

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.12 OF 2013

(An Appeal arising out of the conviction and sentence of KIARIE W. KIARIE - CM delivered on 12th November 2012 in Nairobi CMC. CR. Case No.1726 of 2012)

A G K.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, A G K, was charged with the offence **child stealing** contrary to **Section 174(1)(a)** of the **Penal Code**. The particulars of the offence were that on 6th November, 2012 at Ruaka in Kiambu County, with the intent to deprive C W (the complainant), a parent who had the lawful charge of N N G, a child under the age of fourteen (14) years, took of the possession of the said N N G. She was further charged with the offence of **demanding property by written threats** contrary to **Section 299** of the **Penal Code**. The particulars of the offence were that on the same day, in an unknown place within the Republic of Kenya, with the intent of extorting money from the complainant, caused the said complainant to receive a text message containing threats of injury to her child namely N N G if the demand was not complied with. When the Appellant was arraigned before the trial court, she pleaded guilty to the charge. She was sentenced to serve five (5) years and seven (7) years respectively in respect of the two counts. The sentences were ordered to run concurrently.

The Appellant filed an appeal challenging the sentence imposed on her. She was of the view that the sentences that were imposed on her were harsh and excessive taking into consideration that she was a first offender and had pleaded guilty to the charge. She asked the court to take into consideration the fact that she had been a victim of rape earlier in the year of her conviction that resulted in her being infected with HIV. She pleaded with the court to direct that she serves a non-custodial sentence. At the hearing of the appeal, the Appellant reiterated her plea for the court to review her sentence. Mr. Muriithi for the State left the issue of sentence to the court.

The Appellant is appealing against the imposition of the custodial sentence only. She is not appealing against conviction. Although sentence is the discretion of the court hearing the criminal case, this court formed the view that the custodial sentence imposed on the Appellant was harsh and excessive, taking into account that the Appellant had pleaded guilty to the charge and was a first offender. This court has also taken into account the age of the Appellant. At the time of commission of the offence she was 19 years. In the period that she has been in the prison, she has learnt that crime does not pay. This court is therefore of the view that the Appellant has been sufficiently punished. The custodial sentences imposed by the trial court is commuted to period served. The Appellant is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2015

L. KIMARU

JUDGE