

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL DIVISION

CRIMINAL MISC. APPLN NO. E073 OF 2025

RAPHAEL WANYONYI APPLICANT

- VERSUS -

REPUBLIC RESPONDENT

R U L I N G

1. By its Judgment made on **12/6/2023**, this Court (**Aburili J**), dismissed the appeal by **RAPHAEL WANYONYI** ('the applicant') on conviction but reduced the sentence of 20 years to 15 years. The Court also ordered that the 3 days he had been in custody be taken into account while calculating the applicant's sentence.
2. The applicant had been convicted by the Nyando Senior Principal Magistrate's Court of the offence of defilement contrary to **section 8(1) and 8)3) of the Sexual Offences Act No. 3 of 2006**. He had been found guilty of having caused his penis to penetrate the vagina of D.N.A a child of 13 years.
3. Vide an undated Motion on Notice lodged in Court in December, 2025, the applicant sought that the said judgment be reviewed. That there was new and

compelling evidence that had come to light after the trial. That it was wrong for the Court to believe the evidence of **Pw 2** and **Pw 3** who pretended to be a Medical practitioner and employee of Ahero County Hospital yet he was not. **Ms. Kagali** left the matter to the Court.

4. I have considered the Motion. It is clear from the grounds set out in the Motion, that the applicant is aggrieved with the way the evidence of the prosecution was analyzed and admitted. That the same was false and should not have been believed.
5. The foregoing being the case, it is not part of this Court to review judgments or decisions of concurrent courts. That is the preserve of the Court of Appeal. The grounds set out in the Motion can only be advanced before the Court of Appeal and not before this Court.
6. That being the case, the Court finds that the application lacks merit and hereby dismisses the same.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **6th** day of **March, 2026**.

A. MABEYA, FCI Arb

JUDGE