



REPUBLIC OF KENYA



**Musavakwa v Republic (Criminal Appeal E090 of 2024)
[2024] KEHC 7254 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E090 OF 2024
RE ABURILI, J
JUNE 13, 2024**

BETWEEN

FREDRICK KIVAJI MUSAVAKWA APPELLANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in the Senior Principal
Magistrate's Court Criminal Case No. E292 of 2021 at Winam)*

RULING

1. This file has been placed before me by the Registry for directions as it was registered as a Miscellaneous Criminal Application yet it falls in the category of appeals, for reasons that the Petitioner/Convict, Fredrick Kivaji Musavakwa, filed a Petition of Appeal dated 14th February 2024 only for it to be registered as a Miscellaneous application.
2. I have perused the Petition of Appeal and the accompanying documents which are a supporting affidavit and Notice of Motion dated 28th May 2024.
3. The Appellant who is the applicant seeks for orders of leave to appeal out of time for judgment in Winam SPM Criminal Case No. E292 of 2021 on 7th November 2022.
4. On the other hand, I observe that in the heading of the appeal, he cites HC Misc. Criminal Application No. E065 of 2023 where Hon. Shariff J granted him leave to appeal out of time on an unknown date.
5. As the file ought to have been registered as an appeal and not a Miscellaneous application, I make the following orders:-
 1. That the Notice of Motion dated 28th May 2024 be and is hereby allowed to the extent that let the applicant file his appeal as intended within 14 days of date of service upon him of the order.



2. The document Petition of Appeal is expunged from the record as it does not indicate when the leave to appeal was granted.
6. This Ruling and order to be served upon the Applicant in prison to accord him the opportunity to file his appeal since there was a confusion in the registration of his appeal by the Registry, occasioned by the wrong documents that were filed from prison, preceding the said petition of appeal.
7. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF JUNE, 2024

R. E. ABURILI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

