



**Lagat v Republic (Criminal Miscellaneous Application  
E114 of 2024) [2025] KEHC 9746 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9746 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL MISCELLANEOUS APPLICATION E114 OF 2024**

**RN NYAKUNDI, J**

**JULY 4, 2025**

**BETWEEN**

**SAMSON KIPYEGO LAGAT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application seeking orders as follows:
  - a. Spent.
  - b. That the appellant was charged of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act* no 3 of 2006 in criminal case no. 1430 of 2014 and sentenced to life imprisonment.
  - c. That I appealed to the high court criminal appeal no. 18 of 2015 whereby my appeal was dismissed in its entirety
2. The application is anchored on grounds that:
  - a. That the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the age of the complainant was not conclusively proved.
  - b. That the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that the identification of the appellant was no proved by recognition.
  - c. That the learned appellate judge erred in law by convicting and sentencing the appellant failing to note that penetration of the complainant was not conclusively proved.
  - d. That further grounds shall be adduced at the hearing of this appeal.



- e. That, I wish to be present during the hearing and determination of this appeal
3. The applicant equally swore an affidavit in support in which he deposed as follows:
- a. That I was charged with offence of defilement contrary to section 8(1) as read with 8(2) of *Sexual Offences Act* no. 3 of 2006 in criminal case no. 1430 of 2014 at kapsabet law court
  - b. That I appealed to the High Court criminal appeal no. 18 of 2015, whereby my appeal was dismissed entirety
  - c. That the learned appellate judge erred in law by upholding the conviction and sentence of the appellant failing to note that the age of the complaint was not conclusively proved
  - d. That the learned appellate judge erred in law by upholding the conviction and sentence of the appellant failing to note that the identification of the appellant was not proved by recognition
  - e. That the learned appellate judge erred in law by upholding the conviction and sentence of the appellant failing to note that the penetration of the complaint was not conclusively proved
  - f. That due to my earlier intention to appeal, I be leave of this honorable court for extension to appeal out of time
  - g. That, further grounds shall be adduced at the hearing of this appeal
  - h. That, I wish to be present during the hearing and determination of this appeal
  - i. That what I have deposed herein is true to the best of my knowledge, belief and trust
  - j. That I am a pauper thus I pray for a waiver

### **Decision**

4. This application is based on the provisions of Art. 50(6) (a) (b) of the *constitution* which provides as follows:
- A person who is convicted of a criminal offence may petition the High Court for a new trial if-
- a. The person's appeal, if any, has been dismissed by the highest court to which the persons entitled to appeal, or the person did not appeal within the time allowed for appeal; and
  - b. New and compelling evidence has become available
5. In interpreting and construing this provisions the drafters provided the yardstick under Art 259 of the *constitution* in the following language:
- a. Promotes its purposes, values and principles;
  - b. Advances the rule of a law, and the human rights and fundamental freedom in the Bill of Rights;
  - c. Permits the development of the law; and
  - d. Contributes to good governance.



6. To invoke Art 50 (6) (a) (b) of the constitution the applicant must persuade this court that the fundamental rights under the fair trial rights enshrined in Art 50 have been infringed or violated by the trial court or appeals court to warrant a review of the decisions and a new trial to be initiated. The sufficient interest must be the interest in the relief of the applicant requests. As with ordinary language, the meaning of a constitutional provision depends on the context in which it is used. Much of constitutional interpretation is therefore about establishing the context or, perhaps, painting the picture within which a particular constitutional provision must be viewed. Sometimes the context is obvious and the meaning of the provision is unlikely to give rise to controversy.

7. The threshold is set by the constitution that an applicant must discharge the burden of proof that their exist compelling new evidence for a new trial to be allowed by the court. In the case of Ramathan Juma Abdulla & 2 others v Republic (2012) eKLR in which Lenaola, J noted that:

*‘Black Law Dictionary, 8<sup>th</sup> edition defines ‘new’ as ‘recently discovered, recently come into being’ and the concise oxford dictionary defines compelling as ‘powerful evoking attention or admiration’. It follows therefore that the evidence must have been recently discovered or has just come into being and is evidence that will evoke attention and arouse a great deal of interest’.*

8. The court is therefore mandated to apply purposive interpretation of the Bill of Rights which in my view is the cornerstone of the remedies being sought by the applicant. On this issue of interpretation the Canadian Supreme Court in R v Big Drug Mart Ltd 1985 18 DLR held as follows:

The meaning of a right or freedom guaranteed by the Charter was to be ascertained by an analysis of the purpose of such guarantee; it was to be understood, in other words, in the light of the interests it was meant to protect. In my view, this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought, by reference to the character and larger objects of the Charter [of Rights and Freedoms] itself, to the language chosen to articulate the specific right of freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the Charter. The interpretation should be .... a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter’s protection.

9. This what the constitution envisages in so far as Art 50 (6) (a) (b) is concerned as illustrated in the case of Tom Martins Kibisu v Republic Supreme Court Petition Bo. 3 of 2014 held as follows:

“(41) Article 50 is an extensive constitutional provision that guarantees the right to a fair hearing and, as part of that right, it offers to persons convicted of certain criminal offences another opportunity to petition the High Court for a fresh trial. Such a trial entails a re-constitution of the High Court forum, to admit the charges, and conduct a re-hearing, based on the new evidence. The window of opportunity for such a new trial is subject to two conditions. First, a person must have exhausted the course of appeal, to the highest Court with jurisdiction to try the matter. Secondly, there must be ‘new and compelling evidence’.

“[42] We are in agreement with the Court of Appeal that under Article 50(6), “new evidence” means “evidence which was not available at the time of trial and which, despite exercise of due diligence, could not have been availed at



the trial”; and “compelling evidence” implies “evidence that would have been admissible at the trial, of high probative value and capable of belief, and which, if adduced at the trial would probably have led to a different verdict.” A Court considering whether evidence is new and compelling for a given case, must ascertain that it is, prima facie, material to, or capable of affecting or varying the subject charges, the criminal trial process, the conviction entered, or the sentence passed against an accused person”. [Emphasis added].

10. Considering the application in context despite the averments in the affidavit there is no compelling new evidence purposed by the applicant to benefit from the provisions of this constitution. The application lacks merit and its therefore dismissed for want of jurisdiction and failure to satisfy the criterion outlined in Art 50 (6) (a) (b) of the constitution.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

