



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CONSTITUTIONAL CRIMINAL PETITION NO. E001 OF 2025

BETWEEN

FRANCIS MACHARIA NG'ANG'A.....PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE ATTORNEY GENERAL..... 2ND RESPONDENT

JUDGMENT

1. Francis Macharia Ng'ang'a, the petitioner herein, filed a petition dated the 16th day of June 2025. He is seeking the following orders:
 - a) Declare that the conviction and sentence of the Petitioner in S.O Case No. E014 of 2020 at Engineer PM's Court is unsafe, unlawful, and unconstitutional in view of the new evidence regarding the victim's age.
 - b) Order a retrial of the case to be conducted afresh, considering the new evidence regarding the victim's true age.
2. The petition was premised on the following grounds:
 - a) The petitioner was charged, tried and convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act No 3 of 2006 and sentenced to fifteen (15) years' imprisonment.
 - b) The conviction and sentence of the petitioner were based on the evidence presented in the trial court, which included the victim's claim of being sixteen (16) years old at the time of the offence.
 - c) During the trial, the victim's mother (PW2) testified that the victim would attain the age of sixteen (16) years on 23rd March 2021, but further testified that she could not corroborate this claim with documentary evidence since the victim's birth certificate and clinic card were destroyed in a fire which burnt down their residential house.

- d) The Investigating Officer (PW3) produced a birth certificate issued on 20th May 2021, when the trial was being held, indicating the victim was born on 23rd March 2004, thus supporting a different age.
 - e) Subsequent to the conviction and sentence, new evidence has emerged from the school admission register at Rayetta Primary School, where the victim was a student and where she sat for her Kenya Certificate of Primary Examination (K.C.P.E) which indicates that the victim's date of birth is 15th December 2001, suggesting that at the time of the offence, she was nineteen (19) years old.
 - f) This new evidence directly contradicts the evidence upon which the trial court based its conviction and raises serious questions about the correctness of the conviction.
 - g) Under Article 50(6) of the Constitution of Kenya, any person who is convicted is entitled to a retrial if there is new and compelling evidence that was not available at the time of trial, which has the potential to alter the outcome of the case.
 - h) The new evidence is compelling because it calls into question the very age of the victim, which is a critical element in a defilement case because defilement is an offence against minors and the sentences prescribed by the Sexual Offences Act are staggered in accordance with the victim's age.
 - i) The petitioner's constitutional right to a fair trial and to be heard has been violated by the conviction based on disputed and potentially manipulated evidence.
3. The respondents were served but did not respond or file submissions.
 4. The petition was filed incorrectly. The petitioner should have appealed so that the court could assess his current claims in light of the evidence previously presented to the trial court. Allowing him to proceed as he suggests would be an affront to justice.
 5. The petition is therefore dismissed.

Delivered and signed at Nyandarua, this 10th day of March 2026

KIARIE WAWERU KIARIE

JUDGE