



**Muigai v Republic (Criminal Revision E004 of 2026)
[2026] KEHC 3822 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E004 OF 2026
FN MUCHEMI, J
MARCH 19, 2026**

BETWEEN

MARVIN PATRICK MUGAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application for determination dated 2nd February 2026 and seeks for the honourable court to exercise its discretion in revision of the sentence in Ruiru Senior Principal Magistrate’s Court Criminal Case No. E2099 of 2025 and release him or place him on a non custodial sentence.
2. The applicant states that he was charged with the offence of causing disturbance to his biological mother contrary to Section 95 of the Penal Code. The applicant further states that he pleaded guilty to the charge and was sentenced to serve six month imprisonment.
3. The applicant states that he has since reconciled with his mother and he has shown remorse, apologized and promised to reform. The applicant further states that the complainant, has forgiven him and sworn an affidavit dated 29th January 2026 to that effect. The applicant further states that he suffers from Bronchial Asthma which condition needs specific medication and conducive environment but the prison conditions have worsened his condition making the complainant to incur extra expenses in treating and caring for him. The applicant argues that he was sentenced to six months imprisonment which is the maximum sentence provided under Section 95 of the Penal Code yet he is a first time offender. The applicant therefore urges the court to review his sentence and release him or grant him a non-custodial sentence on the remainder of his sentence.
4. The respondent did not oppose the application and stated that the applicant has less than two months to complete the sentence.



The Law

5. The High Court's power of revision is set out in Article 165 (6) and (7) which provides:-
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

6. Section 362 of the Criminal Procedure Code provides:-

The High Court may call 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.

7. Section 364(1) of the Criminal Procedure Code provides:-

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 his 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 section 354, 357 and 358, and may enhance sentence;
 - b. In the case of any other order other than an order of acquittal alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
8. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court's revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

9. Similarly Nyakundi J in Prosecutor vs Stephen Lesinko [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to section 362 of the Criminal Procedure Code as follows:-
- a. Where the decision is grossly erroneous;



- b. Where there is no compliance with the provisions of the law;
 - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
 - d. Where the material evidence on the parties is not considered; and
 - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
10. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
11. The applicant was arrested on 22nd December 2025 and charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to Section 95(1)(b) of the Penal Code to which he pleaded guilty and was sentenced to six months imprisonment. During mitigation, the applicant apologized for his actions and asked for a fair sentence. The trial court sentenced the applicant to six months imprisonment.
12. Section 95 of the Penal Code provides:-
- Any person who-
- a. Uses obscene, abusive or insulting language, to his employer or to any person placed in authority over him by his employer in such a manner as is likely to cause a breach of the peace; or
 - b. Brawls or in any other manner creates disturbance in such a manner is likely to cause a breach of the peace, Is guilty of a misdemeanour and is liable to imprisonment for six months.
13. It is noted that the sentence imposed by the learned magistrate is the one provided under Section 95 of the Penal Code as the maximum sentence. I have further perused the proceedings and noted that the applicant was a first offender and has served approximately three months in prison. The record also shows that the complainant, his mother has accepted his apology for the wrong that affected her as the victim. Given the circumstances of the case, it is my considered view that the sentence meted upon the applicant was harsh and excessive given the fact that the applicant was a first offender. The court ought to have considered the said factor and not given him a maximum sentence.
14. The applicant has served three (3) months imprisonment since he was sentenced on 24/12/2025 which period is sufficient in my view.
15. The applicant is therefor released forthwith unless otherwise lawfully held.
16. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 19TH DAY OF MARCH 2026.

F. MUCHEMI

JUDGE

