REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL REVISION NO. E036 OF 2025

ZACHARIAH NJOROGE MBURU……APPLICANT

VERSUS

REPUBLIC……...RESPONDENT

(From the original conviction and sentence in Criminal case NO. E474 of 2024 of the Senior Magistrate's Court at Engineer by Hon. Dr E.N. Wanjala Principal Magistrate)

RULING

1. The Criminal Procedure Code provides the High Court with jurisdiction to revise criminal matters decided by lower courts under section 362 in the following terms:

   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.

   Therefore, the court's revision is limited to ensuring the correctness, legality, and propriety of any findings, sentences, or orders made by the subordinate court.

2. Section 364 (5) of the Criminal Procedure Code restricts the revisional jurisdiction in the following manner:

   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 insistence of the party who could have appealed.

3. The applicant had the right to appeal the sentence imposed by the trial court on September 18th 2024, but he opted not to. Consequently, he cannot seek a revision from this court unless

the sentence is illegal; in this case, there is no legal basis for such a review. It would be unlawful and irregular for this court to examine the sentence.

4. The applicant has two options: either to seek leave to file an appeal out of time or to petition the president under Article 133 of the Constitution, which provides:

> (1) ***On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2), by —***
>
> ***(a) granting a free or conditional pardon to a person convicted of an offence;***
> ***(b) postponing the carrying out of a punishment, either for a specified or indefinite period;***
> ***(c) substituting a less severe form of punishment; or***
> ***(d) remitting all or part of a punishment.***
>
> ***(2) There shall be an Advisory Committee on the Power of Mercy, comprising—***
>
> ***(a) the Attorney-General;***
> ***(b) the Cabinet Secretary responsible for correctional services;***
> ***and***
> ***(c) at least five other members as prescribed by an Act of Parliament, none of whom may be a State officer or in public service.***
>
> ***(3) Parliament shall enact legislation to provide for—***
>
> ***(a) the tenure of the members of the Advisory Committee;***
> ***(b) the procedure of the Advisory Committee; and***
> ***(c) criteria that shall be applied by the Advisory Committee in formulating its advice.***
>
> ***(4) The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the President.***

5. If this court interferes with the sentence, it will be tantamount to usurping the president's powers. It can only interfere with the sentence of a subordinate court on appeal in appropriate cases. The application is, therefore, declined.

Delivered and signed at Nyandarua, this 21st day of November 2025

KIARIE WAWERU KIARIE

JUDGE