



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ambunya v Republic (Criminal Application E288 of 2022)  
[2023] KECA 1110 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1110 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E288 OF 2022  
M NGUGI, JA  
SEPTEMBER 22, 2023**

**BETWEEN**

**JOSEPH ISMAIL AMBUNYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application seeking a hearing date for an appeal from the judgment of the High Court of Kenya at Kakamega, (Dulu, J) dated 9th July, 2014 in HCCRA No. 54 of 2013)*

**RULING**

1. The applicant has filed an undated application by way of notice of motion in which he asks the court to give him a hearing date for his appeal. The application is supported by an affidavit sworn by the applicant on November 10, 2022. He avers in this affidavit that he was charged with the offence of defilement contrary to section 296(2) (sic) of the *Penal Code* and sentenced to death. It would appear that this averment is made in error as section 296(2) provides for the offence of robbery with violence and prescribes death as the penalty therefor.
2. The applicant further avers that he appealed against his conviction and sentence but his first appeal was dismissed by Dulu, J. He avers that he filed a second appeal to this Court in 2014 but has not received a file number nor has he received any communication from the Court.
3. There was no response from the respondent to the application, and it is not clear whether or not service was effected on the office of the Director of Public Prosecutions.
4. It would appear, if the averments by the applicant are accurate, that there may have been an administrative lapse in the Court Registry relating to the applicant's appeal. The documents annexed to the application include a memorandum of appeal expressed to be from Vihiga Criminal Case No 1213 of 2011 and Kakamega High Court Criminal Appeal No 54 of 2013.



5. To resolve the difficulty that the applicant finds himself in, I direct that this ruling be placed before the Deputy Registrar of this Court with a view to an investigation of the matter to establish what happened after the High Court (Dulu, J) dismissed the applicant's appeal on July 9, 2014 as the applicant contends.
6. Thereafter the Deputy Registrar to take appropriate action with respect to the preparation of the record of appeal to facilitate the hearing of the applicant's appeal to this Court.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

*I certify that this is*

*a true copy of the original*

**DEPUTY REGISTRAR**

