

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL REVISION NO. 8 OF 2016

REPUBLIC.....APPLICANT/PROSECUTOR

-VERSUS-

DAISY CHEROTICH.....RESPONDENT

RULING

The Respondent Daisy Cherotich was charged with the offence of failing to report commission of an offence C/S 24 as read with S. 29 of the Prohibition of Female Genital Mutilation Act No. 32 of 2011.

She pleaded guilty to the charge which was read to her in Kipsigis language. The facts were read to her and she admitted them to be correct. She was convicted on her own plea and before sentencing the court called for a probation report. Subsequently the accused was placed on probation for 2 years.

S. 29 of the prohibition of female Genital Mutilation Act provides: -A person who commits an offence under this act is liable on conviction to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings or both”.

From the above it's apparent that parliament intended to divest the court the discretion of sentencing by providing for minimum sentences . The learned trial magistrate had no discretion to place the accused on probation. The probation placement was illegal.

S.362 of the CPC gives the high court powers of revision. In exercise of these powers I hereby alter and revise the sentence of probation placement for two years and substitute it with one of a fine of Kshs.200,000/= in default one years imprisonment

M. MUYA

JUDGE

15/3/17

Ruling delivered dated and signed this 15/3/2017 in the presence of learned counsel for prosecution Mr. Waweru Respondent present in person, Court assistants- Mercy/Rotich.

M. MUYA

JUDGE

15/3/17