



**Musyoka v Republic (Miscellaneous Criminal Application
E009 of 2025) [2025] KEHC 10073 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2025**

**JN NJAGI, J
JULY 11, 2025**

BETWEEN

ISAAC MUTUKU MUSYOKA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has filed an undated application seeking for revision of his sentence and for orders that he serves the remaining sentence under probation.
2. The application is brought under the provisions of Section 364 of the [Criminal Procedure code](#) which provides that:

In the case of a proceeding in a subordinate court, record of which has been called for, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may:
 - a. In the case of any other order other than an order for acquittal, alter or reverse the order.
3. The applicant also relies on Section 6 of the [Criminal Procedure code](#) that provides that:

The High Court may pass any sentence authorized by law.
4. The application was supported by the affidavit of the applicant in which he states that he was sentenced to serve 20 years imprisonment for the offence of defilement contrary to Section 8(1) as read with section 8(3) of the [Sexual Offences Act](#) No. 3 of 2006. That with remission of part of the sentence he is due to serve 13 years and 4 months. That he was arrested on 28/10/2016 and the sentence ought to be completed on 28/10/2029. That he has about 3 years remaining. He thus seeks that the court orders that he serves the remaining period of 3 years under probation. He says that he regrets the offence committed and he is rehabilitated. That the prison administration has issued him with a favourable progressive report. That he suffers from diabetes and has to use insulin injection for 3 times in a day.



5. A Sentence Review Report was filed by the Principal Probation officer, Garsen, who recommended that the applicant serves the remaining sentence under probation order for a period of 24 months. The recommendation is chiefly based on the medical status of the Applicant that he suffers from insulin dependent diabetes mellitus which is a chronic illness that necessitates a strict regimen of insulin for immediate glucose control and lactus for basal insulin needs. That these drugs are expensive to get and are a strain to the prison services which lacks funding for chronic diseases.
6. I have considered the application. The same is seeking for revision of sentence. Revision is provided for under Section 362 of the [Criminal Procedure code](#) which section gives the High Court supervisory powers over the Subordinate courts and in that regard the court can call for any file from the Subordinate courts so as to satisfy itself on the legality, correctness or propriety of any order or judgment made by such court. The application herein is not made under any of these grounds. No challenge is being made on the legality, correctness or propriety of the sentence of 20 years meted out on the applicant. Revision of an order or judgment is not a matter of discretion of the court but has to meet the criteria stated in Section 362 of the [Criminal Procedure Code](#). The application herein does not meet the criteria set out under the above stated section.
7. In view of the above, I do not find any merit in the application. The application is consequently dismissed.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 11TH DAY OF JULY 2025.

J. N. NJAGI

JUDGE

In the presence of:

Ms Mkongo for the Respondent

Applicant: Present virtually at GK prison, Malindi

Court Assistant – Ndonye

