</sup>.*

From a perusal of the Worksheet, it is clear to this court as it was to this trial court that the applicant was inconsistent in reporting for work as directed. Her Medical Condition did not absolve her from reporting to work to be assigned light or appropriate duties except when she was given sick offs. I am satisfied that where the offender has willfully failed to comply with a Community Service Order, the Court can cancel the order and mete out any appropriate sentence, which is what the trial magistrate did. I find no merit in this application for Review and same is dismissed.

**Dated and Delivered at Bungoma this 4<sup>th</sup> day of June, 2019.**

**S.N. RIECHI**

**JUDGE**