



**Okello v Republic (Criminal Appeal 149 of 2018)  
[2022] KECA 1251 (KLR) (10 November 2022) (Judgment)**

Neutral citation: [2022] KECA 1251 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 149 OF 2018  
PO KIAGE, F TUIYOTT & JM NGUGI, JJA  
NOVEMBER 10, 2022**

**BETWEEN**

**LUKA OKELLO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment of the High Court of Kenya at Migori, (Mrima, J.) dated 23rd February, 2017 in HCCRA No. 26 of 2016)*

**JUDGMENT**

1. The appellant abandons his appeal on conviction and focuses on the sentence. He asks us to consider recent jurisprudence from the High Court and from this court, in which it has become quite clear that courts retain discretion to deal with sentence in matters under the *Sexual Offences Act*, notwithstanding the minimum mandatory sentences, which have been questioned and found unconstitutional.
2. Miss Odumba, learned prosecuting counsel does not object to the withdrawal of the appellant's appeal on conviction, she goes on to state that given the circumstances of this case, the state proposes that the sentence imposed upon the appellant should be reduced from 20 years to eight (8) years.
3. Having considered the submissions made before us, our decision in this matter, is that the appeal on sentence succeeds and the appellant's sentence is reduced to the time already served.
4. In the result, the appellant shall be immediately set at liberty unless otherwise lawfully held. The full reasons for this judgment shall be rendered on the March 17, 2023.

Order accordingly.

**DATED AND DELIVERED AT KISII THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2022**

**P.O. KIAGE**



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**JUDGE OF APPEAL**

**F. TUIYOTT**

.....  
**JUDGE OF APPEAL**

**JOEL NGUGI**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**

