



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 144 OF 2013

CAROLINE SHIRANGA ANZENGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in the Chief Magistrate's Court at Kibera Criminal Case No. 2643 of 2013 delivered by Hon. J. Osoro Juma (Mrs) SPM.)

JUDGMENT

Caroline Shirinda Anzenga, the Appellant herein was charged with the offence of being in possession of papers for forgery contrary to Section 367(a) of the Penal Code. Particulars of the offence were that on the 1st day of August, 2013 in Gataka village within Ongata Rongai within Kajiado County, without authority knowingly had in her custody 6,758 papers intended to resemble and pass as special paper as is provided and used in making US currency notes amounting to 675,800 US Dollar Bills.

The Appellant was convicted on his own plea of guilty and was sentenced to serve five years imprisonment. She has appealed only against the sentence. In a Memorandum of Appeal filed on 27th August, 2013, she was aggrieved that she was a first offender and yet she was not given a more lenient sentence, that she was young then aged only 22

years, she had a seven months old baby in prison who was unlikely to get the best upbringing in the prison and that the sentence was harsh in the circumstances. In court, she submitted that she wanted to go to her rural home to help her grandmother.

Learned State Counsel Miss Njuguna did not oppose the appeal, submitting that the Appellant was a first offender who had a two years and 11 months old baby and in any case, she had already served two and a half years in prison.

I have accordingly considered the appeal and the respective submissions. Under Section 367(a) of the Penal Code, any person who, without lawful authority or excuse makes, uses or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any bank note or currency note is guilty of a felony and is liable to imprisonment for

7 years. In that case, the sentence imposed on the Appellant was lawful.

However, given that she was a first offender and she pleaded guilty thus saving the court time, the trial court ought to have considered a more lenient sentence. Furthermore, it is important to note that as at the time of conviction, he had a seven months old baby who has now turned 2 years and 11 months. In the best interest of the upbringing of the child, it is only just that the appeal succeeds. I consider that he has already served two and a half years of the imprisonment term which I consider as sufficient punishment in the circumstances.

In the result, the appeal partially succeeds with the order that the Appellant has served sufficient sentence and I order that she be and is hereby set free unless otherwise lawfully held.

DATED and DELIVERED this 23rd DAY of DECEMBER, 2015

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

1. Appellant present in person
2. No appearance for the Respondent



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