



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**

**Criminal Appeal 76 of 2004**

**EVANS MASESE MOSE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT OF THE COURT**

The appellant was charged with attempted robbery contrary to Section 297(2) of the Penal code.

The particulars of the offence were given as follows:-

***“On the 1<sup>st</sup> day of November 2003, at Saoset Village Kipkelion in Kericho District of the Rift Valley Province, jointly with others not before court, while armed with pangas attempted robbery of David Kipkemoi Chirchir and at or immediately before or immediately after the time of the attempted robbery used actual violence to the said David Kipkemoi Chirchir”.***

He was tried, convicted and sentenced to death but was however aggrieved by the said conviction and sentence and preferred the present appeal. When the appeal came up for hearing, before the appellant could address us, Mr. Gumo Assistant Deputy Public Prosecutor told the court that he did not wish to support the conviction. He submitted that the subject matter of the attempted robbery was not disclosed in the charge sheet and that made the charge to be defective. We entirely agree with him. Section 137 of the Criminal Procedure Code sets out mandatory rules for framing of charges and information. Section 137(c) requires that any property in a charge or information be identified clearly. That was not done and such omission was fatal to the entire charge and the subsequent conviction and sentence. We allow the appeal, quash the conviction and set aside the sentence that was pronounced by the trial court. The appellant should be set at liberty forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED at Nakuru this 2<sup>nd</sup> day of February, 2006.

**D. MUSINGA**

JUDGE

**2/2/2006**

**L. KIMARU**

JUDGE

**2/2/2006**