

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL REVISION NO. 7 OF 2016

REPUBLIC.....APPLICANT/PROSECUTOR

-VERSUS-

MERCY CHELANGAT.....RESPONDENT

RULING

This is an application for revision grounded on the illegality of the sentence meted out on the Respondent.

She 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.

The charge was read to her in Kipsigis language. She pleaded guilty and the facts were read to her and she admitted them to be true and further stated that she was under peer pressure to get aroused. The court called for a probation report and later placed her 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”.

It's apparent from the above that parliament in its wisdom decided to remove the courts discretion in sentencing by imposing minimum sentences in this act.

The learned trial magistrate had no option but to follow the provisions of S. 29 of the Act.

S. 362 of the Criminal Procedure Code provides:- The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or sides recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

Having found that there was illegality in sentencing the sentence of probation placement for two years is hereby revised and altered and substituted with one of a fine of Kshs.200,000/- in default one year imprisonment.

Ruling delivered dated and signed this 15th March 2015 in open court and in the presence of learned counsel for prosecution Mr. Waweru.

Respondent in person

Court assistants – Mercy/Rotich.

M. MUYA

JUDGE

15/3/2017