



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MALINDI

Criminal Appeal 31 of 2006

(From the original conviction Malindi S.R.M. CR.case No. 2972 of 2005)

MWANGO JAMBO CHILANGO APPELLANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

By an application by way of Notice of Motion dated 20th February 2007, under Section 350(2) (iv) and (v) of the Criminal Procedure Code, the appellant seeks orders:

(1) That leave be granted to the appellant to amend the petition of appeal filed herein by the appellant while acting in person.

The application is supported by the annexed affidavit of Patrick Shujaa sworn on 20th day of January 2007.

The application is based on the grounds that:

- 1. That the petition of appeal dated 6th June 2006 was filed by the appellant while acting in person.**
- 2. That the petition of appeal filed by the appellant while acting in person does not indicate with clarity the particulars of the matters of law and fact in regard to which the trial court erred in.**
- 3. That there is need to amend the said petition so as to show the issues of law and fact, that the trial court erred in.**

The State Counsel did not raise any objection to the proposed amendment.

Having carefully analysed and appreciated the law relating to amendment as aforesaid, I granted the appellant leave to amend the petition and to file the amended petition of appeal within 14 days. I also ordered that the appellant pay the requisite filing fees towards that end.

On 31st May 2007, at the hearing of the appeal, it came to pass that the petition of appeal was in fact not amended. Instead the appellant underlined all the grounds in red ink which in my view amounts to introducing all new grounds.

The word amend is defined in Chambers Concise Dictionary thus:

*“..... To correct, to improve, to alter in detail, with a view to improvement to rectify
..... To cure”*

The Criminal Procedure Code does not provide the manner in which amendment may be effected. Accordingly, I fall back on the Civil Procedure Rules by way of analogy.

Order VI A Rule 7 of the Civil Procedure provides:

“7(1) every pleading and other document amended under this Order shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or, if no order has been made, the number of the rule in pursuance of which the amendment was made.

(2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.

(3) Colours other than red shall be used for further amendments to the same document.”

In my considered view the amendment under the Criminal Procedure Act should also be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.

The foregoing being my view of the matter I find and hold that the petition of appeal has not been amended. This being a criminal matter I exercise my wide discretion in favour of the applicant. I order that amendment of the petition should be done as aforesaid and filed within the next 14 days.

Dated and delivered at Malindi this 11th Day of June, 2007.

N.R.O. OMBIJA

JUDGE