

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.334 OF 1999

PETER MUINDI.....1ST APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.335 OF 1999

JIMMY SESE MUSILA.....2ND APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(From Original Conviction and Sentence in Criminal Case No.221 of 1999 of the Chief Magistrate's Court at Mombasa – B. Maloba, Ms – S.R.M.)

R U L I N G

There is a tendency for prisoners for asking for O.B. as part of their intended additional evidence on appeal.

The Learned State Counsel has requested this court to issue directions as to the procedure to be followed. Once an appellant has requested for the O.B. he should be provided with if the court is satisfied that the appellant is entitled to have it. Then the appellant will select what additional evidence he intends to use from the O.B. He will then prepare an application containing the additional evidence he intends to adduce on appeal and serve the same to the State and the application will be heard by the Judge. If the Judge allows the application, he will then give directions on how the additional evidence will be taken and that will form part of the record of appeal and will be considered along with the evidence contained in the proceedings of the Subordinate Court. Those are the directions.

Dated at Mombasa this 9th day of October, 2001.

G.O. OMWITSA

COMMISSIONER OF ASSIZE