



**Republic v Simiyu & another (Criminal Case E190 of 2024)
[2026] KEMC 59 (KLR) (22 January 2026) (Judgment)**

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**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E190 OF 2024
FM MULAMA, RM
JANUARY 22, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

DIANA AKINYI SIMIYU 1ST ACCUSED

DICKSON MANGI YAA 2ND ACCUSED

JUDGMENT

1. The accused persons are charged with various counts for the offence of trafficking in persons contrary to section 3(1) as read with Section 3(5) of the Counter trafficking in persons Act no. 8 of 2010.
2. The particulars were that on diverse dates in the month of March 2024 the 2 jointly transported, harbored and/or received W.W.W a child aged 16 years from Thika for purposes of exploitation for cheap labour
3. The prosecution called 7 witnesses and closed its case and the 2nd accused person gave his sworn testimony and closed its case.
4. Vide a ruling delivered by this court, the 1st accused deliberately excused herself from the proceedings and as such the matter proceeded in her absence and she shall be bound by this judgement.
5. I have considered the testimonies of both the prosecution and the 2nd accused person as well as submissions filed by the 2nd accused and dated 7/7/2025 which date I find rather odd considering the that the matter was closed 27/10/2025 but that is neither here nor there. It is possibly a typographical error.



The Evidence

6. Pw 1 WW the complainant stated that in April 2024 she rubbed shoulders the long way with her mother and immediately thereafter developed a relationship with the 1st accused and who had a girl aged either 5 or 6 years and who used to come and play in their home and Pw 1 would drop her back in the evening.
7. She further stated that their relationship grew stronger and she at times went to her home to watch movies. On a particular day she had a conflict with her sister and she went to the 1st accused house and when the 1st accused saw her she became concerned and she explained that she was tired with the frictions back at home both with the mother and the sister.
8. The 1st accused then asked her whether she knew where her friend Stella went to but she answered in the negative and the 1st accused placed a call on Stella and Stella informed her that she was very okay where she was but she did not disclose the location. The 1st accused then told WW that she is the one who took Stella to where she is and that she could take her to a similar place if she wanted and WW indicated that she would not mind provided there is no stress and frustration.
9. There was then silence on that topic until sometime when the 1st accused told her that there was someone who wanted her photos so as to decide whether to give her a job or not. She then sent the 1st accused her photo using her Instagram page.
10. On another particular day they met with the 1st accused while they were taking food to the niece and daughter respectively and the 1st accused informed her that she should be ready by 1500hours or 1600hours because her bus ticket was ready. At 1600hours the 1st accused called WW to her house and told her to go pack her clothes as she was going to where Stella was.
11. She went back home, packed and used different routes so that people could not see them together with the 1st accused carrying some of her bags and she carried the others but later met at a junction and the 1st accused gave her Kshs.500/= as pocket money.
12. Pw 1 then took a motorcycle upto the main road then boarded a super metro bus to Nairobi. Upon arrival, she went to Buscar station. At the station, she had some 2 numbers that had been written to her by the 1st accused. The purpose for them were that once she arrives she calls her so that she sends a screenshot of the bus ticket. She borrowed a phone and the ticket was sent and that is how she new she was going to Lamu.
13. She boarded the bus to Mpeketoni and upon arrival she had been instructed to call the 2nd number which belonged to Dickson. She called Dickson and who in turn sent a motorbike that picked her from Buscar bus station and she was taken to Dickson's house. Upon arrival she did not find anyone. She placed the bags in the sitting room and she slept on the seat. At around 1500hours Dickson came to the house, greeted her and thereafter prepared food and they ate as they had a conversation with a view of knowing her and her relationship with the 1st accused.
14. As the conversation went on she stated that Dickson wanted to find out whether she was aware of what she was coming to do and she answered that she was there for work but wasn't aware of the type of work she was to do. Dickson then informed her that he has a night club that sells alcohol in Hindi but could not go to work because at the moment night clubs in Lamu had been closed and that she could only start work once they have reopened.



15. After the brief chat, he took a shower and left and later came back at 2000hours later that night and brought food and left again and came the following morning and gave her Kshs.250/= for use to walk around Mpeketoni to familiarize herself with the town.
16. On one particular day her friend by the name Rehema called her and told her that she was outside the gate and she was there to deliver her a sweater. Pw 1 further stated that all these while the 1st accused used to call her through Dickson's phone and instructed her not to call people unnecessarily and not to call anyone known to me.
17. Pw 1 further testified that contrary to the instructions of the 1st accused person she called her friend Njengu who resides in Thika and she told her that she was in Lamu for work.
18. Following her action of meeting Rehema, Dickson took away the phone she had and she later on decided to join a dance group that had offered to give her free dance classes and at this time they were rarely meeting with the said Dickson.
19. One particular day she went out with her friends and came back the following morning and found Dickson in the sitting room and he told her that someone was looking for her and who claims to be her mother and he asked whether he should give her fare back to Thika but she refused and Dickson then told her that she will have to look for another place to live and Dickson chased her away and Njeri agreed to host her. She went back to Dickson's house to pick her clothes and found Dickson has packed her clothes and was in the house and who warned her that she should not mention him anywhere since the DCI are looking for her.
20. While at Njeri's place she found a job at Palm city as a waiter where he worked for 2 days and on the 2nd day Dickson came to the said palm city and she served him beer and soon thereafter her uncle came made her sat down and soon thereafter the mother also arrived. They then boarded a motorcycle and went to a lodging and thereafter recorded a statement with Stella at the Hindi Police station.
21. She identified the said Dickson in court as the 2nd accused.
22. On cross examination she stated that it is the first accused who gave her the idea and that the 1st accused threatened her not to fail her when she was enroute but she came to Lamu willingly. It was her testimony that she was able to pass through the roadblocks with the help of the person sitting next to her and who took her as her daughter and it is the passenger who talked to the police.
23. She further stated that she knew that Dickson was in Lamu but she was in constant talks with the 1st accused. She further stated that it is the 2nd accused who paid her bus ticket but indicated the person travelling as Diana and travelled under the name Diana.
24. Pw 1 stated that in cross examination that Dickson did not take her to Palm city and did not start work at Dickson's club since it did not have a permit. She further stated that she lied to Dickson that she was 18years because the 1st accused told her to say as much. She concluded that her friend MCSD looked for a job for her at Palm City and that she came to look for work.
25. Pw 2 Stella in her testimony stated that she was the 1st person to be taken to Lamu by the 1st accused in almost the same fashion as Pw 1. She stated that sometimes in August 2023 she argued with her aunt and she decided to leave her house and that is when she met the 1st accused and after explaining what had transpired and the 1st accused promised to help her get a job. She then went to the 1st accused's house and who took her to her sister's place in Kiganjo and came back after a week and told her grandmother that she wanted to go back to school.



26. She went back to Kiganjo to collect her clothes and on her way she met the 1st accused and who advised her not to go back to school and informed her that Dickson Yaa was looking for an employee and that she should go and work there. The following day the 1st accused bought shoes for her and facilitated her to obtain a police abstract for purposes of crossing the roadblocks.
27. She then escorted her to the bus station and bought her a phone and Kshs.500 and finally boarded the vehicle to Mpeketoni and upon arrival Dickson met her and they went to Hindi as they rode on his motorcycle. It later emerged that she was to be employed to sell chips and chicken and smokies(sausages).
28. She further stated that she worked for a while but left the place because she was not being paid.
29. On February 26th she stated that she was called by the 1st accused and asked her to speak to someone and that person happened to be Pw 1. Pw 1 then informed her that she wished to joined her in Lamu but she told her to finish school first. 3 days later she was called again but this time with the 2nd accused person and told her that there was someone who wanted to talk to her and again it was Pw 1 and who told her that she had met the accused persons and that is why she wanted to speak to her.
30. A week after they had spoken she became aware that Pw 1's mother was in Lamu to look for her and she was called by the area chief to go and record her statement.
31. On cross examination she stated that on 26/2/2024 she was called by the 1st accused and she was told that she speaks to Pw 1 and indicated that in her statement the date indicated is 29/3/2024.
32. She admitted that despite lying to the police by using an abstract in Diana's name, the court should believe her testimony. She indicated that she had nothing to show that she was in the employment of the 2nd accused.
33. PW3 stated that on 26/3/2024 went out on her business errands and when he returned home he did not find her daughter; the complainant and the house help responded that she was at the 1st Accused's house and she directed her to go and bring her home. The house help went but she did not find her. Pw 3 assumed Pw 1 had gone to her father. She called the father's line but the same was unreachabele.
34. The following day she called and it went through but Pw 1 was not at his place. Pw 3 then sent the house help to 1st accused's house again but this time with instructions that she obtains any number from the 1st accused's phone that Pw 1 might have used to call . Upon getting to the 1st accused house, the 1st accused confirmed that indeed Pw 1 had called a number using her phone but she had deleted the said number. She further added that it was common practice for Pw 1 to make calls using people's phone including hers.
35. Since they were unable to trace her, a physical search was instituted in homes and houses and in the process they met one girl who told them that Pw 1 had gone to where Pw 2 had gone and that she had told her that someone would sent fare to her to facilitate her transport. A frantic search continues but she could not be traced and Pw 3 returned home.
36. Upon returning home, she came across a notebook that had so many numbers but one name had 2 phone numbers and she called one of the numbers and it was picked by a man and who told her that she had spoken with Pw 1 and that he would even record their conversation and share with her. He did that and she was able to extract Pw1's phone number from the conversation.
37. She then called Pw 2's number and it was also picked by a man but who took it to Pw 2 and she asked whether she had seen Pw 1 but she answered in the negative and stated that she did want that story.



38. Pw 3 then reported the matter to Makongeni police station and submitted the numbers to DCI Thika for tracking and all showed they were in Hindi and she travelled to Hindi and went straight to Hindi police station in the company of her friends.
39. The police then called the area chief and the chief upon arrival confirmed having heard Pw 2 working at a hotel and he went out to look for her and after a while he came back with Pw 2. Pw 2 was interrogated and her phone examined and one of the numbers that was being tracked and believed to belong to Pw 2 was found in the call log and had been called like 2 days ago. Pw 2 was placed in the cells. The following day he admitted to have spoken with Pw 2 as per the call log. She later disclosed that Pw 1 was in Mpeketoni and took them to a house where Pw 1 was but they did not find her there.
40. She further testified that it later emerged that the place they had been referred to in Mpeketoni belonged to a man who had opened a bar in Hindi. The DCI called him and upon arrival at the station he stated that he did not know her whereabouts but given time he would look for her and he was given police bail and released to go assist in the search. Later that night the person called and informed her that he had seen Pw 1 at Palm city and she rushed there with her friends and they found Pw 1.
41. Pw 1 was interrogated and it was her testimony that the 1st accused had told her that there was a person who was looking for barmaids and it is the 1st accused who paid her fare and that the man who had shown them where she was sent a motorcycle to pick her and her to the house and the person later bought her a phone and used to give her money for meals.
42. She further stated that it was the same person who had employed Pw2 and when he heard that Pw 2 had been arrested the man sent her away and she went and stayed with another lady and who assisted her get the job at Palm city.
43. On cross examination, Pw 3 indicated that he identified the 2nd accused in court by his facial appearance.
44. Pw 4 Corporal Lilian Mbithe of No. 9XXX testified that on 6/4/2024 she noted the case of a missing person had been minuted to her. She obtained number 07XXX5 and 07XXX3 and was informed that the numbers were being tracked by the DCI in Thika. She then called the area chief and gave her the photo of the missing child. She also summoned Pw 2 and after interrogation she agreed to take them to Mpeketoni and went to the house led by Pw2 found it open but it did not have anyone inside and upon inquiries they informed that the house belongs to the 2nd accused. On 11/4/2024 the reportee came back with the Pw 1 and the results were made in the OB and Pw 1 was handed over to Pw 3.
45. Upon cross examination she stated that she did not verify tenancy from the landlord of the houses and never recorded any statement from the neighbours and that at the house they did not find the 2nd accused or anything linked to the 2nd accused.
46. Pw 6 No. 1xxx3 PC Nancy Akumu a detective from the Antihuman and child trafficking unit and the IO in the matter testified that on 24/1/2024 Pw 3 made a complaint that her daughter was missing and reiterated what Pw 3 had told her and which forms part of the evidence of Pw 3 above.
47. It was her testimony that the investigations revealed that Palm city belonged to one Michael and that the 2nd accused was the one who sent fare to the 1st accused to facilitate the transportation of Pw 1 to Lamu. She produced the bus ticket at Pexh 1.
48. Upon cross examination she stated that in this type of cases she looks out for exploitation, recruitment, transportation, reception and cheap labour as it is the case herein. She further admitted that the totality of her evidence is what she was told by witnesses and that she could not tell the number and name of



the man who received the call by Pw 3. She further admitted not having seen the book that contained the numbers.

49. Pw 6 indeed confirmed that she could not ascertain whether Pw 1 was working under the control and instruction of the 2nd accused but concluded by stating that the 2nd accused was harboring them in his house.

Defence case

50. In his sworn testimony the 2nd accused, a veterinary officer while denying the charges stated that the 1st accused was his girlfriend and that before 26/3/2024 he was in communication with the 1st accused and who once told him that if he had some opportunity in his club he should employ her friend as the said friend did not have relatives or parents and was in dire need of a job opportunity.
51. At the moment he did have an opportunity but promised her to consider her request once he had an opportunity in the club. Days later he needed someone to sell chips and kuku and he informed her and also enquired from her some details of her friend which included her age and whether she had her ID. She confirmed as much and even the said friend confirmed as much.
52. On 26/4/2024 he spoke to the 1st accused and advised her to allow the friend to travel and he sent her Kshs.1,300/= at her request but he did not bother to ask what the amount was meant for as it was normal for him to send her money upon her request.
53. The 1st accused then informed him that her friend did not have a phone but she had sufficiently informed her of the directions and she had given her his number. On 27/3/2024 she arrived and he went and picked her and since she was tired she requested for a place to sleep and he booked a room for her at Silent lodge for her to rest. He produced the receipt dated 27/3/2024 as Dexh 1.
54. The following morning he went back the Silent lodge and upon asking for her ID so as to make a copy she informed him that she had forgotten them at home and he advised that she should ask someone to send them to her as a parcel but she said she did not have anyone as her parents were both deceased.
55. It was his testimony that she pleaded with him to allow her work without her ID but he could not allow that and he proposed to give her fare back to Thika and she would return once she had all her papers in place. He gave her the fare and called the 1st accused and informed her of what had transpired.
56. A day later he called the 1st accused and sought to know whether she had arrived but the 1st accused indicated that she had not seen her and a week later he was summoned by the police and he was arrested and informed that he was a potential suspect in a child trafficking case but was released and after his released he was informed that she had been found.
57. He was summoned back at the station and upon her interrogation Pw 1 she informed the police that she had lied about her not having parents and further that she had travelled to get her ID yet she had not but instead went to a friend's place in Mpeketoni.
58. Since Pw 1 had been found the police advised that the case should terminate but Pw 3 gave a condition that she should be paid Kshs.230,000/= as compensation but he declined and that is how he was re arrested again and now faces these charges.
59. It was further his testimony that there was a further request by the police that he pays Kshs.300,000/= so that the case terminates but he again declined and that is how he was arraigned in court.
60. He concluded his testimony by stating that he did not use any force or threats to get her to Mpeketoni and that he did not employ her because she did not have an ID.



61. On cross examination it was his testimony that Pw 6 and 7 who asked for Kshs.300,000/= in order to stop pursuing the case but admitted that none of them was cross examined on that aspect. He further admitted that the 1st accused was his girlfriend but the relationship ended as soon as this issue arose and she escaped.

62. It was further his testimony in cross examination that he booked her the room in Silent resort.

Analysis.

63. An offence of trafficking in persons is defined in Section 3(1) of the Counter Trafficking in persons Act as a person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of;

- a. threat or use of force or other forms of coercion;
- b. abduction;
- c. fraud;
- d. deception;
- e. abuse of power or of position of vulnerability;
- f. giving payments or benefits to obtain the consent of a person having control over another person.

64. For the prosecution to establish an offence under the Act it must show that the accused persons with guilty minds recruited, transported, or harboured, or received another person's in this case WWW for the purpose of exploitation and used threats or force or abduction, or fraud, or deception, or abused vulnerability or obtained consent by payment to the victim or person having control of the victim.

65. In essence the elements to be satisfied for the offence of Trafficking in persons to be proved are 3 fold to wit; the act, the purpose and the means. The act consists the element of recruitment, transportation, transfer, harbouring or the act of receiving another person for purposes of exploitation. The purpose in this sense being the reason(purpose) of exploitation and finally the means being those as listed at paragraph 63(a) to (f) above.

66. The offence of trafficking therefore consists of a process with the ultimate purpose of exploitation of the person trafficked. Every participant in every stage of the process is guilty of the offence, and an accused need not participate in all stages to be guilty. If the prosecution establishes to the satisfaction of the court that the accused was part of the chain and committed only one act in the chain which was aimed at facilitating the commission of the offence, he/she would be guilty of the offence of trafficking In Persons.

67. In Muhammad Asif v Republic [2017], Justice P. Nyamweya held thus;

“....The offence of trafficking in persons captures the entire trafficking continuum, and engagement in just one of these trafficking “stages” is sufficient. Therefore, different persons or groups of people may be responsible for different aspects of the trafficking crime. The offence is thus formulated in such a way as to capture the different actors along the trafficking continuum, including those who do not directly exploit the victim's labour or services, so long as they knew their action was for the purpose of exploiting or facilitating the exploitation of a person.”



68. In *Benard Onyandi v Republic* [2018] eKLR the Court held that;
“for the Prosecution to establish an offence under the Counter trafficking or the prosecution to establish an offence under the act it must show that the accused (1) recruits or (2) transports, or (3) harbors, or receives another person’s for the purpose of exploitation and has used threats or force or abduction, or fraud, or deception, or abused vulnerability or obtained consent by payment to the victim or person having control of the victim. The offence of trafficking consists of a process with the ultimate purpose of exploitation of the person trafficked. Every participant in every stage of the process is guilty of the offence, and an accused need not participate in all stages to be guilty. If the prosecution established to the satisfaction of the court that the accused was part of the chain and committed only one act in the chain which was aimed at facilitating the commission of the offence, he would be guilty of the offence of trafficking In Persons.”
69. What I gather from the said authorities and my reading of the Act is that the evidentiary requirements for trafficking in persons should address the commission of an act, the means and exploitative purposes. This is what I will determine as against the evidence on record.
70. The commission of an Act is demonstrated through the recruitment, transportation, transfer, harbouring and receipt of persons. I am now duty bound to find if any of the accused or both of them were involved in any of the acts while keeping in mind that it is enough to convict as soon as I find any of the accused was involved in any 5 acts aforementioned.
71. From the evidence of Pw 1, it is clear that she was in clear communication and friendship with the 1st accused and the idea to travel to Lamu was actually hatched by the 1st accused and who sold the idea to the victim especially after Pw 1 disclosed to her that she was being frustrated at home by her family.
72. True to her promise, and by use of deception placed a call to Pw 2 and who informed Pw 1 via call that she was at a better place but did not disclose her location and where she was probably “enjoying” life from that was free from stress. Pw 1 was tempted by this disclosure. As days went by the 1st accused informed Pw 1 that someone wanted her photos so that the person could ascertain her suitability to a particular job and Pw 1 sent the photo to the 1st accused using her Instagram page. This photo or evidence was not adduced in evidence.
73. One of the afternoons the 1st accused met Pw 1 while heading to the same school to deliver food to daughter and niece respectively and that is when the intended plan was actualized. She advised Pw 1 to go and pack her clothes and they met at a junction and she gave Pw 1 Kshs.500/= as pocket money and off she left for Lamu. The 1st accused gave her some 2 numbers that Pw 1 would call her with so that she sends a screenshot of the bus ticket. Pw 1 did as advised and the bus ticket was shared and she travelled to Lamu. The bus ticket was produced as Pexh 1.
74. I have carefully interrogated the bus ticket from Buscar. It shows the travel date was 26/3/2024 but it does not show to whom it relates but shows that the same was booked by Joseph Nganga.(Mpeketoni). Totality of these and as it is evident from the record, it is the 1st accused who facilitated the travel by clever means so as to remove any traces of her in the entire process. This court is alive to the fact that given the nature of this offences, perpetrators are always keen to avoid their trails and may more often than not deploy clever ways to avoid being trailed or their traces being found. I am thus convinced from the evidence the 1st accused involved herself in the transportation and transfer of Pw 1 from Thika all the way to Mpeketoni in Lamu county.
75. It is the case by the prosecution that the 2nd accused person being in need of someone to work in his bar procured Pw 1 for this purpose hence the charge as contained in counts 2,3, and 4. With regards



- to count 2 therefore it is stated that he jointly with the 1st accused transported Pw 1. The evidence on record as discussed above demonstrate that the 2nd accused had nothing to do with her transport although he admits that at the 1st accused's request sought for a place for her friend at his premises and the indication the 1st accused gave indicated that the intended employee was 19 years and with an ID and she was advised to organize for her travel and according to the 2nd accused, the 1st accused thereafter asked her for some money which he sent Kshs.1,300/= as he has always done considering the fact that they were in a relationship.
76. A perusal of the bus ticket also show that the bus fare was Kshs.2,200/= and not the Kshs.1,300/= the 2nd accused sent and this therefore lends credence to the testimony by the 2nd accused that he would send her money more often than note. The Mpesa statement produced confirms this piece of evidence as I have seen other instances the 2nd accused sent the 1st accused money. Furthermore, no evidence was led to demonstrate that the money was part of the bus fare to lend any credence to the assertion by the prosecution.
77. It is therefore not safe on the available evidence by the prosecution to conclude that the 2nd accused played part in the transfer and transportation of Pw 1. In his defence, the 2nd accused denied as much and when cross examined it was his testimony that he never asked the 1st accused to assist in getting Pw 1 to work for him although he was looking for someone to assist in her food vending business and he was offering to pay Kshs.300/= per day.
78. It is therefore the finding of the court which I so hold that the 1st accused person was solely responsible for the transfer and transportation of Pw 1 from Thika to Mpeketoni in Lamu county.
79. On whether the 2nd accused participated in receiving and harbouring Pw 1, the evidence by the prosecution through the evidence of Pw 1, is that once Pw 1 arrived in Mpeketoni she had instructions to call a 2nd number that allegedly belonged to the 2nd accused. No such record or phone number was disclosed in order for this court to make a finding that it indeed belonged to the 2nd accused. However, in his defence, the 2nd accused admitted that indeed Pw 1 upon arrival in Mpeketoni she called him and informed him as much. He then booked her at Silent lodge resort for her to put up pending her travel to Hindi for work. The receipt for accommodation at Silent resort was produced as Dexh 1
80. The 2nd accused in his defence, seems to suggest that in as much as he received Pw 1, he was at that moment under the impression that the Pw 1 was an adult and had all the necessary documentation in readiness to start work. To that extent and given the fact that the 2nd accused never took Pw 1 to his house, he did not harbour Pw1 as Pw 1 was not accommodated in his house. On this issue I find the evidence by the defence rebutted the allegation by Pw 1 that she went to the 2nd accused's house.
81. As to the means it must be demonstrated by the prosecution that all the accused persons separately or jointly used threat or use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability and giving or receiving payments or benefits to gain control over a person.
82. From the evidence on record, it is clear to my mind that the 2nd accused person was not in direct communication with Pw 1 and as such he never used any threat or any of those means referred in the Act. To the contrary, evidence has it that it is indeed the 1st accused who used deception to transfer and transport Pw1 in the guise that she will enjoy life just like Pw 2. This is from the background that she was frustrated and in constant conflict with her family members. I agree with the 2nd accused's submission that the evidence on record so far indicates that indeed it is Pw 1 who deceived the 2nd accused into believing that she was an adult and only to arrive without her national identity card.



83. With regards to Purpose it is the evidence of the prosecution that Pw 1 was trafficked to Mpeketoni for purposes of exploitation which I agree includes but not limited to keeping a person in a state of slavery, subjecting a person to practices similar to slavery and involuntary servitude.
84. The evidence on record further demonstrates that the 2nd accused never employed Pw 1. The 2nd accused in his defence admits as much for the sole reason that Pw 1 did not avail her national ID for purposes of identification and confirming her age. To me the evidence on record did not prove the aspect of purpose for the reason that employment did not materialize for the reasons advanced by the 2nd accused in his defence and as such the exploitation aspect did not materialize.
85. From the evidence it can be deduced that the 2nd accused person anticipated an adult to take up the work he intended and had no mens rea from the onset with regards to trafficking in person and this is confirmed by the evidence of the 2nd accused in his defence.
86. Generally in such kind of cases, in order for a person to be found guilty of such an offence he or she must have committed an illegal act(actus reus) and had the required state of mind(mens rea). With regards to mens rea, the prosecution has to demonstrate with sufficient evidence that the accused persons had the “guilty mind” and the standard applicable in this sense is sufficient “guilty mind”. This was the finding of the court in the case of Geoffrey Andare vs Attorney general & 2 others [2016] eKLR where the court was of the view that the requisite mental element required in a trafficking in persons case is that the person committed the material acts with the intention that the victim be “exploited”.
87. It should be noted that the Act criminalizes trafficking in persons when conducted intentionally for instance for sexual exploitation (Section 2), however, it should also be noted that an offence of trafficking in persons should not require that actual exploitation take place. All that is required is that the accused persons committed one of the constituents act employing one of the listed means for the purpose. It therefore does not require actual exploitation to take place but a manifestation of an intention to exploit.
88. This is now to be juxtaposed with the standard I have alluded to above “sufficient guilty mind” as against each of the accused persons and the evidence on record.
89. The totality of the evidence on record is that in my view I am satisfied that the prosecution proved and/or demonstrated “sufficient guilty mind” on the aspect of recruitment of Pw1 on the part of the 1st accused hence count 1 is proved. On count 2 both accused persons are charged jointly. To that extent, evidence must be led by the prosecution to show that the 2 worked in cohorts to transport PW1. The evidence on record falls short of this. The evidence is clear that it is the 1st accused who transported Pw 1 from Thika to Mpeketoni and as such count 2 fails.
90. On count 3 as against the 2nd accused it is said that he received Pw 1 as a component of trafficking in persons. The evidence on record indeed shows the 2nd accused person received and booked her at Silent lodge. He did all these without “sufficient guilty mind” and I say this because of his refusal to admit her to work when he noticed that she did not have a national identity card and offering to send her back to get the necessary documentation before admission to work. If the 2nd accused person for all intents and purposes wanted to exploit Pw 1 he wouldn’t be minded whether she has a national identity card or not and that is in my view my finding that he did not have “sufficient guilty mind”. Count 3 thus fails on that limited extent.
91. Similar fate befalls count no. 4 to that limited extent that I am not convinced that the 2nd accused had “sufficient guilty mind” in booking in Pw 1 at Silent lodge.



92. In my view then the term “harbouring” as used in the Act refers to knowingly providing shelter and/or accommodation with the intention of concealment or protection of a person for purposes connected with exploitation.
93. No evidence was adduced to show that the Pw 1 was kept by the 2nd accused under restricted movement, locked premises, or in conditions amounting to concealment. Mere presence of Pw 1 at Silent lodge paid for by the 2nd accused without proof of intent to exploit does not amount to “harbouring” under the law.

Disposition.

94. Flowing from the above the 1st accused is guilty in count one and she is accordingly convicted in that count under section 215 of the CPC. Count two was not proved and each of the accused person is acquitted in that count under section 215 of the CPC.
95. The 2nd accused person is acquitted in counts 3 and 4 under Section 215 of the CPC. The 2nd accused is thus at liberty having been acquitted in all the counts facing him.
96. Pursuant to the ruling of this court made on 5/11/2024 with regards to the 1st accused willingly waiving her right to be present during the trial of this matter, an order was made that she shall be bound by the judgment of this court. That position still obtains and the 1st accused despite her deliberate absence she is bound by the finding and outcome of this court/judgment.
97. Considering I do not expect to get and record her mitigation having been sentenced in count 1, I will proceed straight away to sentence her.
98. As regards her sentence, the penalties for the offence of trafficking of persons are created by section 3(5) and (6) of the Counter Trafficking in Persons Act which provide as follows:
 - “(5) A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.
99. In the case of Cheye v Republic (Criminal Appeal E049 of 2022) [2025] KEHC 1773 (KLR) (Crim) (24 February 2025) (Judgment) CJ Kendagor, J upheld a sentence of Kshs.30 million and in default to serve 30 years imprisonment.
100. The penalty under the said section is what is now commonly referred to as the mandatory minimum sentence, accordingly the 1st accused is sentenced to a fine of Kshs.30,000,000/= in default to serve 30 years imprisonment.
101. The sentence shall commence on the date she is arrested and warrants are hereby issued and the same to be executed by the in charge Antihuman and Child trafficking Unit of the DCI.
102. Those shall be the orders of this court.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 22ND DAY OF JANUARY 2026.

F.M. MULAMA.

RESIDENT MAGISTRATE

In the presence of:



Idris Tomno for DPP.

Mr. Maina for the accused person virtually.

Dickson Mangi Yaa physically.

Court Assistant:- Daniel Joshua.

