



**Kamenge v Director of Public Prosecution (Criminal Revision
E222 of 2024) [2025] KEHC 18712 (KLR) (16 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E222 OF 2024
SM GITHINJI, J
DECEMBER 16, 2025**

BETWEEN

STANLEY MBURUGU KAMENGE APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

JUDGMENT

1. Stanley Mburugu Kamenge, The Petitioner herein, was charged in the lower Court with a main count of incest by a male person, Contrary to Section 20(1) of the *sexual offences Act*. No. 3 of 2006.
2. The particulars of this offence are that on the night of 29th and 30th day of July 2007 at Iriene Village in Meru Central District within Eastern Province, the Petitioner committed an act namely sex, which act caused penetration with a female person namely Mercy Nkirote who to his knowledge, the said female person was his daughter.
3. In the alternative the Petitioner faced a charge of indecent act with a child, contrary to Section 11(1) of the *Sexual offences Act* No 3 of 2006.
4. The particulars hereof being that on the nights of 29th and 30th day of July 2007 at Iriene Village in Meru Central District within Eastern Province, the Petitioner caused an act of indecency with Mercy Nkirote, a child aged 9 years by touching and inserting a finger into her private parts.
5. The trial Court heard the matter and convicted the Petitioner on the alternative count, and was consequently sentenced to serve life imprisonment.
6. Dissatisfied with the said conviction and sentence he appealed to the High Court and the appeal was dismissed on both the conviction and sentence.
7. Still dissatisfied with the said finding the Petitioner appealed to the Court of Appeal where conviction was upheld and the life imprisonment varied to a definite period of 30 years imprisonment. The



Petitioner now approaches this Court under Article 50(6) of *the Constitution* of Kenya 2010, alleging that new and compelling evidence has become available, necessitating a retrial in the interest of justice.

8. The alleged new and compelling evidence is availed by way of an affidavit allegedly sworn by the victim, one Mercy Nkirote. The availed copy is however not dated and signed by her. The stamp for the Commissioner of Oath is also missing. It therefore appears not properly executed.
9. In the said affidavit, the victim alleges that she was coached and coerced by her then teacher, Agatha Muthoni, who was a prosecution witness in the trial, to give a false evidence against him, with intention of settling her personal Vendetta against him.
10. The Petition was canvassed by way of Written Submissions and both parties filed their respective submissions of which I have duly considered.

Determination

Issues for Determination

11. The Court identifies the following issues for determination:
 1. Whether the affidavit sworn by the complainant constitutes new and compelling evidence within the meaning of Article 50(6) of *the Constitution*;
 2. Whether the petitioner has met the constitutional threshold for an order of retrial;
 3. What orders should issue.

Whether the Affidavit Constitutes New and Compelling Evidence

12. Article 50(6) of *the Constitution* provides that:

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 person is entitled to appeal; and
 - (b) new and compelling evidence has become available.”
13. There is no dispute that the petitioner’s appeal to the High Court and the Court of Appeal was dismissed, thereby satisfying Article 50(6)(a).
14. The crux of the petition therefore lies in whether the affidavit sworn by the complainant, now aged approximately 26 years, constitutes new and compelling evidence.
15. The principles governing what amounts to “new and compelling evidence” are now well settled. In *Tom Martins Kibisu v Republic* [2014] eKLR, the Court of Appeal held that:

New” evidence is evidence that was not available at the time of trial and could not, with reasonable diligence, have been obtained; and

“Compelling” evidence is evidence that is credible, of high probative value, and which, if adduced at trial, would probably have led to a different verdict.
16. The affidavit relied upon by the petitioner is sworn by the complainant, who testified at trial when she was nine (9) years old. In the affidavit, she alleges that she was coached and influenced by her then teacher, to give false testimony against the petitioner, who is her biological father.



17. This Court takes judicial notice of the fact that recantation evidence, especially in sexual offence cases, must be treated with extreme caution. The dangers of such evidence were emphasized in *Philip Nzaka Watu v Republic* [2016] eKLR, where the Court of Appeal warned that recantations may arise from family pressure, reconciliation attempts, guilt, or other extraneous influences.
- The relied upon affidavit does not disclose vividly the actual circumstances under which such claimed influence occurred;
18. There is no corroborative evidence to support the claim of fabrication of evidence. Further, the complainant was subjected to cross-examination at trial, and the trial court as well as the first appellate court made concurrent findings that her testimony was credible and consistent, and was supported by availed medical evidence, as well as the evidence of the alleged teacher.
19. While it is true that the affidavit was sworn long after the conclusion of the trial and appeals, the facts it seeks to introduce relate to matters that were already within the complainant’s knowledge at the time of trial.
20. The Court agrees with the position taken in *George Ngodhe Juma & Others v Attorney General* [2003] eKLR, that evidence is not “new” merely because it is presented later; it must be evidence that could not have been obtained with reasonable diligence at the time of trial.
21. The affidavit merely seeks to contradict testimony given during trial. Such contradiction, without more, does not meet the constitutional threshold.
22. This Court is also guided by the constitutional principle that the best interests of the child are of paramount importance (Article 53(2) of *the Constitution*).
23. Allowing convictions in sexual offence cases to be reopened solely on the basis of post-conviction recantation affidavits would undermine the administration of justice and expose victims, especially children, to manipulation and pressure long after trials have been concluded.
24. Having carefully considered the petition, the affidavit in support thereof, the submissions by both sides, and the applicable law, this Court finds that:
1. The affidavit sworn by the complainant does not constitute new and compelling evidence within the meaning of Article 50(6) of *the Constitution*;
 2. The petitioner has failed to demonstrate that the proposed evidence is credible, of high probative value, or capable of leading to a different verdict;
 3. The petition is devoid of merit.

Accordingly, the petition for a retrial is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 16TH DAY OF DECEMBER, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Ms. Adhi for the state.

Petitioner in Prison (virtually).

