



**Mwenda v Director of Public Prosecution (Criminal Revision  
E236 of 2024 & Originating Summons E037 of 2021 (Consolidated))  
[2025] KEHC 15990 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15990 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MERU**

**CRIMINAL REVISION E236 OF 2024 & ORIGINATING  
SUMMONS E037 OF 2021 (CONSOLIDATED)**

**SM GITHINJI, J**

**NOVEMBER 5, 2025**

**IN THE MATTER OF: ARTICLES 25 (C), 28, 156 AND 165(3) (A) OF THE CONSTITUTION  
OF KENYA 2010 AND ANY OTHER ENABLING PROVISIONS OF THE LAW.**

**AND**

**IN THE MATTER OF: NEW AND COMPELLING EVIDENCE UNDER  
THE PROVISIONS OF ARTICLE 50(6) OF THE CONSTITUTION 2010**

**BETWEEN**

**MARTIN MWENDA ..... PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner, Martin Mwenda was charged together with another known as Cosmas Mwenda Kinyua, with the offence of Gang Defilement, contrary to Section 10 of the [Sexual Offences Act](#) No. 3 of 2006.
2. In the lower court, both were found guilty of the offence and were sentenced to 25 years imprisonment. The petitioner appealed against the conviction and the sentence, and the appeal was found in want of merit and dismissed. He did not prefer an appeal to the court of appeal.
3. The Petitioner's appeal having been dismissed, he has now moved this court under Article 50 (6) (b) of [the Constitution](#) of Kenya 2010 seeking a new trial, alleging the emergence of new and compelling evidence.



4. The alleged new evidence is that the key prosecution witness (PW-1) who was the victim in the alleged crime, has via her affidavit sworn on 16<sup>th</sup> day of August 2024, recounted her evidence given during the trial, claiming that she was advised by Mr. James Mbuthia, the then Area Manager whom she reported to the incident (PW-2), to mention the Petitioner as a suspect who was in company of the first accused during the incident. She further alleges to have been coerced by the said Area Manager to implicate the Petitioner, as he alleged that if she does not do so the charge of gang-defilement would collapse.
5. In the Petition, the Petitioner relies on the affidavit in support of his Petition and that of Evangeline Kathomi (PW-1).
6. The Respondent filed a replying affidavit dated 9<sup>th</sup> May, 2025 and relied solely on it. The Petitioner filed Submissions and relied on the case of Tom Martins Kibisu –vs- Republic, Supreme Court Petition No. 3 of 2014 (eKLR) where the Court held that 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.
  - (b) ...."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 .
7. The issues for determination in this case are:-
  1. What constitutes new and compelling evidence under Article 50 (6)(b); and
  2. Whether the recantation by PW-1 meets that threshold and warrants a new trial.
8. On the first issues, the authority depended on by the Petitioner of Tom Martins Kibisu-vs- Republic [2014] eKLR, the Supreme Court defined new evidence as evidence that:-
  - a. Was not available at the time of trial: and
  - b. which, despite exercise of due diligence could not have been availed then.
9. Compelling evidence was defined as credible, admissible, and likely to have an important impact on the result of the case.
10. Thus, both elements of newness and compelling nature of the evidence, must be satisfied.
11. The affidavit by (PW-1) amounts to a repudiation of her prior testimony in Court. While such a development may sound significant, the law demands this Court approaches it with caution. The said witness testified in the open Court, was cross-examined, and her evidence was accepted by both the trial Court and Court of Appeal (High Court) as credible evidence. Her later change of mind, more than two years after the incident, does not automatically qualify as new evidence. The information was known to her then, and compelling reasons needed be given as to why it could not be disclosed at the time. Further there's no independent corroboration of the alleged coercion and the issue did not arise at all during the trial. In Wilson Thirimba Mwangi –Vs- DPP [2015] eKLR, the High Court held that a recantation may only qualify as new and compelling evidence if it's credible, independently verifiable, and goes to the root of the conviction. The availed recantation does not meet the threshold.
12. Even assuming the evidence is new, it is not compelling. The record shows that the conviction rested on multiple strands of evidence, where PW-1 consistently disclosed the Petitioner as a culprit to PW-2, PW-3 and PW-4. Recantation of the evidence appear influenced and an afterthought. This



court therefore finds that the recanted testimony by PW-1 is not new and compelling evidence within the meaning of Article 50(6)(b) of *the Constitution* of Kenya 2010; and that the Petitioner has not demonstrated that a retrial would probably result in a different verdict.

13. Accordingly, the Petition dated 19/8/2024 is dismissed for want of merit.

**DATED AND DELIVERED AT MERU THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025**

**S.M. GITHINJI**

**JUDGE**

Appearance:-

1. In presence of the Petitioner.
2. The Respondent, Ms. Adhi.

