

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E103 OF 2025

JUSTON AKANGA MUSUNDU.....
APPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. Kahuya I.M on 13th March 2025 at Kibera Chief Magistrate's Court Criminal case no. E1410 of 2024 Republic of Juston Akanga Musundu)

JUDGEMENT

1. The appellant was charged with four counts, namely two counts of kidnapping from lawful guardianship contrary to section 255 as read with section 257 of the Penal Code, and two counts of demanding money by menaces contrary to section 302 of the Penal Code. Upon conviction, he was sentenced to five years' imprisonment on each count of kidnapping and seven years' imprisonment on each count of demanding money by menaces, all the sentences to run concurrently.
2. Being aggrieved, he lodged this appeal challenging both conviction and sentence. He contended that the prosecution evidence was insufficient, that crucial witnesses were not called, that the case was motivated by a land dispute, and that the sentence imposed was harsh and excessive.
3. This being a first appeal, this court is guided by the principles in **Okeno v R [1972] EA 32**. The duty of the court is to re-analyse and re-evaluate the entire evidence and arrive at its own

conclusions, while bearing in mind that it did not see or hear the witnesses testify and should give due allowance to the findings of the trial court.

4. The prosecution case rested principally on the testimony of the two minors and their parents, supported by the investigating officer. PW6, a minor, testified after voir dire examination that on 9th May 2024, while on his way to a shop, he met the appellant by the roadside and was lured into a Probox motor vehicle which already had another minor inside. He stated that the appellant, despite having a disability on one leg, drove them from Riruta to Kakamega. Upon arrival, they were forced to sleep in a thicket and to drink swamp water. He maintained that he was telling the truth and denied any knowledge of a dispute between the appellant and his father.
5. PW4, the other minor, corroborated this account. He testified that he was in the same vehicle with PW6 throughout the journey. He denied any family disagreement and maintained that his evidence was not influenced by any grudge. Their accounts were consistent, coherent, and remained unshaken in cross-examination.
6. PW3, the father of PW6, testified that on the same date he was informed that his son had gone missing after leaving home to go to the shop. Days later, he was contacted by unknown persons and instructed to send money for bus fare and ransom. He sent a total of Kshs. 15,500 to a number registered in the name of Magdalene Ndeto. On 15th May 2024 he received his son after the child was placed on a PSV from Kakamega to Nairobi. He denied any collusion to fabricate the case and stated that he did not even

know the name the appellant used while in his grandmother's employment.

7. PW5 corroborated this evidence and confirmed that he participated in sending the ransom as instructed. He further testified that after payment, the appellant assisted in boarding the missing child onto a PSV. PW1 and PW2 testified on the report to the police, the rescue of the victims, and the arrest of the appellant. Both denied any land dispute or motive to frame the appellant.
8. The investigating officer, PW7, testified that he connected this case to other similar kidnapping complaints in which ransom had been sent to the same recipient. He recovered a mobile phone with several SIM cards from the appellant and produced M-Pesa statements showing the ransom payments. His evidence linked the appellant to the extortion scheme.
9. In his defence, the appellant asserted that he had travelled to Kakamega for church work and that the case was fabricated to disinherit him of ancestral land. That defence was considered by the trial court and rejected. On re-evaluation, this court finds that the alleged land dispute was a bare assertion unsupported by any independent evidence. All the key prosecution witnesses denied any such dispute. The alibi was displaced by the direct and consistent testimony of the minors and the sequence of events surrounding the ransom demands and release of the child.
10. On the counts of kidnapping from lawful guardianship, the prosecution was required to prove that the complainants were minors, that the appellant took or enticed them out of the keeping

of their lawful guardian, and that such taking was without consent. The minority of PW6 and PW4 was not disputed. PW6 and PW4 placed the appellant at the scene and described how he lured them into the vehicle and transported them across counties. PW3 confirmed that he had not consented to his son's removal. The confinement of the minors in a thicket and their forced survival on swamp water demonstrated unlawful detention. The identification of the appellant was direct and positive. There was no evidence of malice, coaching, or mistaken identity.

11. On the counts of demanding money by menaces, the elements were equally proved. There was a clear demand for money, accompanied by the continued detention of the child, which constituted a menace, and the intent to obtain money by inducing fear. PW3 and PW5 testified to the demands and to the payments made. The M-Pesa statements corroborated the fact of payment. The appellant's role in facilitating the release of the child after payment completed the chain of extortion.
12. The complaint that crucial witnesses were not called is without merit. The prosecution is required to call only such witnesses as are sufficient to prove its case. The absence of Magdalene Ndeto did not weaken the case, as the appellant's role as the principal actor was firmly established by direct and circumstantial evidence.
13. Turning to sentence, the appellant was sentenced to five years' imprisonment on each count of kidnapping and seven years' imprisonment on each count of demanding money by menaces, all to run concurrently. Under sections 257 and 302 of the Penal Code, the maximum sentence for each offence is seven years'

imprisonment. The sentences imposed were therefore within the statutory limits. The trial court was entitled to consider the gravity of the offences, the vulnerability of the victims, the prolonged detention, and the aggravating feature of transporting minors across counties and extorting money from their parents. The order that the sentences run concurrently was to the benefit of the appellant.

14. There is no indication that the trial court took into account any irrelevant factor or failed to consider any relevant one. The sentence cannot be said to be harsh or excessive in the circumstances of this case.

15. It is my finding that the prosecution proved all the elements of each offence beyond reasonable doubt. The conviction was sound, and the sentences imposed were lawful and proportionate. The appeal is devoid of merit and is dismissed in its entirety. The conviction and the sentences of the trial court are hereby upheld. Orders accordingly.

Judgement dated and delivered virtually this 21st day of January 2026

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.