

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MARSABIT**  
**CRIMINAL REVISION CASE NO. E 049 OF 2025**

**KULULA KITABA.....**

**.....APPLICANT**

**VERSUS**

**REPUBLIC.....**

**....RESPONDENT**

**R U L I N G**

**A. Introduction**

1. The petitioner was charged and convicted for ***the offence of murder contrary to section 203 as read with section 204 of the penal code of the penal code, Cap 63 laws of Kenya*** and after trial was sentenced to serve eighteen (18) years imprisonment for the said offence. The petitioner subsequently filed this revision application on 2<sup>nd</sup> October 2025 seeking to review his sentence to a non-custodial one by dint of ***section 4 of the Probation of offenders Act or Section 35 of the Penal code.***

2. The petitioner chose to rely on the affidavit supporting his application, the new pre-sentence report dated 2<sup>nd</sup> March 2026 and oral submissions made before the court. In brief he stated that he had been sentenced without the benefit of section 333(2) of the CPC and had been in prison for about nine (9) years. Unfortunately, he had developed back/spinal cord strain, which required constant medication and physiotherapy and thus urged the court to place him on probation for the remainder of his imprisonment term to enable him continue with his rehabilitation. Reliance was placed in the case of **Republic Vrs Godfrey Muchanji Odhiambo, Criminal case No 55 of 2015 & Daniel Wachira Mathu Vs Republic, Criminal Review Application No E024 of 2022.**
3. The applicant also noted that the court had unlimited original jurisdiction and wide discretionary powers to review the sentence imposed downward considering the emerging jurisprudence and circumstances highlighted herein. This court did call for a pre-sentence report, which highlighted positive reviews from the applicant family and also recommended that he be given a chance to serve the remainder of his term while placed on probation.
4. The respondent, through Prosecution counsel did not object to the said application and left it for this court to make an appropriate determination of the same.

## **B. Analysis of Law**

5. I have considered the application as well as the response by the Prosecution counsel. The powers of the High court in revision are contained in **Section 362 through to 366 of the Criminal Procedure Code (cap.75). Section 362** specifically 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”.**

6. What the High Court can do under its revision jurisdiction is stated under **Section 364 of the Criminal Procedure Code Cap 5**, which states as follows: -

***“(1) 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 section 354, 357 and 358, and may enhance sentence;***

***(b) in the case of any other order than an order of acquittal, alter or reverse the order.***

***(2) No order under this section shall be made to the prejudiced of an accused person unless he had had an opportunity of being heard either personally or through an advocate in his own defence. Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.***

***(3) Where the sentence dealt with under this section has been passed by a Subordinate Court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.***

***(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.***

***(5) When an appeal arises from a finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be***

***entertained at the instance of the party who could have appealed.”***

**7. Section 362 of the Criminal Procedure Code (cap.75).**

**Section 362**, only allows this court to review sentences issued by the subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, and this power does not extend to reviewing the sentence melted out by a court of concurrent jurisdiction. Therefore, though the applicant has put forth cogent ground to justify a review of his sentence, the same cannot be entertained as the court is not legally clothed to do so.

8. Secondly, on Section 333(2) of the CPC, the same was expressly considered by the trial Judge before his sentence was passed.

9. I find that this is not an application where the courts discretion can be exercised in favour of the applicant.

**10.** I find this application is not merited and hereby dismiss the same.

**11.** It is hereby so ordered

**Ruling read, signed and delivered in Open Court at MARSABIT this 6<sup>th</sup> day of May, 2026.**

**FRANCIS RAYOLA OLEL  
JUDGE**

**Delivered** on the **virtual platform, Teams** this **6<sup>th</sup>** Day of **May,**  
**2026.**

In the presence of:-

Present from Kamiti Prison .....Petitioner

Mr. Mburugu .....For O.D.P.P

Mr. Jarso .....Court Assistant

ORIGINAL