



**Simiyu alias Danger v Republic (Miscellaneous Criminal Case
E097 of 2024) [2025] KEHC 13898 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL CASE E097 OF 2024
RN NYAKUNDI, J
OCTOBER 6, 2025**

BETWEEN

DAVID SIMIYU ALIAS DANGER APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant David Simiyu Alias Danger was charged with Rape contrary to Section 7 of the [Sexual Offences Act](#) No. 3 of 2006.
2. The brief facts of the particulars are that on the 28th November 2022 at Chebarus of Sigot Sub Location, Moiben Sub County within Uasin gishu County caused his genital organ namely penis to penetrate the genital organ namely vagina of Lydia Wangeci without her consent within the view of Lydia Wangeci being a person with mental disability.
3. On Alternative Count the Applicant was charged with committing an indecent act with an adult contrary to Section 11(A) of the [Sexual Offences Act](#) No. 3 of 2006. The particulars are that on the 28th Novemb3r 2022 at Chebarus within Moiben Sub County of Uasin Gishu County, intentionally caused his penis to contact the vagina of Lydia Wangeci against her will.
4. The Applicant vide an undated Notice of Motion has approached this Court seeking the following orders:
 - a. That this matter be certified urgent to be heard at the first instance.
 - b. That the prayers intended are for time spent in pre-trial custody.
 - c. That more grounds to be adduced during hearing thereof.
5. Which application is supported by an affidavit sworn by the Applicant who deponed as follows:



- a. That he was charged with the offence of Rape contrary to Section 3(1) (a) (b) of the SOA No. 3 of 2006 and sentenced to serve 8 years and 6 months imprisonment.
- b. That he is a first offender and now approaching this honourable Court to exercise its powers provided by *the Constitution* under Article 165(3) (b) (7) and invoke the provision of Section 333(2) of the CPC and allow his sentence to begin and run from the day of the arrest.

Decision

6. The Applicant was arrested on 29th November 2022. Pled not guilty to the offence and necessitated his trial in which the Prosecution summoned five witnesses. He was later placed on his defence and on 23rd May 2024 he was found guilty, convicted and sentenced to ten years imprisonment. Which was discounted to eight years six months by dint of Section 333(2) of the CPC.
7. He has now approached this Court under Article 50(6) (a) &(b) of *the Constitution* as read with Section 362 of the Criminal Procedure Code. From the record, the Applicant was not able to meet the terms of Bail under Article 49(1) & (h) of *the Constitution*.
8. From the record the Learned Trial Magistrate complied with the law on pre-trial detention credit period during the computation of sentence which is reflected in the committal warrant to be eight years six months imprisonment. The application is therefore dismissed for want of merit under Section 382 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 6TH DAY OF OCTOBER 2025

.....

R. NYAKUNDI

JUDGE

