



Simatei v Republic (Miscellaneous Criminal Application E021 of 2025) [2026] KEHC 1407 (KLR) (11 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2025
RN NYAKUNDI, J
FEBRUARY 11, 2026**

BETWEEN

SIMON KIPRUTO SIMATEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 3rd day of February 2025 seeking the following orders:
 - a. Spent.
 - b. That I am the applicant herein seeking for sentence review in criminal case No. 2933 of 2009 for the offence of defilement contrary to Section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006 where the applicant was sentenced to serve a life sentence.
 - c. That under the provisions of [the Constitution](#) of Kenya 2010 and Practice & Procedure Rules 2010 this court has power to hear and determine infringements of fundamental rights and award remedies.
2. The Application is supported by the annexed affidavit sworn by the Applicant who deponed as follows:
 - a. That I am a Kenyan male adult of sound of mind and duly competent to swear this affidavit in a court of law.
 - b. That I was charged and convicted for the offence of defilement contrary to Section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) No. 3 of 2006 in criminal case No. 2933 of 2009 at Eldoret CM’s court.



- c. That my first appeal to the High Court was dismissed in its entirety vide HCCRA No. 78 of 2009 at Eldoret was dismissed.
- d. That I my second appeal to the court of Appeal at Eldoret was dismissed in entirety, conviction and sentence confirmed.
- e. That the High Court at Machakos in Petition No. E017 of 2021 Philip Mueke Maingi & 5 Others vs DPP at Machakos declared that court discretion in sentencing should not be fettered by mandatory minimum sentencing provisions.
- f. That the decision in *Wangechi v Republic* [2024] KECA 836 highlighted the unconstitutionality of indeterminate life sentences, advocating for determinate sentencing to ensure fairness and rehabilitation.
- g. That the court in *Kangale v R* [2022] KEHC 14709 substituted a life sentence with a determinate sentence, recognizing the importance of judicial discretion.
- h. That the High Court further stated that those who were convicted of sexual offences and whose sentences were passed on the basis that the trial courts had no discretion but no impose the said mandatory minimum.
- i. That this honorable court is seized of competent jurisdiction under Article 165(3)(b) of *the constitution* of Kenya 2010 to hear and determine this matter.
- j. That I am a pauper who cannot incur any costs for preparation of this application thus pray that such costs be waived.

Decision

3. The life sentence being complained of by the applicant is provided under section 8 (2) of the *Sexual Offences Act* being the prescribed sentence for the offence of defilement contrary to Section 8(1) of the same Act. A sentence of life imprisonment sometimes, but not always, has mixed components. One component, in such cases, is intended to reflect the period of imprisonment which the convicted person deserves as a form of punishment for his or her wrongful act, the other component reflects the anxiety of the Court to ensure that the convicted person remains incarcerated after he/she has served the punitive component of his or her sentence, simply because the Court is not satisfied that society may not be endangered by his or her release either because of some mental instability or some other defect in the character of the person.
4. The applicant to this matter has been in the litigation landscape from the trial court to the Court of Appeal which is the ultimate forum on such criminal appeals. Apparently his appeals were all dismissed on the merit. Therefore, the discretion of this court is only exercisable under Article 50 (6)(a)(b) of *the constitution* which expressly provides as follows:

That a person convicted of a criminal offence may petition the High Court for a new trial if:

 - a. The person's appeal has been dismissed by the highest court to which they were entitled to appeal, or they did not appeal within the allowed time.
 - b. New and compelling evidence has become available.
5. This constitution imperative has been litigated within our legal system as supported by the following cases law:



1. Philip Mueke Maingi v Republic (Petition 436 of 2016) [2017] eKLR: The High Court explicitly cited Article 50(6)(a) and (b) in a petition for a new trial, noting the court's power to handle such requests when new and compelling evidence is presented.
2. Republic of Kenya in the High Court of Kenya at Nairobi (Misc. Civil Application No. E021 of 2022): This ruling discusses Article 50(6) in the context of exhausting appeal rights before petitioning for a new trial, emphasizing the requirement for "new and compelling evidence".
3. Katuta, Joseph Melikino v Republic (Criminal Appeal 12 of 2016) [2017] eKLR: This case is cited as an explanation of the application of new evidence in criminal appeals and petitions.
4. AOO & 6 others v Attorney General & another (Petition 570 of 2015) [2017] eKLR: Cited in relation to the rights of convicted persons to petition for review under the Article.
6. For the applicant to satisfy the threshold set in this constitution provisions, it is incumbent upon him to demonstrate that even after exhausting the appeal process there is new and compelling evidence which was not available during the original trial or appeal and if the same admitted it will likely produce a different verdict to the benefit of protecting the fundamental rights and freedoms as enshrined in *the constitution*. In the case of Kabaiko V Republic, Criminal Petition No. E071 [2025] KEHC 10167 (KLR) the court observed inter alia adopting the definition in Black Law Dictionary 8th edition which 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'.
7. The question I posed to myself is whether, if a retrial were to be ordered, there exists evidential material that is potentially admissible and capable of altering the verdict on both conviction and sentence. In my considered view, the answer is in the negative. The truth is that the application before the Court lacks merit and is therefore liable to dismissal under section 382 of the Criminal Procedure Code. It is so orders.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH DAY OF FEBRUARY 2026

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R. NYAKUNDI
JUDGE

