



**Kirui v Republic (Criminal Revision E123 of 2023)  
[2024] KEHC 4978 (KLR) (9 May 2024) (Revision)**

Neutral citation: [2024] KEHC 4978 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E123 OF 2023**

**JK SERGON, J**

**MAY 9, 2024**

**BETWEEN**

**SIMON KIPNGETICH KIRUI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**REVISION**

1. The applicant was charged with the offence of grievous harm contrary to section 234 of the [Penal Code](#). The matter proceeded for trial and in the end, the applicant was convicted of the said offence and was on 22nd December, 2023 sentenced to four (4) years imprisonment with no option of a fine by Hon. F. Nyakundi in Kericho Criminal Case No. 404 of 2020 Republic v Simon Kipngetich Kirui.
2. The applicant has moved this court pursuant to the provisions of Sections 362 and 364 of the [Criminal Procedure Code](#) CAP 75 Laws of Kenya urging this court to quash and set aside the order on sentence and substitute the same with a non-custodial sentence or the option of a fine.
3. The Applicant further stated that the sentence meted out was harsh and excessive in the circumstances and that he was not given the option of a fine or non custodial sentence. He stated that he was remorseful, a first time offender and also cited medical grounds to wit persistent chest pains.
4. I have considered section 347 (1) (a) of the [Criminal Procedure Code](#) which provides that; “ a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court ” The Law does not allow a party who is entitled to challenge the order of conviction or sentence on appeal to personally approach the Court and seek for revision.



5. It would appear from the provision of Sections 362 and 364 of the *Criminal Procedure Code* that the Court may either act suo moto or may be prompted by another person or body other than the convict to exercise its supervisory of power of revision.
  6. Section 364 (5) of the *Criminal Procedure Code* provides that; “When an appeal lies from a finding, sentence or order and no appeal is brought, no proceedings by way of revision shall be entertained at the instant of the party who could have appealed.”
7. In the case of *Martin Mavuti Kituyi v Republic* HCCR. Revision No. 27 of 2013 the court rendered itself as follows; “... the very nature of revision as a discretionary remedy explains the policy underpinnings of Section 364 (5) of the *Criminal Procedure Code*; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an Appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity...”
8. Having personally approached this court to prompt this court to exercise its supervisory power of revision, the applicant breached the Provisions of Section 364 (5) of the *Criminal Procedure Code*. I find the revision to be incompetently before this court. The same cannot be entertained by this court. I hereby issue an order striking out the revision.

**DATED, SIGNED AND DELIVERED THIS 9TH DAY OF MAY, 2024**

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**J.K. SERGON**

**JUDGE**

