



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

**CRIMINAL CASE NO. 57 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ISAACK MOMANYI MAKWORO.....ACCUSED**

**RULING**

1. By a ruling dated 9<sup>th</sup> November, 2019 under the provisions of **Section 306** of the Criminal Procedure Code the Court held that the prosecution did not prove the case of murder against the accused person as charged but found that a lesser offence of manslaughter had been proved.
2. At the time of the said ruling Mr. Meroka the learned State Prosecutor pointed out to the court that **Section 211** of the Criminal Procedure Code had not been complied with leading to the review herein.
3. I must point out that the correct section of the law as regards trial in the High Court is **Section 306** of the Criminal Procedure Code and not **Section 211** as pointed out by Mr. Meroka which requires the court to either acquit or put the accused on his defence.
4. As pointed out by Mr. Meroka it is clear that the accused was convicted without giving the same an opportunity to give an account of what happened and or to exercise his right to remain silent under the provisions of Article 50 (2)(i) of the Constitution and thereby compromising his right to free and fair trial.
5. In exercise of the powers conferred upon the court under **Article 159(2)(4)** of the Constitution of Kenya 2010, I hereby review the order issued herein and substitute the same with an order putting the accused person on his defence under the provisions of **Section 306(2)** of the Criminal Procedure Code.
6. The accused shall therefore through the advice of his Advocate on record choose how he intends to defend himself.

DATED, SIGNED and DELIVERED at Nairobi this 19<sup>th</sup> day of December, 2017

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Wegulo for the State*

*No appearance for Mrs. Gulenywa for the accused*

*Accused present*

*Court clerk Tabitha*