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| Case Number:    | Criminal Case 1253 of 1975  |
| Date Delivered: | 15 Dec 1975   |
| Case Class:     | Criminal  |
| Court:          | High Court at Nairobi (Milimani Law Courts)   |
| Case Action:    | Judgment  |
| Judge:          | Edward Trevelyan, Chanan Singh  |
| Citation:       | James Mulama v Republic [1975] eKLR   |
| Advocates:      | JJ Odhiambo for the Appellant, W Mbaya State Counsel for the Republic.  |
| Case Summary:   | <p style="text-align: center;"><b>James Mulama v The Republic</b></p> <p style="text-align: center;">High Court, Appellate Side, Nairobi 15th<br/>December 1975</p> <p style="text-align: center;">Trevelyan &amp; Chanan Singh JJ</p> <p><i><b>Criminal Law</b> – conspiracy – acquittal of all accused bar one – conviction of remaining accused quashed on appeal – undesirability of charging conspiracy when specific offence may be charged.</i></p> <p><b>Case referred to in judgment:</b></p> <p><i>R v Manning</i> (1883) 12 QBD 241, 53 LJMC 85, 51 LT 121.</p> <p><b>Appeal</b></p> <p>James Mulama appealed against his conviction and sentence (Criminal Case No 1253 of 1975) at the Senior Resident Magistrate's Court at Nairobi on two charges of conspiracy. He appealed on the ground that his coaccused had been acquitted.</p> <p><i>JJ Odhiambo for the Appellant.</i></p> |

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|  | <i>W Mbaya</i> State Counsel for the Republic. |
| Court Division:  | Criminal                                       |
| History Magistrates:   | -  |
| County:  | Nairobi  |
| Docket Number:   | -  |
| History Docket Number:   | -  |
| Case Outcome:  | Convictions quashed                            |
| History County:  | -  |
| Representation By Advocates:   | Both Parties Represented                       |
| Advocates For:   | -  |
| Advocates Against:   | -  |
| Sum Awarded:   | -  |
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**APPELLATE SIDE**

**CRIMINAL CASE NO 1253 OF 1975**

**JAMES MULAMA..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... REPUBLIC**

**JUDGMENT**

This case has occasioned us some concern. The appellant was charged with two counts of conspiracy and the charges were laid as being committed with a named accused and others, but state counsel who does not support the convictions says that the evidence could only point to the appellant and his co-accused having committed the offences and no-one else; so that he was unable to support the appellant's conviction, his coaccused having been acquitted. With respect, it is unfortunate that it must be so because with specific offences rather than conspiracy charges the situation would no doubt be very different.

If on a charge of conspiracy all the accused but one are acquitted that one has to be acquitted also unless it is charged and proved that someone else not named in the charge has been part of the conspiracy.

That is the law as stated in various cases including *R v Manning* (1883) 12 QBD 241 to which state counsel drew our attention.

Courts do not look and never have looked kindly at conspiracy charges brought instead of specific offences and this case illustrates the dangers attendant upon the police embarking upon conspiracy charges when specific charges are available. We have no alternative but to allow the appeal, which we do.

*Convictions quashed.*

Dated and Delivered at Nairobi this 15<sup>th</sup> Day of December 1975

**E. TREVELYAN**

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**JUDGE**

**CHANAN SINGH**

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**JUDGE**



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