**Dickson v Republic (Criminal Revision E007 of 2022)**
**[2025] KEHC 14031 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14031 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**CRIMINAL REVISION E007 OF 2022**

**RN NYAKUNDI, J**

**OCTOBER 8, 2025**

**BETWEEN**

**WAMBULWA DICKSON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

## RULING

1. The Applicant Wambulwa Dickson was charged with Defilement contrary to Section 8(1) as read with section 8(4) of the *Sexual Offences Act* No. 3 of 2006.

2. The brief facts of the particulars are that on the 17th day of June 2021 at [Particulars Withheld] in Soy Sub County within Uasin Gishu County, intentionally and unlawfully caused his genital organ namely [penis] to penetrate the genital organ namely [vagina] of SL a child aged 16 years old.

3. On alternative charge the Applicant was charged with committing an indecent act with a child contrary to Section 11[1] of *Sexual Offences Act*. The brief facts being that on 17th day of June 2021, at [Particulars Withheld] in Soy Sub County within Uasin Gishu County, intentionally and unlawfully touched the vagina of SL the child aged 16 years with his penis.

4. The Applicant was sentenced to serve fifteen (15) years' imprisonment on 18/2/2022.

5. The Applicant earlier on had filed an appeal which was heard and determined on the merits by Mohochi J in which he pronounced himself on 16th November 2023 as follows:

> "Applying the above legal provisions and reasoning to the instant case, it is apparent that the sentence imposed by the Trial Court was not illegal. This is so because the fifteen (15) years' imprisonment is the least prescribed and contemplated in Article 50(2) (I) of *the Constitution*. The Article provides that:

"Every accused person has a right to a fair trial, which includes the right-

(p) to benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been charged between the time that the offence was committed and the time of sentencing." The upshot is that the conviction and sentence of fifteen (15) years' imprisonment is hereby upheld and the Appeal is accordingly dismissed for want of merit. The sentence shall run from 17th June 2021."

6. The threshold of this application is based on Article 50(6) (a) & (b) of *the Constitution* which demands that an Applicant to be granted a remedy of a new trial must demonstrate that the new compelling evidence to be adduced was not available at time of the initial trial and if admitted it will render the verdict voidable. The evidence must be compelling meaning that it must be admissible, credible and not merely corroborative, cumulative, collateral or impeaching. It must be such that if it is considered in light of all the evidence, it must be such as to be favourable to the petitioner to the extent that it may possibly persuade a Court of law to reach an entirely different decision than that already reached. "New" evidence for the purposes of Article 50(6) is evidence not adduced in the previous proceeding. "Compelling" means evidence which is reliable, substantial and highly probative of the case in the context of the outstanding issues, that is the issues which were in dispute in the first trial.

7. The criteria for new compelling evidence under Article 50(6) (a) & (b) of *the Constitution* includes the following:Newness: The evidence must be recently discovered and not known

or available at the time of the original trial or appeal.
Discovery: The evidence must have been discovered after the conviction and could not have been obtained through reasonable diligence during the trial or appeal process.Compelling: The evidence must be substantial and reliable, capable of belief.Probative Value: It must be highly probative, meaning it could potentially persuade a court to reach a different decision than the one already reached.Impact of Outcome: The new evidence must be significant enough that it would likely lead to a different verdict if presented in anew trial.

8. In this respect the Applicant bears the burden of proof under Section 107(1), 108 & 109 of the *Evidence Act* to demonstrate that the evidence meets the criteria of new and compelling to vitiate the earlier decision and a new one favorable to his fundamental freedoms and rights under Chapter 4 of *the Constitution*. The evidence envisaged by the drafters of *the Constitution* should not be used to fill gaps or patch up weak points in the original case but must genuinely add into a new dimension of the case or a retrial to be ordered.

9. The problem has been one determining the degree of discretion resting to the High Court under the above provisions. An understanding of the provisions of Article 50(6) (a) & (b) of *the Constitution* and its purpose first necessitate an analysis of the historical background of the case and the impugned judgment. The power of the Court to grant new trials for a variety of reasons is for the attainment of justice and its all underpinned upon the exercise of legal discretion guided by the nature and circumstances of the particular case and directed with a view to the attainment of meeting the ends of justice. It has been recognized that this power donated to the High Court to grant a new trial is inherent in that very Court where it appears that an injustice has been occasioned in the previous trials either on appeal or at the Apex Courts for that matter. It appears from the foregoing statement that the trial Court labored under an entire misapprehension as to its powers and its duties. Our statute provides that a new trial may be granted, among other grounds, for insufficiency of the evidence to justify the verdict; and this power must be exercised by the trial Courts, if at all. These Courts should be given due care not to invade the legitimate province of the jury, but if, after giving full consideration to the

testimony in the light of the verdict, the trial judge is still satisfied that the verdict is against the weight of the evidence, and that substantial justice has not been done between the parties, it is his duty to set the verdict aside." (See Clark v Great No. Ry. Co. 37 Wash 537, 79 Pac. 1108 (1905). The Court went on to discuss grounds for new trials and concluded that:

> " We must, in line with our decisions, affirm orders granting new trials when such orders state:
>
> (a) That substantial justice has not been done;
>
> (b) That the evidence is not sufficient to sustain the verdict, or that the verdict is against the weight of the evidence."

10. I have reviewed the entire record from the Subordinate Court to the High Court on appeal together with the application by the Applicant, there is no credible new compelling evidence in favor of the Applicant for granting a new trial in any of the instances advanced before this Court. It is to be noted that the Applicant has not discharged the burden of proof necessary in the case of the grant of a new trial. To that extent the application is dismissed for want of merit.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 8TH DAY OF OCTOBER 2025.**

.....

**R. NYAKUNDI**

**JUDGE**