



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**Criminal Case 19 of 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ISAACK BALESA.....ACCUSED**

**RULING**

The accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 1<sup>st</sup> July, 2005 at 12 noon the accused, murdered Jarso Baleso at Bulto Mulito village in Waya Location of Tana District. After selection of the assessors, the trial commenced on 8<sup>th</sup> November, 2005 and by 22<sup>nd</sup> June 2006 a total of eight witnesses had been called by the prosecution.

The deceased and accused were half brothers and great friends. The evidence adduced by the prosecution witnesses who were at the scene was to the effect that they heard screams and on going to the scene from there the screams came, they found the deceased lying down unconscious with a deep cut on the head. There was an axe next to the body. They also were unanimous that the accused was not at the scene. They all arrived after the incident and none of them saw the accused inflict the injuries on the deceased. No circumstantial evidence was adduced to link the injuries and the axe with the accused. The prosecution also failed to adduce medical evidence as to the deceased person's cause of death.

Despite several adjournments the doctor did not come to testify.

For these reasons, I find no basis to require the accused to make his defence.

In the result he is acquitted under Section 306. He shall be set at liberty forthwith unless otherwise lawfully held.

Dated and delivered at Malindi this 24<sup>th</sup> day of July 2006.

**W. OUKO**

**JUDGE.**

24.7.06

W. Ouko, J

Mr.Nyakoe

Mr.Ogoti

CC: Gladys

Assessors present

Ruling delivered.

W.OUKO

JUDGE