



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CRIMINAL MISC. APPLICATION NO. 21 OF 2019**

**BONIFACE MUTUA WAMBUA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. **Boniface Mutua Wambua**, the Applicant was arraigned in Court for the offence of **Defilement** contrary to **Section 8(1)** as read with **Section 8(4)** of the **Sexual Offences Act**. He was convicted and sentenced to **20 years imprisonment**. He appealed against the decision of the first instance Court. This Court considered the Appeal, confirmed the conviction but set aside the sentence imposed and substituted it with **fifteen (15) years imprisonment**. Aggrieved, the Appellant filed a second Appeal to the Court of Appeal, a matter that is pending hearing.

2. By way of Chamber Summons dated **19<sup>th</sup> March, 2019** he now seeks an order that the **twenty (20) years imprisonment** meted out by the trial Court do commence from the date of his arrest.

3. This Court became *functus officio* after pronouncing the sentence of **fifteen (15) years imprisonment** that was to run from the date of conviction by the trial Court. This Courts mandate having expired, it cannot usurp the jurisdiction of the Court of Appeal.

4. Therefore, the Application is dismissed.

5. It is so ordered.

**Dated, Signed and Delivered at Kitui this 19<sup>th</sup> day of June, 2019.**

**L. N. MUTENDE**

**JUDGE**