



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Revision 65 of 2008

1. Criminal Division
2. Court vacation
3. Revision

Procedure

- i) Section 362 of Criminal Procedure Code Cap.75

Laws of Kenya

- ii) Only a letter is required to be written.
 - iii) No notice of motion is filed
 - iv) No appearance is to be made by any party.
 - v) The court on its own discretion may ask for appearance of parties.

4. Order: Application 5 August 2008 marked as rejected.

Revision not available where there is a right of appeal.

5. Case law – nil
6. Parties absent

K.A. Nyachoti & Co. Advocates for the applicant-absent

State Counsel for the respondent. – absent

(From Original case No. 23888 of 2004 at Chief Magistrates Court at Makadara, S.N. Karani (Ms)

HUMPHREY GITONGA MWIRIGI APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

REVISION

I: Procedure

1. I have a notice of motion dated the 5 August 2008 and filed on 7 August 2008, under Section 362 of the Criminal Procedure Code seeking the powers of the High Court to call for a file, examine the record of the criminal proceeding before any subordinate court, to satisfy this court of the correctness and or legality of the said subordinate courts proceeding.

2. According to the 1987 and 2008 Criminal Procedure Code there is no rules provided in the manner in which one may make an application before the court.

3. The practice for many years in these courts has been for a letter to be written outlining the said illegality of the record of the subordinate court. This letter is addressed to the Deputy Registrar of the High Court and not to the trial magistrate who heard the matter. The Deputy Registrar to the High Court, Criminal Division would open a revision file. On the said file alone, the Hon. Judge would accordingly act on.

4. The Hon. Judge would correct such irregularity suo moto. On the other hand the Hon. Judge would ask for the advocate or persons to appear in order to seek certain clarification. The general rule under Section 365 is that:

“No party has a right to be heard either personally or by an advocate before the High Court exercising the power of revision”.

5. The notice of motion before me has been irregularly filed.

6. Further, even if the applicant had written a letter, the issue upon the request for revision lies in an appeal. Section 365 (5) requires that no application for revision may be entertained.

It states:-

“When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the interest of the party who would have appealed.”

7. The application is accordingly rejected and dismissed.

DATED THIS 8TH DAY OF AUGUST 2008 AT NAIROBI.

M.A. ANG’AWA

JUDGE

K.A. Nyachoti & Co. Advocates for the applicant-absent

State Counsel for the respondent. – absent