



Wanjala v Republic (Petition E013 of 2023) [2025] KEHC 7281 (KLR) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E013 OF 2023
RN NYAKUNDI, J
MAY 26, 2025**

BETWEEN

BENJAMIN SIFUNA WANJALA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application in the case as follows:

- i. That the petitioner is not seeking to interfere with conviction but sentence
 - ii. That the application be certified as urgent and service thereof be dispensed with it be heard in the first instance.
 - iii. That I beg to be present during the hearing and determination of this petition.
- It is further stated in the affidavit sworn by Benjamin Wanjala which states as follows:

- i. That I am a male adult Ugandan citizen of sound and mind versed with the fact of this matter and hence competent to swear affidavit
- ii. That I was convicted and sentence to serve life imprisonment for the offence of defilement c/ sec 8 (1) as read with 8(2) sexual offence act 3 of 2006 CM'S Eldoret
- iii. That after my conviction I appealed against both conviction and sentence vide high court criminal appeal no. 72/2008 which was dismissed by Eldoret high court
- iv. That I am a first offender ,remorseful, repentant and God-fearing man
- v. That ,I make this petition in reliance to petition No..E017 of high court Machakos by justice Odunga and petition no.97/2021 at high court Mombasa by justice Mativo and justice Githinji minimum mandatory sentences and court's discretion on determining cases on individual circumstances upon mitigation respectfully.



- vi. That, this honourable court has unlimited discretion under article 165(3) (b) of *the constitution* of Kenya 2010 to hear and determine this matter.
 - vii. That, I am not interfering with the conviction but on sentence only.
 - viii. That, I beg to given a fair opportunity to argue my petition before this court.
 - ix. That what I have deponed herein is true correct to the best of my knowledge information and belief.
2. This Application can only be considered within the text of Art. 50(6)(A) & (B) of *the Constitution* as read with Section 362 of the CPC. In the context of Art. 50 (6)(A) & (B) new and compelling evidence typically refers to evidence that was not available during the original trial and despite due diligence could not have been obtained earlier by the Applicant. This constitutional framework of new evidence must be relevant, admissible of high probative value and capable of being believed by the review court. In the sense of this principles to be compelling something needs to be really convincing. A motion for a new trial based on newly discovered evidence that demonstrate constitutional or statutory error may indeed be brought under Art 50 (6) (A) & (B) of *the constitution*. For the court to exercise its discretion to entertain a new trial under this constitutional imperative the Applicant must show that the evidence has come to his or her knowledge since the final decision of the court at the trial or after an Appeal process. That it was not owing to the want of due diligence that that evidence did not come sooner to his knowledge. That should the court be persuaded by the new evidence it is so material that it would probably produce a different verdict that that of the primary court or an Appeal's court altogether.
 3. The other challenge I grasp with this provision is the notion by the Applicants that there should be no time limit for filing of a motion for new trial grounded on newly discovered evidence. I am of the considered opinion that there should be a definite time limit within which motions in terms of Art. 50 (6)(A) & (B) of *the constitution* for a new trial based on newly discovered evidence should be made unless the court is satisfied that for good sufficient cause shown by the Applicant such a motion should be filed out of time.
 4. I have evaluated the affidavit evidence thought sympathetic to the Applicant has not met the criteria for this court to review his sentence which was considered on Appeal by Ngenye J on 15.7.2013. The Application lacks merit and the same is dismissed under Section 382 of the CPC

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 26TH DAY OF MAY 2025

.....

R. NYAKUNDI

JUDGE

petition no e013 of 2023	0
--------------------------	---

