

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E001 OF 2025

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS
VERSUS
JOHN OMARE PAADE.....1ST ACCUSED
JOSEPH ADUNGO PAADE.....2ND ACCUSED

JUDGMENT

1. The accused persons herein, John Omare Paade and Joseph Adungo Paade, face a charge of murder. It is alleged that they murdered Robert Indukita Odepu, on 5th March 2024, at Ngelechom Sub-Location of South Teso Sub-County, Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. They denied the charges, and a trial was conducted. The prosecution presented 7 witnesses.
2. PW1, Brian Indukita, was a son of the deceased. On the material day, he and the deceased were at home, but the deceased left, after someone telephoned him. Thereafter, the 1st accused came into their compound, with 2 other people. They did not talk to anyone, but knocked some things down, and left. Someone came and informed him that the deceased had been killed at the shops. He rushed there, and confirmed that it was true. He did not witness the assault, but alleged that he had seen the 2 accused persons in a video that his aunt had. He did not state what the people in the video were doing.
3. PW2, Justus Kausi Emojong, was at the shopping centre, on the material day, when he got information that a thief had been caught at a place he called Pepeyang. He rushed there, and found that the alleged thief was the deceased. He had been sat down, and was holding a pig. He was being questioned about where he got the pig from, and who his associates were. Someone then hit him with a panga on the head. That scared PW2, and he left the scene, and went back to the shops. The deceased was later brought to the shopping centre, still leading the pig. There was a large crowd around him. the crowd began to assault him with sticks and stones, until he died. He identified the accused persons as among the persons who assaulted the deceased. He said that they used sticks to do so. He knew the accused, as they were his neighbours. He said a cobbler, known as

Wawa, picked a huge stone, and hit the deceased with it, on the head, and said that it was at that point that he died.

4. PW3, Wilmot Odepu, was the father of the deceased. He had someone screaming, that the deceased had been killed. He rushed to the scene. He found the deceased being cut. He fell down, beside the deceased, and asked his assailants to kill him instead. He telephoned the authorities, and the police came and carried the body. He stated that although there were many people present, he was able to identify those who perpetrated the assault. He identified the 2 accused persons, as among the persons who were actively present. He stated that both were armed with pangas. He said that the 2 accused persons led the team of those beating the deceased. He identified them as his neighbours, who he had known for 15 years. He stated that he witnessed Wawa beat the deceased with a big stick.
5. PW4, Helena Amasugutu, was the mother of the deceased. On the material day, she was at home with the deceased, who then left. After a while she heard noises from the road. She rushed there, and found the deceased being beaten. She identified the 2 accused persons as being among the assailants. She identified them as sons of Otere, their neighbour, but added that she did not know their actual names. When she enquired why they were beating him, she was informed that he had stolen a pig. She asked them to stop the assaults, and she was threatened, adding that she was also assaulted. She said Wawa was among the assailants, together with the accused.
6. PW5, Dr. Odero Eric, was the medical officer, who performed postmortem, on the body of the deceased, on 11th March 2024. He noted multiple cut wounds on the head, that were above the cheek, forehead, scalp, parietal side of the head and the temporal region. There was also a cut wound on the right flank of the torso. Internally, there was extensive subdural haematoma, on both sides of the head. His opinion was that the deceased died of head trauma, due to mob justice. He said that there was no penetration of the skull, and that he did not see sign of an injury caused by a stone.
7. PW6, Phineas Oparelo Olute, was the owner of the pig. He got information that it had been lost, or stolen. He began to search for it. He got information that a person had been caught with the pig, and was being assaulted. He rushed to the scene. When he got there, he found that the person was already dead, but his pig was still there

with him. He could not identify or recognise the dead person, because he was covered in blood, but his parents were present. He did not witness the killing, for by the time he got to the scene the deceased was already dead.

8. PW7, No. 110841, Police Constable Haron Okeya, investigated the matter. He went to the scene, after a report was made to the police. He found the deceased lying there, with a pig beside him. He also found the parents of the deceased there. The police removed the body, and handed the pig to an employee of the owner. He, thereafter, conducted investigations, recorded statements from the witnesses, arrested the accused persons, took them for mental assessment, presented them to court, and witnessed the postmortem exercise.
9. On 18th July 2025, I delivered a ruling, where I found and held that a *prima facie* case had been established against the 2 accused persons, to warrant their being required to present a defence. A defence hearing was conducted. The accused persons made sworn statements, and called 2 witnesses.
10. The 1st accused, John Omare Paade, testified as DW1. He denied the charges. He stated that, on that material day, he was working at a farm, with a friend of his. They heard commotion at the trading centre, and rushed there. They found a person being assaulted, who he identified as his neighbour. He said that that person was dead by the time they got there. He said that he did not assault him. He also stated that he did not identify any person at the scene, except for Wawa, a village cobbler, who had stones, with which he was hitting the deceased. He said that he witnessed, as Wawa smashed the head of the deceased with a big stone. He also testified that the 2nd accused, who he identified as his brother, was not at the scene, for he had gone to Amukura, to assist their sister, called Atyang, with something.
11. Francis Lerengit, testified as DW2. He was the friend who was at the farm with the 1st accused. He said that the 2nd accused was not with them, for he had gone to Amukura, to assist his sister, Atyang. While at the farm, they heard screams, from the shopping centre, Ng'elechom, and they rushed there. They found that the crowd had assaulted and killed a thief. A pig was tied to his leg. He said that there were very many people, asserting that it was them who killed the deceased. He said that he heard them mention Wawa. He testified that the 1st accused did not participate, as he only stood around. The

police then came and removed the body. He said that the 1st accused could do nothing to prevent the killing, for there were very many people. He asserted that the deceased was already dead, by the time they got to the scene.

12. The 2nd accused, Joseph Adung'o Paade, testified as DW3. He said that on the material day, he left very early for Amukura, to assist his sister, demolish a house. He left at 7.30 AM, arrived at Amukura at 9.00 AM, and remained there till 6.30 PM, when he left, arriving home at 7.00 PM. He stated that he was not at Ng'elechom, when the murder happened, and he was not involved.
13. Christine Atyang testified as DW4. She said that she was a sister of the accused persons. She said that on the material day, she was at her home, at Amukura, from where she sent a *boda boda* operator, to Ng'elechom, to go and pick the 2nd accused, to help her patch her house with mud. The 2nd accused arrived at 9.00 AM. They completed the exercise at 5.00 PM, when he left for home. She said that she was with him, from 9.00 AM till 5.00 PM, emphasising that he did not leave Amukura at any stage, during that period. She stated that she did not see the 1st accused that day.
14. At the close of the oral hearings, the accused persons, through their Advocate, filed written submissions, which I have read, and noted the arguments made in them.
15. The offence of murder has 4 elements: proof of the death, the cause of it, the role of the accused in the causation, and malice aforethought. A conviction should be founded upon these elements being positively proved.
16. On proof of the death, all the civilian witnesses, that is PW1, PW2, PW3, PW4 and PW6 saw the body at the scene, and so did the 1st accused person. PW7, the investigating officer, was among the police officers who removed the body from the scene. PW5, the medical officer, performed postmortem on the body. Proof of the death was overwhelming.
17. On the cause of the death, PW5 did an autopsy on the body, and noted several serious injuries. There were several severe cut wounds on the head. The conclusion was that death happened because of severe head trauma. The injuries were multiple, consistent with

assault from multiple sources, or repeated assaults, which was itself consistent with mob justice.

18. On the role of the accused, in the causation, there were eyewitnesses, presented by the prosecution. PW1 was at the scene, but then the deceased had died, and, therefore he did not witness the assaults that contributed to the death. What he saw earlier could be a pointer. The 1st accused had come to the home of the deceased and the witness, with 2 other individuals, and displayed insolence. They did not talk to anyone. They looked around, knocked some items down. Then left. Shortly thereafter, someone came and informed PW1 that the deceased had been fatally hurt, at the shops. PW1 knew the 1st accused well, he was a neighbour. PW2 was at the shops, when the commotion started, and he was present when the deceased breathed his last. He stated that there was a crowd, but within it he saw the 2 accused persons, actively participating in assaulting the deceased. He saw them beating him with sticks, pruned from trees and shrubs.
19. PW3 was alerted of the commotion by a screaming woman. He rushed to where the commotion was, and found the deceased being assaulted, by among others, the 2 accused persons, who he mentioned by name. According to him, both had pangas. He said he knew them for they were his neighbours, for 15 years. He identified the 2 accused persons as the leaders of the mob. PW4 was also attracted to the commotion by noise from the road. She went there and found the deceased being beaten. She identified the 2 accused persons as having been amongst the assailants. She identified them as sons of Otere, saying that she did not know their names. She asserted that she saw them beating the deceased. She said that they started hitting the deceased with bare hands, then transited to using sticks, then pangas.
20. All 4 witnesses were persons who knew the accused persons prior. They were local people. Their next-door neighbours. The incident happened in broad daylight, at 10.00 AM. There was nothing to hamper identification. Indeed, as these were local people, who were neighbours, this was a case of recognition. They were identified and recognised as active participants, in the chain of events, that led to the death of the deceased. They were part of the causation.

21. I heard the defences by the accused. The 1st accused said that he visited the scene, but after the deceased had already died. He said that he got there when it was all over. That testimony was supported by DW2, his friend and witness. DW2 testified that they were together, and the 1st accused did not do anything to the deceased, neither could he do anything to protect him, as the deceased was already dead. Yet, the 1st accused made serious contradictory statements. By one breath he said they found the deceased already dead, but by the other he said he witnessed as Wawa hit the deceased with a huge stone, on the head, adding that the deceased died after that hit by Wawa. During cross-examination, he said he found him being assaulted, and that after he died, he, the 1st accused, then went home.
22. So, what was it? Was it that he found the deceased already dead, as he had testified earlier, which testimony was supported by DW2, or was it that he found him still alive, and that he died in his presence, after the assault with a huge stone by Wawa, whereupon he, the 1st accused left? This is shifty. The credibility of that defence is shaky, as a consequence.
23. Regarding the 2nd accused, the defence was that he was not anywhere near Ngelechom, but 20 kilometres away at Amukura, with his sister, where he remained throughout that day. All 4 defence witnesses testified to that. The weakness in that narrative was that he contended that he had gone to assist his sister demolish her house, while, according to her, she required his assistance to patch up the house with mud. That inconsistency in the 2 narratives ought to go into the credibility.
24. The 2nd accused was seen by 3 witnesses at the scene, who knew him very well. The events happened in broad daylight. I am not persuaded that the said witnesses were mistaken about what they saw, and who they saw doing what.
25. In terms of the role of the accused persons in the causation of the death of the deceased, I am persuaded that the prosecution was able to demonstrate, beyond reasonable doubt, that the 2 were part of the crowd that was assaulting the deceased, and that they had actually actively participated in the beating of the deceased. They played a role. They were complicit.

26. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.
27. The deceased herein was killed by a mob. PW2, PW3 and PW4 identified the accused persons as having been part of that mob. They detailed how both hit the deceased. There was an intention to kill the deceased, expressed to PW4, when she attempted to intervene. She testified that she was also threatened with death. That would mean that there was proof of direct intention to kill. An intention to kill may be deduced from the circumstances of the killing, where the same may be inferred from what happened. The deceased left his home healthy, according to PW1 and PW4, but was assaulted, by the mob, so badly that he died, within minutes or hours of leaving home. Those who assaulted him, to the point of causing his death, must have intended to kill him, or to cause him grievous harm or injury, or to commit some felony, or were indifferent that the act of beating him, so badly, could cause his death. Quite clearly, there was intention to kill, hence there was malice aforethought.
28. The death was caused by mob action. In such circumstances, intention attaches on all those participating in the acts that cause injury to the deceased, eventually culminating in his death. It has to be deemed that anyone, from or in the crowd, who hit or kicked the deceased, had a common intention, with everyone else, who also hit the deceased. The mere fact that the death was caused by mob action does not diminish the complicity and criminal responsibility of any of those involved, neither does the fact that the decisive blow was delivered by someone else.
29. In view of everything said above, I do hereby find and hold that the prosecution has established, beyond reasonable doubt, that the accused persons herein, are guilty of unlawfully causing the death of the deceased, Robert Indukita Odepu, on 5th March 2024, contrary to sections 203 and 204 of the Penal Code. I, accordingly, convict them, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.

30. For the purpose of sentencing, I do hereby direct the County Director of Probation and Aftercare Services to look into the antecedents of the accused, and get the views of the community and the family of the victim, and thereafter file a pre-sentence report, within 14 days. There shall be a sentencing hearing on 16th April 2026. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS
13TH DAY OF MARCH 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the accused persons.