



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL MISC. APPLICATION NO. 180 OF 2012**  
**FROM ORIGINAL RECORDS IN H.C.CR.C 30 OF 2008**

**HARRISON MAKAU MUTHAMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

The Application (undated) filed in court on 14/11/2012 seeks orders that the sentence in **H.C.C.CR.C 30 of 2008 Republic –vs- Harrison Makau Muthama** be revised under **section 362** and **364** of the **Civil Procedure Code**.

The Applicant was sentenced by **Hon. Justice Dulu** on 5/10/2012 for six (6) years for the offence of manslaughter. The Applicant seeks a lenient sentence or any other sentencing option other than custodial sentence. The accused has pointed out his mitigating circumstances and the favourable probation officer's report that was produced.

The Applicant has also filed a petition of appeal.

The application for revision is incompetent.

**Section 362** of the **Criminal Procedure Code** provides as follows:-

**“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”**

The High Court cannot therefore revise orders made by a court of equal and concurrent jurisdiction. The application therefore fails.

I have noted that there is a petition of appeal filed herein. The Applicant has stated that he was unable to file (the appeal presumably?) because he fell sick and could not obtain the court file in time. I will therefore leave it to the Applicant to consider whether to file an application to appeal out of time.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 4<sup>th</sup> day of July 2013.**

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**B. THURANIRA JADEN**

**JUDGE**