



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 109 OF 2018

L G N.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This is an application for revision arising from the judgment of L.K. Mutai Principal Magistrate. The trial court found the applicant “guilty but insane” for the offences of assault contrary to Section 252 and grievous harm contrary to Section 234 of the Penal Code. The learned magistrate made a special finding ordered that the applicant be detained under the president's pleasure by virtue of Section 166 of the Criminal Procedure Code.

2. The applicant does not fault the proceedings, order or sentence of the trial magistrate. Her plea is for leniency based on the following grounds:-

(a) That she has served under the President's pleasure detention order at Langata Prison for a period of eight (8) years.

(b) That she was insane when she committed the offence but has now been certified of sound mind.

(c) That she has a fixed abode.

(d) That the welfare of her children has been adversely affected due to her prolonged absence from home.

(e) She has two children under the care of her aged mother who is of over 80 years.

3. I have perused the doctor's report dated 9/04/2018 by Dr. Mburu of Mathare Mental Hospital. It confirms that the applicant has now become capable of making her defence. This means that the applicant has received full treatment on her mental illness with positive results.

4. I note that the order of the magistrate was made within the law. However, due to the fact that the mental status of the applicant has changed, she can now look after herself unlike the time of sentencing.

5. Having been detained for 8 years and also given the fact that she has children at home under the care of her aged mother, it is appropriate to revise the sentence imposed by the trial court.

6. I hereby revise the sentence on the grounds that the period of eight (8) years served for the two offences is sufficient.

7. I direct that the applicant be given a probation sentence subject to suitability which will assist her to undergo counseling and to adjust in society having been confined for a long time.

8. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF JULY, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Mate for State

Applicant