



Kimutai alias Korea v Republic (Criminal Miscellaneous Application E135 of 2025) [2025] KEHC 16844 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E135 OF 2025**

**A MABEYA, J
NOVEMBER 14, 2025**

BETWEEN

NEWTON KIMUTAI ALIAS KOREA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Newton Kimutai alias Korea was tried and convicted of the offence of gang rape contrary to section 10 of the *Sexual Offences Act* No 3 of 2006. He was sentenced to 15 years' imprisonment on 8/1/2024.
2. By a Motion on Notice dated 24/7/2025, he applied that the sentence be reviewed as it was harsh. That it be reduced to the possible minimum. He gave some of the reasons for seeking the review as being, he had learnt his lesson, he had changed amongst others.
3. The jurisdiction of this Court to review the decision of a Subordinate Court is encapsulated in section 362 ad 364 of the *Criminal Procedure Code*. The said sections provide: -

“362. 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.

364. In the case of a proceeding in a subordinate court the 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 a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence.”



4. From the foregoing, it is clear that the review jurisdiction only attaches if there is an irregularity or illegality in a proceeding or order made by the Subordinate Court.
5. In the present case, there is no irregularity that the Court has been able to discern from either the proceedings that resulted in the sentence or the sentence itself.
6. In the premises, I find the application to be without merit and hereby dismiss the same.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 14TH DAY OF NOVEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

