

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**CRIMINAL CASE (MURDER) NO. E030 OF 2024**

**REPUBLIC .....**  
**.....PROSECUTOR**

**VERSUS**

**PETER MUHUA ODAHA.....1<sup>ST</sup>**  
**ACCUSED**

**LEONARD OUMA OBALA.....2<sup>ND</sup>**  
**ACCUSED**

**JUDGMENT**

1. The accused persons herein **Peter Muhua Odaha** and **Leonard Ouma Obala** were charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 31<sup>st</sup> day of May 2024 at Honge Beach Village in Usenge Sub Location, Bondo Sub County within Siaya County, jointly with others not before court murdered **George Onyango Marango**.

2. The prosecution called seven (9) witnesses in support of its case.

3. **Denis Makokha Marango (PW1)** testified that the deceased was his brother and that on 2/6/2024 he received a call from deceased's friends that some people had disappeared with the deceased. That he rushed to Yimbo Usenge area and visited the home of a lady by name Nya-Sakwa who had a relationship with the deceased and who informed him that the deceased had been killed. That the deceased had been supplying fish to the said Nyar-Sakwa. That the clan elder arrived but he did not identify himself and that he alerted them to leave the area or else they would face the same fate that befell the deceased. That he later pleaded with the deceased's friends that they report the incident at Usenge Police station and which they did at 9.00 am and remained at the station until 6.00 pm. That the OCS had no fuel and requested for Ksh6000/= which they did not have though they managed to raise Kshs3000/=. That the OCS later chased them away. That the following day, they went back to the police station where the OCS contacted the assistant chief to confirm the incidence but who denied the same. That he did not know the persons who disappeared with the deceased and that it was Nya-Sakwa who knew them. That he mentioned the name of Odaha. That the DCI intervened in the matter and that the body was discovered

and which was found at the mortuary. That he believes that the persons responsible are the people in court including the 2<sup>nd</sup> accused who is the village elder whom he had met earlier. That he does not know the 1<sup>st</sup> accused.

On cross examination, he stated that he recorded his statement on 4/6/2024 where he spoke in Dholuo and which was interpreted to English by his brother called Fred to the police officer who recorded it. That the village elder found them at the home of Nya-Sakwa and that a conversation ensued leading to a disagreement and that they were about twenty people including two friends to the deceased. That the duty of the clan elder was to ensure that there was no criminal activities in the village and that there existed peace and order and that the village elder was threatening them to leave the area. That Nya-Sakwa did not give a list of attackers and neither did she mention the name of the 2<sup>nd</sup> accused. That the friends of the deceased are those who fished with the deceased. That they were informed that the body was discovered in Imbo Usenge on the door step of a certain house where a fight had taken place.

**4. Alfred Opondo Marango (PW2)** testified that on 2/6/2024 he was at home when he received a report that the deceased had disappeared from where he did his business at Yimbo Usenge. That they then left for that area on 4/6/2024 and made enquiries on the exact place where the deceased resided and lodged a report at Usenge Police Station. That the OCS informed them to wait for any report. That PW1 was

among those who were out in search of the deceased. That later PW1 notified PW2 that he heard rumours that the deceased had died. That they recorded statements and later contacted Nyar-Sakwa who came to the police station and recorded her statement. That on 5/6/2024 they went back to Usenge Police Station and found the 2<sup>nd</sup> accused person. That the OCS called the assistant chief who gave out the name of Odaha who was ordered to present himself to the police station. That they then proceeded to Bondo Police Station where they were referred to the DCI. That he was not present when the body of the deceased was discovered and that he could not tell if the murderers were in court. That it was only the 2<sup>nd</sup> accused whom he saw at the police station.

On cross examination, he stated that the assistant chief did not go to the police station and that he could not tell if he was a witness. That he did not know the 1<sup>st</sup> accused person. That he dictated his statement in Kiswahili which the officer recorded. That he did not visit the scene.

**5. Benta Akinyi Otieno (PW3)** testified that on 2/6/2024 that she had gone to harvest beans when her child went and alerted her that their uncle George Onyango had been killed in Usenge area. That on 3/6/2024 she linked up with her sisters and moved to Yimbo area and that her brother Makokha Ouma and others went to Usenge. That they claimed that the clan elder had pointed out that the

deceased had been warned to keep off a certain woman in the area and that six suspects were involved in the death. That she could see the 2<sup>nd</sup> accused who was the clan elder whom she had spoken about. That he was the one who found deceased's body and alerted the police.

On cross examination, she stated that she was at home and that they left for Bondo on 3/6/2024 and that they remained at Bondo Police station as their brothers went in search of the deceased. That the DCI Bondo ordered the 2<sup>nd</sup> accused to produce the deceased failing which he would be charged over the same. That she did not witness the incident. That she does not know the 1<sup>st</sup> accused person as she has seen him for the first time. That the first accused is the one who reported about the discovery of the deceased's body near his compound. That she was certain that 1<sup>st</sup> accused and 2<sup>nd</sup> accused were involved in the incident. That she did not witness the incident as she was not present and that she could not tell if 1<sup>st</sup> accused resided in the house where the deceased's body was discovered.

On re-examination, she indicated that she only knew the 2<sup>nd</sup> accused as one of the killers.

**6. George Odhiambo Orange (PW4)** testified that he was a fisherman and that the deceased was his friend and fellow fisherman and that they lived together. That they lived at Got Agulu beach. That there was a funeral they were to attend on 12/5/2024 at 9.00 am and that they last met on 29/5/2024 at 9.00am. That he never saw him again. That he

did not find him in the house and so he assumed that he would turn up. That later he received a report that he had been beaten at Honge beach. That he was advised to rush there and check. That he met a lady named Nya-Sakwa who informed him that he had been with the deceased and that she believed that he might have died. That Nya-Sakwa handed him the deceased's belt and pair of sandals. That he went to see the area chief and briefed him that his friend had been killed and that the chief chased him away. That he then alerted the deceased's brothers. That Nya-Sakwa mentioned that eight people were involved but could only recall six of them. That he went and reported the matter at Usenge police station but he police chased them away and advised that the missing person might turn up. That they moved to Bondo DCI and a search was mounted for five days and the body was recovered although in bad state. That one thigh had been removed by a dog and that the head had been severed and the body could not be recognized. That he presented the black belt and a pair of beige plastic sandals that he was given by Nya-Sakwa as exhibit PMFI 1 and 2. That Nya -Sakwa had named Ouma Kwanda Odaha as one of the suspects whom he did not know. That he knew the 2<sup>nd</sup> accused as he is the village elder for Honge village. That the body was found near the house of the 1<sup>st</sup> accused namely Rakwayo. That the 2<sup>nd</sup> accused should be aware of anything taking place in his village and that they reported to him only for him to turn them away. That he accompanied them to the scene only for him to chase them away after a

confrontation between him and the villagers ensued. That the village elder claimed that the deceased had already been killed and that nothing could be done and that he chased them away. That the only thing linking 1<sup>st</sup> accused is that the body was found inside a bush behind his house.

On cross examination, he stated that he was with accused on 29/5/2024. That he recorded his statement with DCI. That he had gone to fish and came back at 6.00 am. That they had parted ways on 29/5/2024 at 9.00 am and that he used to live with the deceased in the same house. That on 1/6/2024 they together went fishing with the deceased. That the deceased had visited Honge Village to listen to music and that deceased informed him of the same. That the deceased was killed within Honge beach. That it is Nya-Sakwa who implicated the suspects and that he used the same to report to the chief. That he was not involved in the death of the deceased. That he reported to Usenge police station on 2/6/2024. That the chief was not a witness in the matter. That the body was recovered not far from the house of the 1<sup>st</sup> accused. That both accused are in-laws and live within the same compound. That the body was found inside a bush and behind the 1<sup>st</sup> accused's house. That the 1<sup>st</sup> accused is a brother- in-law of Nya-Sakwa. The he knew Nya Sakwa after the death of the deceased. That he maintains that 1<sup>st</sup> accused resides in the house near where the body was discovered. That the body of the deceased had been there and that the stench ought to have alerted the 1<sup>st</sup> accused but

not to wait until dogs brought a piece of the body. That it is upto the court to decide the involvement of the 1<sup>st</sup> accuse.

On cross examination, he stated that he had lived with deceased for two years. That the deceased's step brothers had gone to the area and that they made a report. That he knows PW3 (Benter Akinyi ). That the deceased had been killed at the home of Nya-Sakwa. That the villagers wanted to lynch the village elder (2<sup>nd</sup> accused). That they usually sell fish at 6.00 am. It is not true that the deceased used to sell fish at night. That it was not true that he and the deceased had a love triangle over Nya-Sakwa.

**7. Julius Oduor Odanga (PW5)** testified that on 30/5/2024, George Olenge alerted him that the deceased had not turned up for two days. That the deceased had been assaulted while at the home of Nya-Sakwa. That he then advised PW4 to alert deceased's family members. That on 1/6/2024 at 10.00 am he accompanied PW4 to the Usenge police station where upon the police advised them to report to the Chairman Beach management Committee. That they went to the scene and met the clan elder who ordered them to leave the area and further claimed that both families of the deceased and Nya-Sakwa should resolve the issue. That he claimed the deceased had been in a love affair with Nya-Sakwa and that was the cause of his death. That the clan elder is the 2<sup>nd</sup> accused person. That he did not know the first accused person. That they advised the deceased's

family to proceed to the police station alongside Nya-Sakwa to report.

On being cross examined, he stated that he does not know the 1<sup>st</sup> accused person and could not tell why he had been charged. That the 2<sup>nd</sup> accused claimed that they had already killed the deceased and that he reported 2<sup>nd</sup> accused's sentiments to the police station. That he has seen the statement although it does not contain his claim on the 2<sup>nd</sup> accused's sentiments of killing the deceased. That it was not true that they had implicated innocent people. That they were three people when the 2<sup>nd</sup> accused spoke.

**8. Pauline Awuor Nyapuni (PW6)** testified that she sells fish at Honge beach. That the deceased was well known to her as George Onyango and that he was a fisherman. That the accused persons are neighbours. That on 31/5/2024 is the day when the deceased died. That she recorded her statement dated 6/6/2024. That on the material date, she was in her house with her children but not yet asleep. That she heard somebody calling from outside and who introduced himself as George Onyango. That she then enquired as to what he wanted. That he claimed that he had some fish which he wished to sell it to her. That she took the fish at a cost of Kshs200/= and went back to sleep. That she heard noise and went outside and that she saw people running. That she recognized them as they had torches while she had a lantern and who included Ouma Wanda, Okoth, Okeno, Jared Radiere, Calmus Onyango, Sam Oyoya who were not in court.

That the people she saw were assaulting the deceased. That the scene was near her house. That some of them assaulted her though they left her and continued assaulting the deceased. That they later carried the deceased away and that she did not see the deceased again. That she recorded her statement.

On cross examination, she stated that the assailants assaulted her and the deceased. That none of the accused persons assaulted her. That Camlus Odaha Onyango who is the brother to the 1<sup>st</sup> accused is not in court and that she does not know why 1<sup>st</sup> accused was in court. That those who carried the deceased were not in court. That she learnt about the death of the deceased one week later. That none of the villagers went to the scene even after hearing the noise. That she had known the deceased for five months. That his son aged 17 years and who was in the kitchen ran away and came back after she had been assaulted. That she was surprised as to why her statement was changed. That she was aware that the deceased's relatives had visited to seek assistance by the 2<sup>nd</sup> accused who turned them away. That the deceased was not her lover and that the assailants were her husband's relatives.

That the date on her statement was changed. That her son ran away on seeing people fighting. That there were other people at the scene whom she did not recognize. That one of the neighbours was threatened by the assailants and thus could not come to the scene.

**9. Dr. Daniel Ochieng Otieno (PW7)** testified that he is based at Bondo Sub-County Hospital. That he performed an autopsy on 18/6/2024 on the deceased. That the body was naked and that the age of the deceased was 32 years and was of good nutrition. That the age of death was more than 72 hours and that body was already decomposing. That there were bone fragments and that the head had been separated from the body. That there was no muscle cover on the head, neck and limbs. That the skull was disfigured with no fractures noted. That the right hip and shoulders were separated from the body. That the internal organs could not be assessed and that the cause of death was inconclusive due to decomposition changes. That a death certificate Number 1085986 was issued. That the autopsy report dated 18/6/2024 was produced as exhibit 3. That there was no skin cover on the bone but bones were apart and not broken. That there were no internal organs to be assessed.

On cross examination, he stated that decomposition depends on various factors. That it was more than 72 hours. That the body was recovered from the wild. That the cause of death thus could be open to anything including poison.

**10. Brovian Anyango(PW8)** minor testified that she is aged 15 years and that they live in Honge Beach within Bondo Sub County. That the deceased was George Onyango who used to sell them fish. That she knows the accused persons but she had never seen them. That she recorded her statement

on 31/5/2024. That on 31/5/2024 at 9.00 pm she was in the house with her mother and siblings Velma Achieng and Thomas Omondi. That her mother is Pauline Awuor. That the deceased brought fish and called her mother from outside. That her mother went outside and picked the fish and brought it into the house. That the fish was worth Kshs200/= and which her mother paid and went back to the house. That later they heard screams nearby. That she sat up and alerted her mother. That it seemed the deceased was being beaten and pushed towards our home. That later they went outside and saw people assaulting the deceased. That they had a torch make of Sun king and that she recognized Ouma Wanda, Jared Odaha, Sam Oyoya, Okoth Okendo, Ouma, Aniki and that none of them were in court. That they were armed with whips and pangas. That they were other people who assaulted the deceased and whom she did not recognize. That she managed to run away and hid in a maize plantation. That her father was then in hospital.

On being cross examined, she indicated that she knew the 1<sup>st</sup> accused Peter Muhua Odaha and that he was not among those at the scene. That both the 1<sup>st</sup> accused and 2<sup>nd</sup> accused were not at the scene. That Odaha was a family name within the area and that many people did use it. That the 1<sup>st</sup> accused is their neighbour and fisherman and that he lives in the same compound with them. That 1<sup>st</sup> accused goes to the lake at 5.00 pm and comes back in the morning. That the deceased's body was found behind the house of the 1<sup>st</sup>

accused on a maize plantation. That the assailants removed deceased's clothes and then took him away. That Velma is aged 14 years and Thomas aged 8 but they did not witness the incident. That her brother Felix remained at the scene but was not called to testify. That she had only known the deceased for two months. That the deceased used to visit their home as he brought fish three times a week. That it was not true that the deceased used to be given food at their home. That she knew the 2<sup>nd</sup> accused person and that no clothes belonging to deceased were found at their home. That it was not true that they hid the body of the deceased and that they did not prevent police from investigating the matter. That she saw 1<sup>st</sup> accused leave for the lake on 31/5/2024 as she was heading to the Jackie's shop as she went to school. That she could not tell the time 1<sup>st</sup> accused arrived from the lake. That the body was found by the 1<sup>st</sup> accused in his farm. That she was present during the recovery. That she could not tell if 1<sup>st</sup> accused was among the assailants as she sat down hearing voices of people passing by.

11. **No. 246526 Pc Sheldon Ndalo (PW9)** testified that he is based at Bondo Police station DCI and performing investigation duties. That on 6/6/2024 a delegation of Marango's family of Kakamega went to their office on claims that the deceased had gone missing. That they began investigations and learnt that the matter had already been lodged at Usenge Police Station. That vide OB10/4/6/2024

the reportee was one Pauline Awuor. That the report was about a missing person and assault. That upon interrogating the reportee, they established that on 31/5/2024 she stated that it was 2100 hours one George Marango (deceased) who was a fisherman at Honge Beach brought her fish worth Kshs200/=. That later they went to the area village officer who is the 2<sup>nd</sup> accused person and arrested him on 6/6/2024 on claims of assault and abduction in order to murder. That two days later, the 1<sup>st</sup> accused lodged a report at Usenge police station that he had spotted a decomposing body ten metres from his house. That they placed him in the cells. That they needed the 2<sup>nd</sup> accused to give an explanation. That they proceeded to the scene and found the body of the deceased. That the body was decomposed and part thereof eaten by animals. That it was in a maize plantation. That the body was collected and taken to Bondo Sub-County Hospital mortuary. That they later recovered a black belt and pair of beige plastic sandals from Pauline Awuor which she claimed belonged to the deceased and the same were produced as exhibit 1 and 2 respectively. That he established that the in-laws of Pauline Awuor had assaulted the deceased as he was alleged to have a love affair with the said Pauline Awuor.

On cross examination, he stated that their objective was to investigate the matter thoroughly. That the 1<sup>st</sup> accused was mentioned by witnesses such as Pauline Awuor (PW6). That he did not know how many people use the name Odaha. That the 1<sup>st</sup> accused is Peter Muhua Odaha. That PW6 might

have been compromised and likewise PW8. That his guess is that witnesses have been compromised. That no fingerprints could be lifted. That the body had already decomposed. That Pauline Awuor went to police station having sustained injuries and was thus a victim. That he had not availed the photographs of the scene of crime showing that the body was found near the home of the 1<sup>st</sup> accused who lives 30 metres from that of Pauline Awuor. That he recorded 1<sup>st</sup> accused's statement who had claimed to have been at the lake fishing. That he recorded the statement of George Odhiambo and that the date of 29/6/2024 was an error. That George Odhiambo informed Pauline Awuor to report the matter.

On being cross examined, he stated that he was the investigating officer and that he had an investigating diary. That he visited the scene of crime and took photographs. That he has not availed the same to court. That he visited the house of PW6 twice and that he had not given any report of any finding at the said house. That he had not taken the exhibits for DNA analysis. That he did not take mobile phones for forensic analysis. That he did not record the statement with assistance of other officers. That it is the Deputy DCI who recorded the statement of PW6. That he had seen the statement of Pauline Awuor. That he did not do the mapping of the phones belonging to 2<sup>nd</sup> accused to establish his whereabouts on the date of the incident.

On re-examination he stated that the incident took place on 31/3/2024 as captured in the statement. That he visited the

house of PW6 twice. That he took photographs of the scene of crime but did not have them processed. That they did not treat Odhiambo Olenge as a suspect as they had already the requisite investigations.

12. At the close of prosecution's case, this court established that a prima facie case had been made out against the accused persons herein to warrant them to be placed on their defence. They opted to tender sworn testimony and called witnesses.

13. **Peter Muhua Odaha (DW1)** testified that he is a fisherman and that he comes from Got Agulu Sub Location. That he is aware of this case. That he does recall on 31/5/2024 he was in the lake having left home at 5.00 pm. That the fishing was to be carried out at night. That he was with Oliver Oduor, Ajim Onyor, Cha Mageta. That the boat belonged to one William Fwete. That he will call those he has mentioned as his witnesses. That he came back at 7.00 am on 1/6/2024 after having sold his fish. That he had heard of the incident that a fight had taken place in the area. That he heard about it while still at the lake. That when he arrived he went straight to prepare tea for his family. That while he was going about his farm, he stumbled upon the body of the deceased. That it was eight days after the alleged incident. That he did not smell anything regarding the rotten body. That it was nearby and he was going to weed his farm. That he went and alerted

the beach management. That the maize crop was quite tall. That he could not tell if anyone could have seen the body and that he got to see it as he had gotten into the farm. That the chairman of the beach management then escorted him to Usenge Police Station where he reported and was placed in cells and then placed in a land cruiser which took him to the scene. That he was not the Odaha mentioned by the witnesses as there are many people with such a name. That he was then in the lake and that Nya-Sakwa was his brother's wife with whom he had no bad blood with. That he used to hear of the name George but had not met him before. That he did not go closer to the body.

On cross examination, he stated that he went to fish on 31/5/2024 and that he came back on 1/6/2024. That his farm is behind but some metres from his house. That he stays with his family and that the 2<sup>nd</sup> accused lives near his home but he is far from where the body was discovered. That Nya-Sakwa is his brother's wife. That the 2<sup>nd</sup> accused was not related to Nya-Sakwa. That he does not know the persons named by the witnesses. That the 2<sup>nd</sup> accused was not among them. That Nya-Sakwa is his sister in-law and whose name is Pauline Nyakunyi while her husband is John Nyakunyi. That he was in the lake fishing at the time of the alleged incident. That he only heard rumours of a fight while he was still in the lakeside. That the fight took place at the home of his brother John Nyakunyi who was at Bondo hospital. That he was not able to bother and interfere as he had his own house chores. That he had left Pauline alone in

the compound when he went for fishing. That he does not stay with his wife as she had left to her parents' home. That he did not involve his neighbours in the matter but only contacted the beach manager. That he only made the report after discovery of the body and after the arrest of the village elder. That he was arrested and that he does not know the identity of those involved.

14. **James Onyango Onyor (DW2)** testified that on the night of 31/5/2024 he together with Peter Odaha (1<sup>st</sup> accused), Oliver Oduor and Ja Mageta came back from the lake on 1/6/2024. That while at the lake they heard that some people had fought and that three days later they learnt that Peter Odaha has been arrested. That he confirms that the said 1<sup>st</sup> accused was not present at the scene. He also added that there are other persons who use the name Odaha in the area such as John Odaha. That he does not know the deceased herein as he had not interacted with him.

On cross examination, he stated inter alia; that he was with the 1<sup>st</sup> accused on 31/5/2024; that he heard that people fought at the home of the 1<sup>st</sup> accused but did not get to know the identity of those involved; that he was on the same boat with the 1<sup>st</sup> accused and that the boat belongs to one Willima Fwete; that Peter Odaha and John Odaha are the only ones with the name Odaha.

15. **William Fwete (DW3)** testified that he owns a boat which operates in Honge Beach in Bondo Sub-County. That on

31/5/2024 he was at Honge Beach to fish and that he was in company with Oliver Oduor, Peter Odaha and Ja Mageta. That as the owner of the boat he gave them the engine, food and lamp. That they came the following day on 1/6/2024 at 7.00 am and that the 1<sup>st</sup> accused was also with them. That he confirms that the 1<sup>st</sup> accused was not at the scene as alleged.

On cross examination, he stated that he had worked with the 1<sup>st</sup> accused for over 10 years. That the 1<sup>st</sup> accused was the one responsible for throwing the fishing net into the lake waters while others performed other tasks. That 1<sup>st</sup> accused is an honest man. That 2<sup>nd</sup> accused is a village elder. That he was not at the scene on 31/5/2024 and that he cannot tell what transpired.

16. **Leonard Ouma Ogola (DW5)** testified that he is the 2<sup>nd</sup> accused and a resident of Honge and a village elder. That on 31/5/2024 at 9.00 pm he was at his home with his family who included his wife Hellen and daughters-in-law Beldine and Jackline. That they were watching news. That he knows Pauline Awuor (PW6) who lives around 500 metres away from his home. That they watched the news upto 10.30 pm. That he did not know anything about the alleged assault of the deceased by six persons. That he was arrested on the basis that he was the clan elder. That he was not hostile and that he did not threaten the family members of the deceased. That he was already in custody when the body was discovered and that he learnt that the

body had been discovered from the 1<sup>st</sup> accused's farm. That he is not related to PW6 and that he heard the evidence of PW6. That on 3/6/2024 at 2.30 pm eight persons who were peaceful approached him to show them a certain homestead belonging to PW6 and that he led them there as the village elder. That on arrival he found more than twenty people at the home some of whom were drunk. That he tried to address them but they did not reach a consent as they were demanding that he hand over their kin. That he was unable to do so and that he could not lead them to the lake for investigations. That there was no police officer among them. That he did not accompany the rowdy people to the lake and went to his home. That he did not participated in the killing of the deceased. That he heard the evidence of PW4 and he had seen his statement which shows that PW6 handed over sandals to PW4. That he is not aware that PW4 is a police officer.

On cross examination, he stated that he knows the 1<sup>st</sup> accused and confirmed that he has not been involved in any criminal activities. That the 1<sup>st</sup> accused hails from his area and who does fishing activity and which is usually at night. That he has been stopped from being village elder because of this case. That he is neither related to 1<sup>st</sup> accused who is a neighbour nor John Odaha. That he did not hear of any screams in the night of 31/5/2024 and was not aware of such a fight in his area. That the deceased's brother went on 3/6/2024 in search of the deceased who was then missing. That he did not know that the deceased's

relatives had lodged report to the police. That he took the deceased's relatives to the home of Pauline (PW6) as they were looking for that homestead since the relatives had claimed that the deceased had visited the home of the said lady but however did not find the deceased there. That he declined to join deceased's relatives in the search because they were harsh and unruly. That he denied allegations that he and others had killed the deceased and threw the body under the lake. That he was not reckless in his talk. The defence closed their respective cases.

17. After the close of the defence case, learned counsels were directed to file and exchange submissions. However, it is only the defence counsel for the 1<sup>st</sup> accused who complied who complied.
18. I have considered the evidence of the prosecution and defence as well as the submissions filed. I find the issue for determination is whether the prosecution proved its case against the accused beyond any reasonable doubt.
19. The burden of proof in all criminal cases is always upon the prosecution to discharge and that the standard is one of beyond any reasonable doubt. See **Woolmington Vs. DPP [1935] AC462**. Also in the case of **Miller Vs Minister of Pensions [1947] 2 ALL ER 372** the court held as follows:  
**“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof of beyond reasonable doubt does**

**not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.’”**

20. The offence of murder is defined in section 203 of the Penal Code as the killing of another person with malice aforethought through an unlawful act or omission. In a charge of murder, the prosecution is under obligation to prove certain essential ingredients inter alia; that there was death of the deceased; that the death was caused unlawfully; that there was malice aforethought; that the accused was the perpetrator of the crime.

21. As regards the aspect of death, the pathologist **Dr. Daniel Ochieng Otieno (PW7)** testified that he performed an autopsy on 18/6/2024 on the deceased which report was produced as Exhibit 3. That the body had decomposed with multiple fragments noted, visible bone fragments on the axial skeleton and all four limbs, head separated from the rest of the body with dangling cervical bones. That there was no skin cover on the bone but bones were apart and

not broken. That there was muscle and skin cover evident on the abdomen and chest but with post mortem skin changes. Skull disfigured but no obvious fractures noted. Right hip and left shoulders separated from the rest of body with bones dangling. That there were no internal organs to be assessed and that he reached the conclusion that the cause of death was inconclusive due to decomposition changes on the body. That a death certificate Number 1085986 was issued. It is clear that indeed the deceased died and that the only issue that was not resolved is the cause of the said death due to the state of decomposition of the body at the time of the autopsy. I find this ingredient was proved beyond any reasonable doubt by the prosecution.

22. As regards the unlawfulness of the death, it is trite law that all homicides are unlawful unless authorized by law. The deceased was a young man then aged twenty (32) years and in good health and who had not married. The injuries noted by the pathologist left no doubt that the assailant desired that the same would lead to the death. It is instructive that the body of the deceased was recovered from a certain farm which was then in a bad state with some body parts severed. It is clear that the body had been thrown into the said area after the person had died. The manner in which the deceased met his death namely that upon being assaulted, he was thrown into a certain bush near the scene left no doubt that his assailants wanted him to die. Hence, I find the death was unlawful and that this

ingredient was proved by the prosecution beyond any reasonable doubt.

23. As regards the aspect of malice aforethought, the Court of Appeal in the case of **Nzioka Vs R [1993] KLR 171** held that before an act can be murder, it must be aimed at someone and in addition it must be an act committed with the following intentions, the test of which is always subjective to the actual accused: -

- Intention to cause death.
- Intention to cause grievous bodily harm.
- Where the accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse.

The foregoing authority is a replica of the conditions to be considered whether the ingredient of malice aforethought under Section 206 of the Penal Code has been established. It transpired from the evidence that the deceased herein had visited the home of Pauline Nyapunyi (PW6) at night to deliver some fish and that as soon as he made to leave the home, the relatives of PW6's husband accosted him and severely attacked him. It was the evidence of PW6 and her daughter Brovian Anyango (PW8) that there was a huge crowd of people who attacked the deceased outside their home. It is clear that the deceased did not manage to leave the home of PW6 alive on the night of 31/5/2024. It had transpired that the deceased had a love affair with the said

PW6 and it seems the relatives of her husband were not happy about finding the deceased at that home and thus attacked him. The circumstances appear to me to suggest that there might not have been a plan to eliminate the deceased and that the same point to a situation depicting a spontaneous reaction by the aggrieved relatives of the husband to PW6. Indeed, it transpired that the deceased was alleged to have had a love affair with Nya-Sakwa (PW6) and that the relatives of her husband were incensed by the conduct of PW6 of inviting a man into the home while her husband was fighting for his life in hospital. Thus the angry relatives accosted the deceased as soon as he came out of the house of PW6 and viciously attacked him. In the premises, I find that the ingredient of malice aforethought was not proved beyond reasonable doubt by the prosecution and that the eventual outcome would have to support a charge of manslaughter and not murder.

24. As regards the third ingredient, the accused persons have vehemently denied involvement in the death of the deceased. It was therefore incumbent upon the prosecution to present watertight evidence placing the accused persons at the scene of crime as the perpetrators of the crime. The prosecution lined up family members and friends of the deceased (PW1, PW2, PW3, PW4 and PW5) whose evidence is that upon the disappearance of the deceased, they made attempts to look for him in addition to reporting to the police at Usenge Police Station. Their

evidence is that in the initial stages, the area chief and the clan elder (2<sup>nd</sup> accused) were reluctant to give any information about the whereabouts of the deceased and that the police were also not helpful as they claimed that they could not book a report of a dead person when the relatives were still looking for him and that it was hoped that the deceased would resurface later on. Further, the evidence is that the relatives of the deceased received information that the deceased had a love affair with one Pauline Nyapunyi alias Nya-Sakwa (PW6) and that they visited her and who confirmed that indeed the deceased had visited her and sold to her fish worth Kshs200/= and that the relatives of her husband later attacked him as he left her house. The said PW6 gave them a belt and a beige pair of sandals left behind by the deceased. It was then that they went to the police station to report and then investigations commenced. It was the evidence of PW6 and her daughter (PW8) that they had a torch make Sun King and the persons who assaulted the deceased Ouma Wanda, Okoth Okeno, Jared Odaha, Sam Oyoya, Ouma Aniki who were not charged and that they were surprised as to why they were not charged with the offence. The said witnesses vehemently denied that the two accused persons herein were among the assailants. The investigating officer stated that he established that the in-laws of Pauline Nyakunyi alias Nya Sakwa (PW6) assaulted the deceased who was alleged to have had a love affair with PW6. He further added that PW6 and PW8 might have been compromised

even though the said PW6 had sustained injuries from the assailants.

25. It is noted that the prosecution's key witnesses are PW6 and PW8. However, the said witnesses had denied that they saw the two accused herein at the scene of crime and maintained that the persons who assaulted the deceased were other relatives of the husband of PW6. Further, the two witnesses wondered why the persons who had assaulted the deceased had not been charged for the offence. The prosecution had the opportunity to seek to declare the witnesses as hostile so as to enable them to be cross-examined by the learned prosecutor and their witness statements produced as exhibits but opted not to utilize the opportunity and hence, that particular evidence had the effect of weakening their case and bolstering that of the defence. What was left of that is only a supposition and suspicion as to the involvement of the accused herein in the crime. Even though the deceased's relatives had had a nasty encounter with the 2<sup>nd</sup> accused earlier on during the search for the deceased, the same cannot form a basis pointing to the guilt of the accused persons, since the prosecution was under obligation to prove the charge against them beyond any reasonable doubt. It is trite law that suspicion, however strong cannot provide a basis of inferring guilt.

26. The two accused persons tendered some alibi. The 1<sup>st</sup> accused stated that on the material date he was away fishing in the lake and only came home the following morning at 8.00 AM. He called two witnesses (DW2 and DW3) who vouched for his alibi. He also stated that he stumbled upon the decomposing body of the deceased from his farm and went to the police station and reported whereupon he was placed in the cells and later charged together with the 2<sup>nd</sup> accused herein. The 2<sup>nd</sup> accused also denied involvement in the crime and contends that he was roped in due to some earlier disagreements with the family of the deceased even though he had assisted them by leading them to the home of PW6 in their search for the deceased. Once an alibi is raised, the duty to prove the guilt of an accused still remains with the prosecution to prove beyond any reasonable doubt. In the case of **Patrick Muriuki Kinyua & Another Vs Republic [2015] KECA 1000 (KLR)** it was held that an alibi is a plea by an accused person that he was not there (was not present) at the place where the crime was committed at the time of the alleged commission of the offence for which he is charged. Again, in the case of **R Vs Sukha Singh s/o Wazir Singh & Others [1939] 6 EACA 145** the court held as follows:

**“If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward there is naturally a doubt as to whether he has not been preparing it in the**

**interval, and secondly, if he brings it forward at the earliest possible moment it will give the prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness, proceedings will be stopped.”**

It is noted that the alibi defence, especially by the 1<sup>st</sup> accused is corroborated and backed by the evidence of his witnesses (DW2 and DW3), who were not shaken even on cross-examination by the prosecution counsel and hence the defence evidence must be believed since the two key witnesses did not implicate the accused herein in the crime. I find that the prosecution did not manage to dislodge the said alibi.

27. The prosecution has also sought to link the 1<sup>st</sup> accused in the crime on the ground that the body of the deceased was recovered from his farm. Indeed, it was the 1<sup>st</sup> accused who discovered the body of the deceased and who lodged the report to the police and which led to his arrest. The 2<sup>nd</sup> accused is also blamed and suspected to have been responsible for the crime as he had earlier on clashed with the family members of the deceased who had claimed that the 2<sup>nd</sup> accused had claimed that they had tossed the deceased into the lake. It would therefore appear that the case of the prosecution rests entirely on circumstantial evidence. It is trite law that for circumstantial evidence to support a conviction, the same must be cogently

established and unerringly point to the accused's guilt and form a chain so complete excluding any other reasonable hypothesis except the guilt of the accused. See **Sawe Vs R [2003] eKLR**. Looking at the entire evidence of the prosecution, I find the same falls short of the standard of proof required of it to justify a conviction against both accused herein and that the threshold of proof has not been met. I find that it is unsafe in the circumstances to convict the accused persons herein.

28. In view of the foregoing observations, it is my finding that the prosecution has not proved its case against the two accused herein beyond any reasonable doubt. I find each of the accused herein Peter Muhua Odaha and Leonard Ouma Ogola not guilty of the charge of murder and are hereby acquitted of the same under section 322(1) of the Criminal Procedure Code are hereby ordered to be set at liberty forthwith unless otherwise lawfully held.

**Dated and delivered virtually at Naivasha this 24<sup>th</sup> day of March 2026.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

**Peter Muhua Odaha.....1<sup>st</sup> Accused.**

**Leonard Ouma Odala.....2<sup>nd</sup> Accused.**

**M/s Owenga.....for 1<sup>st</sup> Accused.**

**Kadera.....for 2<sup>nd</sup> Accused.**

**Soita.....for Prosecution.**

**Maurine.....Court Assistant.**