



**Odira v Republic (Criminal Appeal E009 of 2021)  
[2022] KEHC 12005 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12005 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E009 OF 2021**

**KW KIARIE, J  
JUNE 23, 2022**

**BETWEEN**

**JOSHUA MBAYA ODIRA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the Ruling in Criminal case no. E179 of 2020 of the Senior Resident Magistrate's Court at Mbita by Hon. N.N. Moseti–Senior Resident Magistrate)*

**JUDGMENT**

1. On 18<sup>th</sup> March, 2021 the prosecution applied successfully to substitute the charge sheet with a view to amend the charges against the appellant. He was dissatisfied and filed this appeal.
2. The appellant was represented Mr. Ongoso Ayoma, Advocate. He raised the following grounds of appeal:
  - a. The honourable learned Senior Resident magistrate erred in fact and in law in misdirecting himself that as per the dictates of law in allowing an additional amendment to the charges preferred against the said accused person in a case whereby the said amendments introduced and the charges preferred against the accused person were all obtained illegal and went against the dictates that pertain to the constitutional fundamentals of the said accused. In as far as the said charges were illegal.
  - b. The honourable learned Senior Resident Magistrates erred in fact and in law when he failed to evaluate and bring himself to the fact that the said amendment in as far as the prosecution is allowed by law to amend the charges before the close of the prosecution case there was ordinate delay in the process of verifying, confiscating, photographing, and bringing the said counterfeit goods before court and in preferring the said charges against the accused.



- c. The honourable learned Senior Resident Magistrate erred in fact and in law when he addressed himself and made a ruling despite the fact that the defence raised breach of his fundamental rights as to the charges against the accused despite admitting that the said amendments have been brought four(4) months later since plea was taken and of which the said amendments is suspect and full of mischief by the investigating body and arresting personnel as well who did not follow the due process of law.
  - d. The honourable learned Senior Resident Magistrate erred in fact and in law when he gave and entered a ruling and set a new precedent which gave and held that despite the fact that amendment to charges preferring new counts can be brought even after the lapse of 5 months or later which goes against the tenets of the constitution and the rights of the accused.
  - e. The honourable learned Senior Resident magistrate erred in fact and in law by arriving at a ruling that is unconstitutional and illegal in nature and the statutes which are against the natural cause of justice.
  - f. That the ruling of the learned trial magistrate goes against the rules of natural justice consequently the said ruling and decision is a nullity in law.
3. The appeal was opposed by the state through Mr. Ochengo, learned counsel. He contended that the substitution was lawful.
  4. At the time when the prosecution applied for the substitution of the charge sheet with a view to amend the charge against the appellant, no witness had testified. Section 214(1) of the CPC provides:  
Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:  
Provided that—
    - (i) where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;
    - (ii) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination.
  5. I have perused the record of the trial court and I find that there was no breach of the rights of the appellant when the substitution was done. The appeal therefore lacks merit and the same is dismissed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 23<sup>RD</sup> DAY OF JUNE, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**

