

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO. 7 OF 2017

MATHEW OGUTU BARASA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the ruling in criminal case No.1027 of 2015 of the Chief

Magistrate's Court at Busia by Hon. C.I Agutu – Resident Magistrate)

RULING

On 17th January, the Hon. C.I Agutu delivered a ruling where she allowed the prosecution to re-open their case to amend the charge sheet. The application was brought under section 275(2) of the Criminal Procedure Code. The appellant was aggrieved by the ruling and therefore filed this appeal.

The state through Mr. Obiri learned counsel opposed the appeal and contended that section 275(2) of the Criminal Procedure Code allowed the prosecution to amend the charge sheet at any time.

Section 275(2) of the Criminal Procedure Code was not the applicable section. This section can only be invoke if the trial was at the High Court. It falls under Part IX which provides for procedure in trials before the High Court. The right section for the amendment before the subordinate Courts is section 214 of the C.P.C. Subsection (1) states as follows:

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:

It is worth noting that this section can only be invoked if the prosecution has not closed their case. In the instant case this section was not available to the prosecution for on 10th November 2016 the prosecution closed their case.

The only instance where the prosecution is allowed to re-open their case is that envisaged under section 212 of the Criminal procedure code. It provides as follows:

If the accused person adduces evidence in his defence introducing a new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut that matter.

This section was not open to the prosecution for the appellant had not adduced any evidence in his defence. Had he done so, for the prosecution to be entitled to the benefits of this section, it must be demonstrated to the satisfaction of the court that he had introduced new matters which the prosecutor could not by the exercise of reasonable diligence have foreseen.

I therefore find that the ruling of the learned magistrate was erroneous. The same is quashed. The appellant to proceed with his trial to the conclusion.

DELIVERED and SIGNED at BUSIA this 21st day of June, 2017

KIARIE WAWERU KIARIE

JUDGE