



The facts giving rise to the charge against the appellant were briefly as follows:

The deceased **Boniface Amaremba**, was on 15<sup>th</sup> July, 2007 at about 3.00p.m at a bus stage in Kapsabet Town with **James Makanga** (PW3) when they were hired to go to the house of the accused to collect certain items. They found the accused in the company of a young girl. He allowed the pair to take the items and commenced their return journey. On their way, the accused attacked the deceased with a panga. The deceased fell down and PW3 went to report to Kapsabet Police Station. He was told to take the deceased to hospital and he hired a taxi for that purpose but before he took the deceased he was chased away by members of the public. The deceased's was however later taken to Moi Teaching and Referral Hospital where he died.

PW3 was then stood down before being cross examined because exhibits which he was expected to identify were not in court. When the trial resumed PW3 was not recalled for cross examination. The evidence of **Dr. Walter Nalyanya**, who performed the post mortem on the body of the deceased was subsequently taken before the prosecution closed it's case.

The appellant then gave an unsworn statement denying commission of the offence and contending that members of the public went to shelter from rain at his house and started taking his items from therein as they beat him. He was then taken to the police station where he was charged with an offence he was not involved in.

On the above facts, the Learned Principal Magistrate found that the offence of manslaughter had been proved against the appellant as required in law and convicted him as already stated. He then sentenced him to ten(10) years imprisonment.

I have re-evaluated and reconsidered the same evidence and note that the offence was committed at about 3.00p.m. That was in broad day light. It was witnessed by PW3 who however was not cross examined. There was therefore non-compliance with section 208 (2) and (3) of the Criminal Procedure Code. That omission would be ascribed to the court. I am not therefore surprised that the Learned Senior Deputy Prosecution Counsel conceded the appeal.

How about a retrial? I am assured that a retrial can be mounted with dispatch. Having considered the evidence of PW3, who was an eye witness, I have come to the conclusion that the prosecution presented credible evidence at the trial upon which a conviction would be founded.

The appellant's trial took about two years to be concluded. I have also noted that he was, during his trial, admitted to bail. In these premises, I am of the view that the appellant would suffer no undue prejudice if a retrial is ordered. This appeal is therefore allowed. The appellant's conviction is quashed and the sentence of ten(10) years imprisonment imposed upon him set aside. The appellant shall be retried on the basis of the original charge by a different magistrate with competent jurisdiction. Pending the retrial, the appellant may be released on bond on such terms as the trial magistrate shall determine.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET**

**THIS 31<sup>ST</sup> DAY OF MARCH 2011.**

**F. AZANGALALA**  
**JUDGE**

Read in the presence of:

The appellant and Mr. Oluoch for the State.

**F. AZANGALALA**

**JUDGE**

31<sup>st</sup> March, 2011