

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL APPLICATION NO. E069 OF 2021

CORAM: R.E. ABURILI, J

SAMSON ONYANGO OCHIENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Application for leave to appeal to the court of Appeal under Rule 113 of the Court of Appeal Rules, from the Judgment in Siaya High Court Criminal Appeal No. 44 of 2019 delivered on 24th March, 2021)

RULING

1. I have considered the application filed on 7/4/2021, supported by an 'affidavit' which is not commissioned. The Application is incompetent.
2. That notwithstanding, nothing prevented the Applicant/convict from filing his Notice of appeal in time. Further, being in prison is not being a pauper.
3. In addition, in this application seeking leave to appeal to the Court of Appeal out of time, and as pauper, the applicant who was convicted of incest and who, on a first appeal only asked this court to consider the sentence imposed on him by the trial court must demonstrate points of law capable of being canvassed on a second appeal. There is no demonstration of points of law for determination by the Court of Appeal as the sentence imposed and confirmed by this court was lawful sentence.
4. I find the application devoid of merit.
5. I dismiss it and this File is closed.
6. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 14TH DAY OF APRIL 2021

R.E. ABURILI

JUDGE