



**Mulama v Republic (Criminal Appeal 180 of 2019)
[2024] KECA 207 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KECA 207 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 180 OF 2019
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
FEBRUARY 29, 2024**

BETWEEN

SAMUEL MULAMA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Kakamega, Prepared, Dated and Signed by (W. Musyoka, J.) on 31st January, 2019. Delivered, Dated and Signed by (J. Njagi, J.) on 7th February 2019 in HCCRA No. 36 of 2015)

JUDGMENT

1. The appellant Samuel Mulama, was tried and convicted by the SPM's Court at Mumias for the offence of defilement of a 16-year-old girl. In accordance with Section 8(4) of the *Sexual Offences Act*, he was sentenced to serve 15 years imprisonment on 12th March, 2015. His appeal to the High Court against conviction and sentence was dismissed on 7th February, 2019.
2. He has now filed an appeal before us from the decision of the High Court in regard to sentence only. According to his notice of appeal dated 14th February, 2019, his appeal from the judgment of the High Court was against conviction and sentence. However, the appellant had filed written submissions from which it is apparent that he is appealing against sentence only.
3. During the plenary hearing, the appellant was present in person while Mr. Chacha from the office of Director of Public Prosecutions was present for the respondent. The appellant reiterated that his appeal is against sentence only. He explained that he has already served 10 years in prison, and would wish to have the period he spent in custody following his arrest before his conviction, factored in computing his sentence.



- 4. In effect the appellant has not stated any grounds that would justify any interference by this Court on second appeal, with the sentence that was imposed upon him by the trial court. In his appeal to the High Court, the appellant did not raise any grounds challenging the sentence. We find that there is no merit in the appeal against sentence. As for his request that the period that he was in remand between the time of his arrest and the time of conviction be factored in computing his sentence, the same has not been opposed by the respondent. In any case, it is consistent with the proviso to Section 333(2) of the Criminal Procedure Code which allows the period spent by a convict in custody before his conviction, to be taken into account in computing his sentence.
- 5. Accordingly we dismiss the appellant’s appeal against sentence but order that in accordance with the proviso to Section 333(2) of the Criminal Procedure Code, the appellant’s sentence of 15 years imprisonment shall commence from 19th February, 2014, which was the date that he was charged in the magistrate’s court and remanded in custody.

DATED AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF FEBRUARY, 2024.

HANNAH OKWENGU

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

