

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL REV. NO. E078 OF 2025

SAMUEL KAMANGARA KIRAGU.....

APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

1. The petitioner herein has filed an undated application seeking for review of his 30 years sentence imposed on him for the offence of murder.
2. The application is based on the grounds that the petitioner has served 4 years of the sentence imposed on him. That he has undergone various rehabilitation programmes, is remorseful and is fully rehabilitated. That he has maintained exemplary behaviour during the period of incarceration. That he has undertaken bible courses.
3. The applicant contends that section 364 of the Criminal Procedure Code gives the High Court power to review cases even where a decision has been made so as to ensure that justice is served in light of new evidence or significant changes in circumstances as to warrant review. That the prison authorities are satisfied with his rehabilitation.

4. The Application is made pursuant to the provisions of Article 165(1) of the constitution and Sections 362 and 364 of the Criminal Procedure Code.
5. Article 165(1) of the Constitution is not relevant for the purposes of the application as it deals with the number of judges of the High Court.
6. Section 362 of the Criminal Procedure Code grants the High Court power to call for records of a subordinate Court so as to satisfy itself as to the correctness, legality and propriety of any order made by a subordinate court.
7. The Petitioner in this case was tried and convicted by the High Court. Section 362 of the Criminal Procedure Code is only applicable to matters dealt with at subordinate courts and does not extend to matters done at the High Court. The section is thereby not applicable in this case as the trial was not conducted before a subordinate court. A Judge of the High Court has no power to supervise another judge of the High Court. The application cannot thereby be dealt with under the provisions of Section 362 of the Criminal Procedure Code.
8. The petitioner is seeking for review of sentence. Article 50(2) (q) of the constitution grants a convicted person the right to appeal the sentence or “apply for review by a higher court as prescribed by law”. Since the applicant was convicted by the High Court, it would mean that his review can only be considered by the Court of Appeal which is court higher than the one which convicted him.

9. The applicant was sentenced to 30 years imprisonment for the offence of murder. He has only served 4 years of the sentence imposed on his. The only grounds for review he offers is that he is fully reformed. Considering that the Applicant has only served a small portion of his sentence, I do not find any grounds for review of sentence, assuming that this court had the requisite jurisdiction to review the sentence. The application is unmerited.
10. In view of the foregoing, I do not find any merit in the application and the same is dismissed.

Delivered, dated and signed at GARSEN this 8th day of May 2026.

J. N. NJAGI
JUDGE

In the presence of:

Mr. Oluoch for Respondent

Applicant: Present virtually at Hindi G.K. Prison

Court Assistant: Nasra