



**REPUBLIC OF KENYA**

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

**MISC. CR. APPLN NO. 52 OF 2019**

**CK.....1<sup>ST</sup> APPLICANT**

**WK.....2<sup>ND</sup> APPLICANT**

**FK.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. CK, WK and FK (“the 1<sup>st</sup> to 3<sup>rd</sup> applicants”) were charged separately in the **Githongo SRMs Cr. Case Nos. 953, 954 and 951 of 2019**, with the offence of abetting female genital mutilation contrary to **section 20 (b)** as read with **section 29 of the Prohibition of Female Genital Mutilation Act No. 32 of 2011**.

2. It was alleged that:-

a) on 14/7/19 at about 18.00hrs at Kiegu location in Imenti Central sub-county within Meru County, the 1<sup>st</sup> applicant accused abetted and underwent female genital mutilation in contravention of the act.

b) on 14/7/19 at about 18hrs at Makandune location in Imenti Central sub-county within Meru County, the 2<sup>nd</sup> applicant abetted and underwent female genital mutilation in contravention of the act.

c) on 14/7/19 at about 21hrs at Kiegu location in Imenti Central sub-county within Meru County, the 3<sup>rd</sup> applicant accused abetted and underwent female genital mutilation in contravention of the act.

3. All the applicants pleaded guilty to the charges. The facts were correctly read to them and they confirmed the same. They were all convicted and sentenced to a fine of Kshs. 200,000/- in default to 3 years imprisonment each.

4. It is that conviction and sentence that has prompted this review. They all applied for the review and had the 1<sup>st</sup> applicant swear a supporting affidavit dated 10<sup>th</sup> September 2019. She told the court that she pleaded guilty because she was asked whether she was circumcised which she answered in the affirmative. She is an adult of 30 years and she underwent the same back in the year 2000 long before this act came into force. Additionally, she is of the belief that she cannot be charged with aiding and abetting female genital mutilation on herself.

5. I have carefully perused the application, the supporting affidavit and the original record. The revisionary jurisdiction of this court under **section 362 of the Criminal Procedure Code** is limited to calling for the trial court’s record and ascertain for itself on the regularity of any order made or proceedings undertaken.

6. All the records show that the charges were read and explained to the applicants in Kimeru a Language which she understood and she admitted to the charge. Thereafter, the particulars of the charge were also read over to them to which they answered “**facts are correct**”. All the applicants were given an opportunity to mitigate which they duly did.

7. In view of the foregoing, they cannot allege that they were only asked whether they were circumcised to which the answered in the affirmative. By stating that they did not understand the charge, or the applicants are retracting their plea of guilty.

8. In **John Muendo Musau v Republic [2013] eKLR** the court observed:-

***“We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused person can change his plea at any time before sentence.”***

9. Since the applicants have already been sentenced, they cannot retract their plea at this stage. In any event, there is nothing in their mitigation to show that they were negating any of the ingredients of the offence which they had already admitted.

10. The other ground was that the charge sheets do not disclose any offence against the applicants. That they could not aid and abet female mutilation (FGM) against themselves. I have looked at the Charge Sheets for the applicants. They were charged with abetting FGM. The particulars being that on the material date and time, they underwent the process which was contrary to the law.

11. ***Section 20 (a) of the Prohibition of Female Genital Mutilation Act*** which provides:-

***“A person who aids, abets, counsels or procures—***

***a) a person to commit an offence under section 19; or***

***b) another person to perform female genital mutilation on that other person, commits an offence.”***

12. The **Tenth Edition of the Blacks Law Dictionary** defines “Abet” as ***‘to assist or facilitate the commission of a crime, or to promote its accomplishment.’*** In the present case, it was alleged that the applicants sought the services of a female genital mutilation practitioner and thereby underwent the process.

13. To this Court’s mind, by willingly presenting themselves to procure FGM they assisted in the commission of the offence in terms of ***section 20 (a) of the Prohibition Against Female Genital Mutilation Act***. In this regard, I find that the Charge Sheets were not defective as claimed by the applicants.

14. In the premises, I find the application to be without merit and dismiss the same.

**DATED** and **DELIVERED** at Meru this 17<sup>th</sup> October, 2019.

**A. MABEYA**

**JUDGE**