



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA  
OF KISII**

**Criminal Appeal 182 of 2009**

**(Being an appeal from the original conviction and sentence of the SRM's court  
at Oyugis in criminal case No. 233 of 2008 - C.L. Yalwala, RM)  
BETWEEN**

**GEORGE OTIENO OPUDO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

On 26<sup>th</sup> August 2009 the appellant through his advocates, M/s Oguttu-Mboya & Company, filed a petition of appeal which contains 10 grounds of appeal.

On 17<sup>th</sup> February, 2010 the appellant's advocate filed a **"supplementary petition of appeal"** and set out **"supplementary grounds of appeal."**

When the appeal came up for hearing on 23<sup>rd</sup> March, 2010, Mr. Mutai, Senior State Counsel, urged the court to strike out the supplementary petition of appeal as the same had been filed without leave of the court. He said that the law does not recognize a supplementary petition of appeal or supplementary grounds of appeal.

Mr. Ochwangi for the appellant responded by stating that there is no provision in the Criminal Procedure Code that stipulates that leave must be sought before an appellant can file a supplementary record of appeal. He added that no prejudice would be occasioned to the respondent by the supplementary record of appeal.

**Section 350 (2)** of the **Criminal Procedure Code** clearly states that "the appellant shall not be permitted, at the hearing of the appeal, to rely on a ground of appeal other than those set out in the petition of appeal."

The proviso to the aforesaid section highlights several instances under which the petition of appeal may be amended.

The relevant ones in this case are **(iv)** and **(v)** which provide as follows:

**"(iv) Save as provided in paragraph (i), a petition of appeal may only be amended with the leave of the High Court and on such terms and conditions, whether as to costs or otherwise, as the High Court may**

**see fit to impose;**

**(v) Notice in writing of an application for leave to amend a petition of appeal shall be given to the Registrar of the High Court and to the Attorney-General not less than three clear days, or such shorter period as the High Court may in any particular case allow, before the application is made; and the application for leave to amend a petition of appeal shall be made either at the hearing of the appeal or, if made previously, by way of motion in open court."**

From the foregoing, it is clear that the Criminal Procedure Code does not make any provision for either supplementary petition of appeal or supplementary grounds of appeal. However, the petition of appeal may, with leave of the court, be amended as deemed necessary. The appellant's counsel filed a strange document and when the learned state counsel raised an objection to the same, instead of simply applying for leave to amend the petition of appeal, Mr. Ochwangi took a wrong position in law as earlier stated.

The so called supplementary petition of appeal is hereby struck out.

Dated, signed and delivered at Kisii on this 24th day of March, 2010

**D. MUSINGA**  
**JUDGE.**  
**24/3/2010**

Before D. Musinga, J.

Mobisa - cc

Mr. Kamau HB for Mr. Ocwhangi for the Appellant

Mr. Kemo for the respondent

**Court:** Ruling delivered in open court on 24<sup>th</sup> March, 2010.

**D. MUSINGA**  
**JUDGE.**