

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Case 55 of 2005

REPUBLIC.....PROSECUTOR

VERSUS

FEBIAS WANJALA RASTO

STEPHEN BARASA WANYONYI ACCUSED

RULING

Both accused persons herein are jointly charged with murder contrary to section 203 as read with section 204 of the Penal Code. They both pleaded ‘*not guilty*’ to the charge. The prosecution closed its case after calling 9 witnesses. Both counsel in this matter made submissions at the close of the prosecution case with counsel for the accused persons urging the court to acquit the accused persons at this stage while the state counsel urged the court to place the accused persons onto their defence. I have considered carefully the evidence so far on record along with the said submissions. As far as accused 1 “*FEBIAS WANJALA RASTO*” is concerned, I am satisfied that a prima facie case has been made out against him to require him to be placed onto his defence. He is accordingly placed onto his defence pursuant to section 306 (2) of the Criminal Procedure Code.

As far as accused 2 is concerned, I note that the eye witnesses namely PW1 Julius Wanyonyi, PW2 – Patrick Wanyonyi and PW3 Joseph Simiyu Mtoto all said that they did not see accused 2 at the scene. The only witness to even remotely connect the 2nd accused with the offence was PW5 – Paul Wamalwa Weluaya. His evidence however was that as he was going to the scene to check on what was happening, he met with accused 2 as he was leaving the scene. He said that it was accused 2 who had told him that somebody was being beaten at the scene and that the person had even tried to stab accused 2. This witness did not however say that he saw accused 2 armed or that he had seen him hit the deceased. The evidence that pw5 saw accused 2 leaving the scene is just a scintilla of evidence which in my considered view does not warrant accused 2 to be placed onto his defence in order for him to defend himself. Accordingly, my finding is that no prima facie case has been established against him to require him to be placed onto his defence. Accordingly I enter a finding of “*not guilty*” in his favour and acquit him under section 306 (1) of the Criminal Procedure Code. He is ordered set at liberty unless he is otherwise lawfully held.

W. KARANJA

JUDGE

26/2/2008

DELIVERED today in open court in presence of both accused – Mr. Situma for them and Mr. Onderi for state.

W. KARANJA

JUDGE

