



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BOMET**  
**CRIMINAL APPEAL NO 82 OF 2015**

**JESSICA MAGERER.....APPELLANT**

**VS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The above mentioned Appellant was convicted and sentenced to pay a fine of Ksh.200,000/= in default to serve three years imprisonment on each count.

In the first count she was charged with aiding the commission of female genital mutilation contrary to section 20 (9) as read with 8.29 of the prohibition of female genital mutilation act no 32 of 2011.

The particulars being that on the 28<sup>th</sup> of November 2015 at about 6:00 am at [particulars withheld] village Lelaitich location of Chepalungu – Bomet county, knowingly and unlawfully aided the commission of female genital mutilation upon N C K, F N, J K and M K by offering them a custody in her house after their clitoris had been cut off.

The 2<sup>nd</sup> count is that of failing to report commission of an offence contrary to section 24 as read with 8.29 of the prohibition of female genital mutilation act no 32 of 2011.

In the 3<sup>rd</sup> count she faced a charge of allowing her premises to perform genital mutilation contrary to section 22 as read with 8.29 of the prohibition of female genital mutilation act no 32 of 2011.

The particulars being that on the 28<sup>th</sup> day of November 2015 at about 6:00 pm at [particulars withheld] village – Lelaitich location of Chepalungu – Bomet county, knowingly and unlawfully did allow her premises in which she was in control or responsible for to be used for purposes of performing female genital mutilation in that N C K, F N, J K and M K their clitoris were cut off in her premises.

The Appellant pleaded guilty to the charges that faced her. Facts were read over to her and she admitted them to be correct. She was later convicted on her own plea.

The appeal appears to be on sentence. The conviction is not contested. In her submissions in court she told the court that she is a first and a single mother of three young children. She maintains that the sentence is harsh and oppressive.

Therein lies the clash between traditional values and the law of the land. I sympathize with this 43 old

single mother of three children. I had called for a probation report which same I have perused and found favourable. However, 8.29 of the prohibition of Female Genital Mutilation Act provides:- “A person who commits an offence under this Act is liable, or 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.”

The sentence which was meted by the learned trial Magistrate was the minimum one allowable.

It cannot therefore be said to be harsh and excessive. The intention of parliament must have been to endeavour to eradicate the culture of genital mutilation. The sentences provided in the Act are towards that goal.

I find no good reason to interfere with both the conviction and sentence. Both are upheld. The appeal has no merit and its disallowed.

Judgment delivered dated and signed this 7<sup>th</sup> day of December 2016 in open court and in the presence of learned counsel for the prosecution Mrs Kiptoo, the appellant in person. Court assistants Mercy/Nicholas.

**M. MUYA**

**JUDGE**

**7.12.2016**