

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Case 39 of 2003

REPUBLIC.....PROSECUTOR

VS

STEPHEN OURE BARASA.....1ST ACCUSED

JOSEPH OMOITE OMANYALA.....2ND ACCUSED

WYCLIFFE AJILO BARASA.....3RD ACCUSED

R U L I N G

At the close of the prosecution's case this court invited the learned senior state counsel and Mr. Gichana, the learned advocate for the 3 accused persons pursuant to the provisions of section 306 of the criminal procedure code make their submissions.

I have considered both the able submissions. The learned senior state counsel conceded that the prosecution witnesses did not connect the 1st accuse, Stephen Oure Barasa and the 2nd accused, Joseph Omoite Omanyala with the offence of murder. I have perused the recorded evidence presented before me, it is clear that the 7 witnesses did not establish the nexus between these 3 accused persons with the offence they were charged and tried for.

The learned senior state counsel was of the view that the slipper view that the slipper recovered at the scene of incriminated the 3rd accused Wycliffe Ajilo Barasa.

The accused's advocate Mr. Gichana was of the view that the accused persons were not connected with the offence they were charged with. He pointed out that the cause of death of the deceased was due to a damaged liver due to too much intake of alcohol.

After a critical consideration of the submissions and the evidence tendered it is clear that there is no shred of evidence connecting Stephen Oure Barasa and Joseph Omoite Omanyala with the offence of murder.

On the other hand, it is said that there is evidence how the slippers found at the scene connected the 3rd accused, Wycliffe Ajilo Barasa, with the offence. There was no evidence to show that Wycliffe Ajilo Barasa wore the kind of slippers found at the scene the on fateful night. It is also said that his conduct of running away from his home depicted him in bad light hence connecting him with the offence.

I find these insinuations insufficient and unreasonable to establish a prima facie case to warrant the 3rd accused person being placed on his defence. I find that there was no direct nor circumstantial evidence to connect all the 3 accused persons with the offence of murdering the deceased. Mere suspicion cannot incriminate the accused persons.

My final conclusion is that all the three accused persons are not guilty. Consequently they are acquitted. They are set free forthwith unless lawfully held.

DATED AND DELIVERED THIS 25th DAY OF February 2005

J.K. SERGON

JUDGE