



REPUBLIC OF KENYA



**KENYA LAW**  
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**Siuma v Republic (Criminal Appeal E015 of 2024)  
[2025] KEHC 5604 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E015 OF 2024  
SC CHIRCHIR, J  
APRIL 29, 2025**

**BETWEEN**

**CLEMENT SIUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment of Hon. C.N Njalale(SRM)  
in Butali chief Magistrate's court criminal case No. E022 of 2022)*

**JUDGMENT**

1. Clement Siuma (The Appellant) was charged with the offence of Sexual Assault contrary to Section 5 (1) (a) ii 2 of the *Sexual Offences Act*. He faced an alternative charge of committing an indecent Act with a child contrary to Section 11 (1) of the *Sexual Offence Act* No. 3 of 2006. He was convicted on the main account and sentenced to 9 years imprisonment.

**Petition of Appeal**

2. He was aggrieved by the sentence and proffered this Appeal. He has set out the following grounds;
  1. That the sentence of nine year is too harsh on me.
  2. That I have humbled myself and found it prudent to request this esteemed court for leniency and mercy on my sentence or order for a non-custodial punishment.
  3. That I am a first offender in the open and I have no previous criminal offence similar to this in any other court, and I just found myself in this offence as a matter of circumstances, I therefore pray for leniency in this matter. My Ladyship getting into such offensive situation was due to lack of awareness in legal matters and through some rehabilitation programmes



such as psychosocial counselling and spiritual teaching I have learned a lot and developed a good personality.

4. That the nine years in prison is a big blow to my life and family.
  5. That am already rehabilitated and deterred from committing any criminal conduct, and I have learned that life in prison is so harsh, am willing and more ready to change my behavior and control my association to others and manage my life and family.
  6. That I am of old age and constant ill health fearing on how to cope with prison life.
  7. That I am remorseful and sorry for whatever that happened and begs for leniency and mercy than any other time in my life. I regret and promise not to repeat again.
  8. That my family is perishing a lot due to this harsh punishment because I was of great help being the only breadwinner in my family.
3. The Appeal was prosecuted by way of written submissions.

### **Appellant's Submissions**

4. He reiterates that the sentence of 9 years was too harsh. He further states that life in prison is challenging due to overpopulation , and scarcity of basic necessities.
5. He further submits that he is at an advance age and is suffering in ill-health. He has 18 children who depend on him.
6. The Respondent did not file any submissions

### **Determination**

7. I have considered the Appellant's grounds of appeal and the submissions. Save for the plea that the 9-year sentence was harsh, the rest of his submissions are really in the nature of a review of sentence based on allegations of reform while in custody. I will thus address myself only to the question of whether the sentence was excessive.
8. The Appellant was convicted of Sexual Assault on a 7-year old child. Section 5 of the [Sexual Offences](#) under which the Appellant was charged states as follows;

“5 Any person who unlawfully ;

- a). Penetrates the genital organs of another person with (i) any part of the body of another person or that person; or (ii) an object manipulated by another so as to cause penetration of the genital organ into or by any of the other person's body is guilty of an offence termed Sexual Assault.

2. A person guilty of an offence under this section is liable upon conviction to imprisonment for term of not less than ten years but which may be enhanced to imprisonment for life”.

9. Thus, the offence attracts a minimum sentence of 10 years and a maximum of life sentence. The Appellant was sentenced to the minimum.



10. In the face the mandatory minimum sentence prescribed by the aforesaid of the sexual offences Act, the sentence meted out to the Appellant is neither illegal or excessive. Neither the lower court nor this court have the powers to vary a statutory prescribed sentence.

11. The other issues raised are not relevant to the Appeal as aforesaid. It is a prayer for review. In the end I find that the Appellant Appeal lacks merit. It is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO ,THIS 29TH DAY OF APRIL 2025**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Godwin Luyundi – Court Assistant

Ms. Kagai for the Respondent.

