**Otieno v Republic**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of judgment:** 23 June 2006

**Case Number:** 6/05

**Before:** Bosire, O’kubasu and Deverell JJA

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Criminal practice and procedure – Written submissions – Not permissible in criminal proceedings –*

*Consequences of court accepting written submissions.*

**Editor’s Summary**

The appellant appealed on a second appeal challenging his conviction and sentence of three years imprisonment for the offence of assault causing grievous harm contrary to section 234 of the Penal Code. It emerged from the record that the trial court had ordered the parties to file written submissions and on the strength of the same, wrote judgment.

**Held** – In no part of the Criminal Procedure Code is there a mention of written submissions. A presiding officer of a court is expected to orally hear such submissions as both sides in a criminal case wish to make and to seek clarification of such submissions as found necessary, in order to appreciate each side’s case before delivering his opinion. The accused is also supposed to hear those submissions and has the right to clarify any point raised or to object to it being raised where he considers it necessary for his own benefit. Written submissions deny the accused that fundamental right – *Salim Dean v Republic* [1966] EA 272 and *Robert Fanali Akhuya v Republic* criminal appeal number 42 of 2000*.* It is not correct to say that merely because the appellant’s counsel acceded to putting in written submissions he accused thereby consented to that course of events. The Constitution envisages express consent of the accused person. Where written submissions are tendered without the accussed’s express consent, the proceedings of the court concerned are thereafter rendered null and void.

**Cases referred to in Judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Dean v Republic* [1966] EA 272

*Robert Fanali Akhuya v Republic* criminal appeal number 42 of 2000