



**Republic v Masinde & another (Criminal Case E043 of 2021)
[2026] KEHC 5597 (KLR) (28 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E043 OF 2021**

RK LIMO, J

APRIL 28, 2026

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN MUKUYUTI MASINDE 1ST ACCUSED

ISAAC JUMA WANYONYI ALIAS PAUL WEKESA KUNDU 2ND ACCUSED

JUDGMENT

1. John Mukuyuti Masinde and Isaac Juma Wanyonyi alias Paul Wekesa Kundu alias Kevin Simiyu Wamalwa are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on diverse dates between 27th October 2021 and 2nd November 2021 at Baraton Location, Kiminini Sub-County within Trans-Nzoia County jointly with others not before court murdered Baby Shannel Blessing (hereinafter to be referred to as the deceased child for ease of reference).
3. The accused denied committing the offence when arraigned in court. The State through the ODPP has presented a total of 12 witnesses to support the charge and their case against the accused is based on circumstantial evidence. Below are the testimonies of prosecution witnesses and evidence tendered during trial.
4. Rose Nanjala (PW1) the grandmother to the deceased child stated that the deceased child was aged 1 ½ years and used to live with her together with two other children. She stated that on 27/10/2021 she left the deceased child with her last born named Glorious and another grandchild named Sharon. That when she returned home in the evening the deceased child was missing and the other children were in shock and she began looking for her.



5. She stated that she reported the matter at Kiungani police station. That later neighbours went to her house to find out what had happened and as she ushered them in, she saw a letter dropped at the door of her house. She stated that she opened the letter and read it through.
6. She stated that the letter read that it was wrong for her to keep on moving from one plot to another. That the author stated that he had gone to her place of work and found her there before proceeding to her home to pick the deceased child. That the author demanded for Kshs.200,00/- otherwise the deceased child would be killed and other children will follow suit.
7. She stated that the letter gave a mobile number 07XXXXXXXX3 as the number to use in sending the money demanded and that it cautioned her to take the matter seriously.
8. She testified that she recalled that there was a man named JOHN MUKUYUTI (1st accused herein) who used to live in the same plot with her before and became friends to the extent that they moved in together and lived as a husband and wife for a period of 4 years. That they later broke up and she moved out of the plot to live elsewhere.
9. She stated that she took the letter to the police where upon the police interrogated her and asked her to go there the following day which she did. That she was referred to Kitale police station then to Kiminini police station.
10. She recalled that on the same material day on 27/10/2021 the 1st accused went to her workplace and saw her before surprisingly giving her Kshs.50/- as he left. That he told her that he was visiting her for reconciliation and informed her that he was a teacher at Goseta Secondary School. She stated that she gave the police all the information and that they went to look for the 1st accused at Goseta Secondary School but did not find him there as there was nobody with the name John Masinde in that school.
11. She stated that the following day she received another letter dropped outside the door of her house. That the letter informed her that she had only two days left to send the money or the deceased child would be killed and the other children picked up too. She identified the 2nd letter in court adding that she rushed to the police with the 2nd letter which she said had also warned her that she was under their radar warning her that the author operated with a rough gang.
12. She stated that the police asked her to try and locate where the 1st accused was and on return she called him and requested for a meeting. That John (1st accused) agreed to meet her that evening of 29/10/2021 and she asked for a boda boda to take her to the meeting place and keep an eye on her.
13. She stated that she met the 1st accused who took her to a house and that a certain woman opened a room which was empty. That John told her he had removed the items in the room for purposes of repairs because the roof reportedly leaked. That he would be occupying the house after repairs. That the 1st accused asked her to accompany him to Kiminini but she declined. She stated that they agreed that she would return the following day after he had settled and returned the items into the house. That she did not inform him about the missing child.
14. She stated that the following day she called John but he informed her that he had lessons at school and would call her at 2pm. That at 2pm, she called him but he told her that he was still busy till evening.
15. She stated that in the evening she walked around the Centre to inquire about any information regarding her missing grandchild.
16. She stated that she later called John who told her that he was just leaving school. That her child then told her that the 1st accused was seen walking by on the main road near her house with another person



- who was carrying a slasher. That when she tried calling again John's number was switched off and that John called her using another line telling her he was heading to Toll before the same line went off.
17. She stated that she returned to the place she had met John the previous evening and met a woman. That on inquiry, she was told that John had just booked the house and had not even paid for it.
 18. She stated that she went back home and on her way back home, she met two vigilante men at Kiungani Centre and told them what was going on. That as she talked to the two men, John called and told her he had returned to Kiminini and that they both agreed to meet at that place. She stated that the two men knew John and one of them namely Moses agreed to go to Toll and see if John was at that place. That Moses shortly called and informed her that John had arrived at Toll but was like headed to Kiminini using a Tuk Tuk.
 19. She stated that they agreed with Moses to keep an eye and follow the Tuk Tuk and John. That upon reaching a certain place John alighted from the Tuk Tuk and walked on foot and as he walked the police arrived and arrested him and led him to Kiminini police station where she told him that she suspected him to know the whereabouts of the deceased child.
 20. She stated that she returned home and found another letter dropped at her door and that the letter informed her that it was a reminder to pay otherwise she would regret her whole life. She identified the letter in court during trial. That the children informed her that they had seen John. That the following day she took the children to the police who interrogated them and recorded their statements.
 21. She stated that the following day on 1/11/2021 she reported to her place of work as usual and was informed that John had gone to her place of work when she had gone to look for the deceased child and notified her co-workers that the deceased child had gone missing. That John was known by her workmates as her brother and that she informed her co-workers that she had gone to look for a job elsewhere.
 22. That she briefed her workmates of what had happened and one of the workers tried sending money to the line given in the first letter but it was in vain. That another line No.07XXXXXXXX0 was sent to her colleague and when she sent 20/- the recipient's name appeared as Isaac Juma Wanyonyi (the 2nd accused). That she did not know who that person was. That she informed the police about the new developments and was asked to go to the police station the following day.
 23. She stated that on 2/11/2021 as she was on her way to Kiminini police station she received a call from one Mama Akinyi who asked her to rush back home and on reaching there she was informed that the deceased child had been found dead. That many people gathered and she was led to a sugar plantation where the deceased child's body was. That the body was swollen and in a sack. That she recognized her from the hair she had plaited for her and the clothes she was wearing.
 24. She stated that the police later arrived and collected the body and took it to the mortuary.
 25. She stated that the police later went back and went into a neighbour's house, conducted a search and recovered various items including a piece of blanket that the deceased child used. She identified the blanket and stated that she had cut the blanket from a larger piece which had remained in her house.
 26. She stated that the police informed her that they had recovered two other letters from the occupant of the house together with Safaricom line numbers 07XXXXXXXX0. She stated that the same number was the one that her workmate had used in sending Kshs.20/- to find out who the recipient was. She further recalled also sending Kshs.20/- to the same number.



27. She stated under cross-examination that the 1st accused was known by her children having lived with him for 4 years and that they knew him as their grandfather and that had the children seen him taking the deceased child away on the material date, they would have informed her. She conceded that the letters demanding for ransom were undated and that the author demanded Kshs.228,000/- belonging to him/her. She confirmed that she did not owe the 1st accused any money.
28. She clarified that she lived on the same compound with 4 other families and among them was the 2nd accused and that the letters were dropped at her door place from the date the deceased child went missing. That the door to her house was directly opposite to that of the 2nd accused.
29. Shantel Happiness (PW2) a child aged 5 years old testified after voire dire examination and told this court amid tears and restlessness that she feared the 1st accused and knew him. The trial had to adjourn for a while after it became difficult for the vulnerable witness to continue testifying. Later she proceeded to state that she lived with her grandmother (PW1) and Brighton. She stated that she was playing with Rachel and had left the deceased child sleeping with one Brighton. That Brighton reported to them that a person known as 'kuka' had taken the deceased child and that they knew where 'kuka' lived but when they went to check for the deceased child, they did not find her there and 'kuka' was not there either. She identified the 1st accused as the person she knew as 'kuka'. She further identified the blanket recovered from the house of the 2nd accused saying that the blanket was used by the deceased child. She also stated that there were two pieces of the same blanket in their house with one used by the deceased child and the other piece kept in a box inside their house. She stated that she knew the 1st accused very well and identified him in the Identification Parade.
30. Faith Barasa (PW3) a daughter to PW1 and the mother to the deceased child was unable to testify while in direct eye contact with the 1st accused. Arrangements were made to enable her testify from a protected witness box where she could not see the accused persons directly. She stated that her mother on the material date (27/10/2021) asked her if she had seen the deceased child. That she told her she had not seen her and she informed her sister one Mercy. That when they arrived home, her mother showed them a letter dropped outside the door to her room. That she did not read the letter and that PW1 headed to Kiminini police station to report with her sister Mercy.
31. She stated that the deceased child used to live with her mother (PW1) and was one year 9 months old. She conceded that she got the child when she had not attained the age of 18 years but denied that she could not live with the child because of bad habits.
32. She stated that the 1st accused used to live with them and they called him 'uncle'.
33. She recalled that a woman reported to them that the deceased child had been found murdered in a sugar plantation.
34. She stated that the 2nd accused was a neighbour though she did not know him as he was never seen at home. She said that his room was most of the time closed. That she saw the 2nd accused on the date of his arrest and that a blanket used by the deceased child was also found inside his room.
35. She further stated that she got the deceased child when the 1st accused was still living with her mother (PW1) and that the father of the deceased child came from Matunda.
36. She stated that she called the mobile number No.07XXXXXXX3 which number was in one of the letters dropped at her mother's doorstep and that a man answered the call and told her that the deceased child was in Kilifi and would only be returned after money was sent. That she requested for a Safaricom line and the person obliged. She stated that she chatted with the person and denied suggestions from defence counsel that, that person was the father of the deceased child. She stated that she lost contact



with the father of her child. She recalled that the 1st accused used to be hostile to her and quarreled her a lot when he lived with them.

37. Brighton Shamal (PW4) a child aged 7 years gave unsworn statement upon voir dire examination and told this court that he was in Grade 1 at Kiungani primary school. He stated that he lived with his mother (PW1), Shantel (PW2) and Shanel (the deceased child).
38. He testified that he was home with Shantel (PW2) when her grandfather (kuka) went and took away the deceased child who was lying on her bed on her blanket. He identified the blanket in court adding that “kuka’ stated that he was taking the child to the house but instead he went with her towards Toll Area. That he went and informed Shantel and began looking for the deceased child. She insisted that it was “kuka” (1st accused) who took the deceased child away using the back door and identified him during trial. He further said that he did not know the 2nd accused.
39. He further stated during cross-examination that the 1st accused used to beat him and his mother (PW1) also he stated that Shantel (PW2) was playing with other children at the front of the house when the 1st accused took the deceased child. That he was alone lying with the deceased child when the 1st accused took the child and that he knew him well and even talked to him. That he told him he was taking the child inside the house but used the back door to take her away. That he saw as he had gone for a short call at a toilet at the back of the house.
40. Dr. Dennis Nanyingi (PW5), the doctor who performed autopsy on the body of the deceased child testified that he did so on 4/11/2021. He stated that the post mortem changes were noted on the body. That maggots at adult stage were seen. That the body was stiff and the skin had greenish-yellow discolouration with a bloated abdomen (swelling). He opined that the time of death was less than one week. That there was rigor mortis on the back (pool of blood). That the baby died lying by her back. That her eyes had popped out. That there were multiple bruises and cuts on the face and scalp. That she had peripheral cyanosis on the fingernails on the right side with a missing left wrist. That left foot and right aspect of the cheek were missing as well. That it had ligature marks where a rope had been removed on the right side, left thigh, the right and left forearm. That internally the wind pipe and the neck were semi collapsed. Both hips were collapsed and reddish. Heart was collapsed and no blood in all the chambers.

The doctor opined that the cause of death was external hemorrhage/asphyxia secondary to strangulation. He further testified that specimens were taken for further DNA analysis and listed them as high vaginal swab, under cartilage and nails for DNA analysis.

That he filled and signed the Death Certificate and tendered it as PExhibit 8. He opined that the missing parts of the body were likely eaten by animals.
41. Peter Waweru Kamau (PW6) testified that he was a businessman and a landlord. He stated that he knew Paul Kundu (the 2nd accused) as he went to him on 14/7/2021 asking for a house to rent. That he showed him the house and he liked it. That he paid Kshs.2000 rent and he moved in. That though he did not give him a receipt, he recorded his name in the rent book which he presented to court (PExhibit 9).
42. He stated that Paul Kundu informed him that he was a cook at Kiungani Secondary School. That he had children schooling in that school and when he asked them if they knew Paul Kundu they informed him that such a person was not working in that school. That he went back to Paul Kundu to inquire and he told him that Kiungani Secondary School had declined to employ him on account of his age and that instead he had secured a teaching job at Blessed Primary School. That he went to that school to check but found out that Paul Kundu had misled him.



43. He stated that he then confronted him to know why he was not forthright and that by then, the 2nd accused was in 3 months' rent arrears. That he told him that he had secured a job at Deko School where he had a daughter. That his daughter denied that the 2nd accused was employed there. That he confronted him once again as he had by then defaulted in rent payment for 4 months and he told him that he had got a job at Kitale International School which he later found out was not true. That four days later the police from DCI Kiminini visited him and asked for some information regarding the 2nd accused. That he told them that the 2nd accused was a tenant in his property and that he used to leave early and used to hang out at a video place till evening.
44. He stated that PW1 was also his tenant and that her child went missing and later found murdered. That there was a time the Area Chief requested all landlords in the area to take the details of their tenants and when he asked Paul Kundu his details, he gave him the name Isaac Juma Wanyonyi and that he was from Kimilili Masaba.
45. Jane Naliaka Wanyama (PW7) testified that she lived in Toll and attended post mortem examination of the deceased child. That she identified the body. She stated that PW1 was a relative to her and was the grandmother to the deceased child. That he knew the 1st accused as "Mwalimu" and that he used to live with PW1.
46. Inspector Martin Kitai (PW8), a Forensic Document Examiner expert testified on behalf of another expert in that field Inspector Elosy Wanja who was the author of the subject report but could not be found to testify owing to some illness. He however stated he was the one who did preliminary analysis of the documents forwarded to them for that purpose.
47. He testified that on 3/11/2021 an Exhibit Memo with exhibits were received from DCI brought by one Inspector Felix Hongo. That the exhibits were as follows;
- i. Exhibit 'A' - a Diary with known handwriting of Mukuyuti.
 - ii. Exhibits B1 to B16 – specimen handwritings of John Mukuyuti.
 - iii. Exhibits C1 to C5 handwriting on the questioned documents.
 - iv. Exhibits D1 to D19 – specimen handwriting of Paul Kundu Alias Isaac Wanyonyi.
48. He stated that the investigating officer wanted the Document Examiner to ascertain whether the questioned handwritings under "C1 to C5" when compared with "B1 to B16" and the known handwritings "A" were made by the same author. He stated that on analysis, it was opined that the handwritings were made by different authors. He stated that when C1 to C5 were compared with D1 to D19, the analyst found that the stated documents were authored by the same author. That in essence 'C1 to C5' were authored by Paul Kundu, the 2nd accused herein. He tendered the report as Pexhibit 10(a) and Exhibit Memo as Pexhibit 10(b).
49. He insisted under cross-examination that the results of the analysis were verified by two examiners.
50. Ann Masinde (PW9) testified that on 26/10/2021 at around 2pm when she was on her way to church, she met a man carrying a child. That the child cried and the man bought a sweet and gave it to the child. She estimated the age of the child to be about 1 year old adding that the child was wrapped in a blue baby blanket. She stated that she then saw the 2 men with the baby board a motorcycle and headed to Kiminini, as she went to church. That when she returned home Rose (PW1) inquired from her about her missing grandchild and she told her what she witnessed.



51. She stated that she went to Kiminini police station and reported what she witnessed. That the following day, she was called to attend an Identification Parade. That she recognized the man she had seen carrying the baby but the man stared at her in a strange manner that instilled fear in her making her avoid touching him.
52. She stated that the two men she saw were familiar to her and knew one of them Paul Kundu (the 2nd accused) because he was a neighbour in a rental house she resided where PW1 also resided in. She stated that she did not know the other one who wore spectacles by name but recalled that he was the one carrying the baby.
53. She further testified that on 29/10/2021 between 7pm and 8pm she heard footsteps outside and when she peeped through the window she saw someone standing in front of the door of Rose's room and that he bent and dropped something. That there was a bright bulb in her room that illuminated outside which enable her see the person dropping a piece of paper at the door of Rose (PW1). That she told Rose about the issue and that Faith picked up the piece of paper.
54. She clarified that she attended an Identification Parade on another date and not on 27/10/2021 as she had initially stated. She insisted that she saw the 1st accused carrying the deceased child and identified the blue blanket (PExhibit 1) that was used to wrap the child in court. That she identified the 2nd accused and had seen him with a scar on his face.
55. She recalled that the 1st accused used to live with Rose before they differed and separated. That the 2nd accused lived in the same rental house in the same compound she also lived.
56. When pressed under cross-examination on why she did not raise an alarm when she saw the 2 men carrying the child, she stated that she was not aware that the child had been stolen.
57. Chief Inspector of police James Ndeve (PW10), testified that he was the OCS of Kiungani police station at the material time when the deceased child was reported missing.
58. He testified that he was the one who conducted an Identification Parade where 3 witnesses attended to identify a suspect (1st accused). He stated that Ann Masinde (PW9) did not identify the suspect (1st accused) out of fear after the suspect winked at her.
59. That on 16/11/2021 he was requested by the DCIO to conduct an Identification Parade with respect to one Paul Wekesa Kundu (2nd accused) and that PW9 positively identified the 2nd accused from a parade where several people with scars on their faces were in the parade. He stated that PW9 identified the suspect by touching him and the 2nd accused had no objection with the manner the parade was conducted. He tendered the Identification Parade Form as Pexhibit 10. He clarified that he conducted the 2nd Identification Parade in Kitale police station because he did not get the suspects with similar features with the 2nd accused in Kiminini police station.
60. Sgt Faith Naserian Kishoin (PW11) the investigating officer in the case stated that on 28/10/2021 her boss Inspector Joseph Adongo instructed her to take over and investigate a case of kidnap of a baby named Shannel (deceased child) aged 1 ½ years.
61. She stated that she commenced investigations by interrogating the grandmother (PW1) to the missing child. That she handed over to her a note she had picked outside her house. That the note demanded payment of a debt of Kshs.280,000 and if not the baby would be killed. She tendered the note as Pexhibit 1.



62. She stated that the grandmother worked in a hotel in Kitale known as Yummy Hotel and would leave the deceased child with other children, Shantel Blessing and Brighton who were twins and aged around 5 years old.
63. She testified that one of the children Shantel (PW2) saw the 1st accused whom she knew as “kuka’ entering the house and picking the deceased child. That PW2 inquired where he was taking the child and that 1st accused told her he was taking her home.
64. She further testified that she traced another witness (Anne Masinde (PW9) who stated that she was from church when she met a person she described as stout, dark in complexion and slightly tall carrying a baby covered in a blue blanket and walking on foot. That the lady reported to her that the stout man was in the company of another man spotting rasta hairstyle and that the men were conversing where to get a sweet to calm/silence the child.
65. She further stated that the same witness also reported to have seen a man drop a letter at the doorstep of PW1.
66. She stated that on 30/10/2021 the 1st accused was arrested while heading to Kiminini from Kiungani and upon search a red notebook/diary for year 2016 was recovered from him with his name, address and phone number. She tendered the red notebook as Pexhibit 9.
67. She further stated that a mobile phone, Lenovo make was also recovered adding that the phone was paired with two simcards of mobile numbers 0700816809 and 0742706216 both from Safaricom. She tendered the mobile phone as Pexhibit 11 and an inventory of items recovered from the 1st accused as Pexhibit 12.
68. She added that on 2/11/2021 she received information that a body had been found in a sugar plantation.
69. She confirmed that an Identification Parade with respect to 1st accused was conducted at Kiminini police station on 31/10/2021 by CIP James Ndeve (PW10). That PW2 and PW4 positively identified the 1st accused but PW9 (Anne Masinde) failed to identify him reportedly out of fear. She stated that the report on Identification Parade captured the intimidation.
70. She stated that two other notes had prior to the discovery of the body of the deceased child been drooped at the doorstep of the grandmother of the deceased child. She stated that PW1 handed over the notes to her and that one stated;

“Where is my money?”

and that it had a phone number 07XXXXXXXX3. That the other note read;

“You have two days to go”.

71. She tendered the note as Pexhibit 2 and the note contains the following message;

“Where is my money? If by tomorrow 3pm I do not receive and see any money on 07XXXXXXXX3, 07XXXXXXXX3.....!!! You have 2 days to go. You, you keep on delaying, my rough boys will pick the big girl soon. Better send my money by 3pm as you look for the rest OK!!!”



The investigating officer stated that the message on the back of the note is unrelated to the message at the front and that the author appears to have picked a piece of paper containing Covid matters and used it to convey the message he wanted to reach the grandmother of the deceased child.

72. She went back to the first note (Pexhibit 1) and gave the message that note contained which was as follows;

“...woman wronging me was bad mistake even if you move to another house, I have been keen (sic) watching you at your place of work. I found your girl alone in a field and I took her so I want my money 280,000/- by Sunday 31/10/2021 start instalment now after reading this note or she will die and we will come for another. My boys are monitoring you always. No calls before you send my money via 07XXXXXXXX3. NO JOKES AND GAMES.”

73. The investigating officer further confirmed that the phone number in the 2nd note is the same phone number given in the 1st note.

74. She further stated that when the house of the 2nd accused was searched, another note was found. She tendered it as Pexhibit 6(a) and the note read;

“Hey! Woman, the girl is taken and I want my Kshs.280,000/- by 28/10/2021 Tuesday at 5pm or she will die failure to that (sic). Send to number 07XXXXXXXX0. I am always watching at your place of work. Pay daily without failure.”

75. She stated that a 2nd note was found in the house of 2nd accused. She tendered it as Pexhibit 6(b) and the note read;

“Do you want your child alive?? Then pay Kshs.128,000 by Friday 29/10/2021 on 07XXXXXXXX0 else we will come for another. I am watching your moves in your place of work (Kitale).”

76. The investigating officer stated that the 2nd note was torn from a diary of 2016 which to the investigating officer was significant because the diary found in possession of 1st accused (Pexhibit 9) was for the year 2016.

77. She further stated that she also got a note dropped at the door of PW1 and she tendered it as Pexhibit 3. She stated that the note read;

“07XXXXXXXX3. Woman I told you deadline is on Sunday 31/10/2021 which is tomorrow yet you haven't sent (sic) my cash as I told you, then it is still 5pm tomorrow (sic). If you fail to send my money Kshs.280,000/- then she will die and I will come for another till the day you pay my debt. I told you if you do anything stupid you will really suffer forever. Better start paying my cash and you will be safe. My boys are watching your moves daily.”

78. She further stated that the police acting on tip off arrested the 2nd accused and police officers namely Inspector Adongo, PC Zaddock Nzuki, PC Collins Nyangor and PC Kevin Owoti conducted a search and recovered the following apart from the notes she has cited;

- i. A blue blanket with white markings – Pexhibit 4.
- ii. Simcard holder bearing mobile phone number 07XXXXXXXX3 (Airtel line) – Pexhibit 13
- iii. Original ID Card bearing the name Paul Wekesa Kundu ID No.9XXXXXX0 – Pexhibit 14



- iv. Airtel scratch card for Kshs.10/- serial number 0XXXXXXXXXX016- Pexhibit 15.
- v. Safaricom simcard holder serial number 8XXXXXXXX1224257391845 – Pexhibit 16
- vi. Another Safaricom simcard holder serial number 8XXXXXXXX 12XXXXXXXXXX82 – Pexhibit 17.
- vii. Safaricom simcard serial number 8XXXXXXXX1224257391845- Pexhibit 18
- viii. Simcard serial number 8XXXXXXXX11 74XXXXXXXX04-Pexhibit 19.
- ix. Telkom (K) simcard serial number 89XXXXXXXX00 0410507372-Pexhibit 20.
- x. Safaricom simcard pocket with Tel number 07XXXXXXXX94- Pexhibit 21.
- xi. Another Safaricom simcard pocket 07XXXXXXXX44- Pexhibit 22.
- xii. Two paper notes – Pexhibit 6(a) and 6(b).
- xiii. A mobile phone make Techno twin sim Imei no.35XXXXXXXXXX58.

She noted that the phone was paired with Safaricom simcard No.07XXXXXXXX0. The mobile phone was tendered as PExhibit 23 (Red and Black in colour).

- 79. The investigating officer stated that an inventory was prepared by PC Zaddock Wafula and the suspect (2nd accused) signed and the following officers witnessed and signed it.
Inspector Adongo, PC Zaddock Wafula, PC Dickson Ngutu, PC Collins Nyangor and PC Calvin Owiti.
- 80. She stated that the inventory contains 20 items recovered but other items were not brought to court. That she also recovered laminated ID card copy of Kevin Simiyu ID serial no.3XXXXXX3. That there was a book titled “Great Hope” with a name Paul Wekesa (07XXXXXXXX85). That there was a poster titled “Queens Ministries International” with telephone no.07XXXXXXXX18. That there was a note book in French title “Trust decis forte”.
- 81. She stated that she later took finger prints of the 2nd accused and identity card found on him to verify his real identity. That she forwarded the same with a letter signed by her boss. She tendered the letter as Pexhibit 25. That she received a response from National Registration Bureau vide a letter dated 11/1/2022 confirming that the finger prints belonged to the 2nd accused Isaac Juma Wanyonyi. She tendered the letter as Pexhibit 26.
- 82. She testified that while in the course of investigations on 2/11/2021 at 10am she received information that a body of a child had been found and proceeded to the scene. That the body was identified as belonging to the deceased child and that the body had started decomposing. That the body was tied with legs and hands tied together. That the scene was horrifying to look at but the scene was processed all the same and the body removed and taken to Kitale County Referral Hospital Mortuary.
- 83. She stated that on 4/11/2021 a Post Mortem was conducted and she could not attend because she was traumatized but the cause of death was as indicated in the Post Mortem report (Pexhibit 8).
- 84. The investigating officer stated that she documented the notes dropped at the deceased’s grandmother’s house vide Exhibit Memo (Pexhibit 10(a) (ii) and forwarded them to the document examiner who upon analysis concluded that the handwriting on the notes matched those of the 2nd accused.



85. She further stated that in the course of her investigations, the grandmother (PW1) of the deceased was called through mobile no.07XXXXXXXX3, which was the same number found on the notes dropped (Pexhibit 1 and 2). That PW1 was given money to send to the number given which was 07XXXXXXXX0 and that, that same number is indicated in the notes found with 2nd accused and tendered as Pexhibit 6(a) and 6(b). That Kshs.20/- was sent on 1/11/2021 at 1321hours by PW1 on her own initiative to know who the recipient was. That the name that popped up in the Mpesa transaction was Isaac Juma Wanyonyi (the 2nd accused). The investigating officer tendered Mpesa statements of PW1 detailing the said transaction as Pexhibit 2.
86. She further stated that when she was interrogating PW1, she informed her that there was a piece of blanket in her house cut from the other piece of blanket that the deceased child was carried with. She tendered the piece of blanket that remained with PW1 as PEXhibit 4. That the piece of blanket was positively identified in court by PW1 and PW6. She tendered the piece of blanket found at the house of 2nd accused as Pexhibit 5. She compared the 2 blankets (Pexhibit 4 and 5) in court and the two blankets fitted perfectly when placed on the floor of the court.
87. She further testified that she interrogated the landlord of the 2nd accused and found that the 2nd accused gave the landlord his identity card number as 9XXXXXX0 which was his real or actual identity card number and his mobile phone number 0701973644. That the 2nd accused over time kept changing his name from Paul Kundu to Paul Waswa to Isaac Wanyonyi and that when he gave out the name Isaac Wanyonyi to the landlord the 2nd time, he gave his identity card number as 20290594 and mobile number 0768138083. She stated that the landlord entered the details in his records in a book. He tendered the book as Pexhibit 27(a) and Notice to the Tenants as Pexhibit 27(b).
88. She stated that the 1st accused was known to PW1 – the grandmother to the deceased child as the two were once lovers and lived together as husband and wife but later differed and moved separate ways.
89. She stated that the 1st accused was known to the children of PW1 and that the same explains why they did not scream when he took the deceased child. She confirmed that the scene of the incident was near Kiungani market and because the incident happened during the day the same could have been witnessed. She however stated that no alarm was raised.
90. She stated that the accused persons were sighted carrying the deceased baby by PW9 who saw the 1st accused carrying the child with the same blanket she had produced as Pexhibit 4. That PW9 did not raise an alarm perhaps because she knew 1st accused as a lover to PW1. She however stated that by the time the deceased child was taken, the 1st accused and PW1 had broken up. That during the Identification Parade, the 2 children Brighton (PW4) and Shantel (PW2) positively identified the 1st accused adding that Ann Masinde (PW9) did not identify the 1st accused because of threats/intimidation and that she observed what happened at the parade from afar.
91. She stated that the 1st accused could have been bitter after the break up and could have been demanding money spent on PW1 when the two were lovers living together and that he threatened to kill all the 3 children belonging to PW1 unless he was paid Kshs.280,000/-. She stated that the deceased child was kidnapped on 27th October 2021 and had he been arrested immediately maybe the child could not have been killed.
92. She further stated in further cross-examination by 2nd defence counsel that the 2nd accused lived in the same plot with PW1. That the landlord had registered his tenants in a book (Pexhibit 27(b)). She stated that Ann Masinde was also a tenant in the same plot. That PW9 reported that she saw 2nd accused



dropping leaflets on the doorstep of PW1. She stated that she subjected the notes dropped to forensic examination and the expert concluded that the 2nd accused authored them.

93. She stated that the mother of the deceased child was a single mother and she did not follow to know who the father was because the investigations carried out pointed to the accused persons.
94. She stated that the 2nd accused was arrested on 16/11/2021 while the 1st accused was arrested on 30/10/2021. She insisted that the plate of Airtel number of the account where the money demanded was to be channeled was recovered from the house of 2nd accused. She stated that the simcard plate is exhibited and it matched the number in the threatening notes (Pexhibit 2 and 3) which is 07XXXXXXXX3. She stated that the 2nd accused had 2 Identity cards that is why she preferred charges using his actual name and alias name.
95. PC Zaddock Wafula (PW12), on his part testified that he was one of the officers who conducted a search in the house of 2nd accused and that he was the one who prepared an inventory of the items found in the said house. He listed the items found as follows;-Original ID Card No.9XXXXXX0 of Paul Wekesa Kundu – Pexhibit 14.-Photocopy of laminated ID Card No.3XXXXXX63 of Kevin Simiyu Wamalwa – Pexhibit 28-Airtel simcard no.07XXXXXXXX3 serial no.1XXXXXXXX98 – Pexhibit 14(a)-Safaricom sim plate serial number 1XXXXXXXX8 Pexhibit 14(b)-Safaricom sim plate serial no.12XXXXXXXX84 Pexhibit 14(c)-Telcom line plate phone no.07XXXXXX79 Pexhibit 14(d).
96. He stated that they also recovered simcard serial no.8XXXXXXXX1224257391845 Pexhibit 15(a) and Telcom line serial no.89XXXXXXXX00410507392 Pexhibit 15(b).
97. He further confirmed recovery of leaflets or notes bearing the words;

“Hey woman, the girl is taken and I want 128,000/- by date 28th October Tuesday at 5pm or she will die following that. Send to number 07XXXXXXXX0 am always watching your place of work. Pay without failure.”

He stated that the note was tendered as Pexhibit 1.

98. That they recovered a 2nd note that read as follows;

“Do you want your child alive? Then pay Ksh.128,000/- by Friday 29th October on 07XXXXXXXX0 or else we will come for another. I am watching your place of work Kitale.”

That the leaflet was tendered as Pexhibit 3.

99. That they recovered the following other items;

- (a)) Safaricom wallet serial no.8XXXXXXXX1224257391845 (Pexhibit 17)
- (b) A book titled “The Great Hope” and inside there was a name Paul Wekesa Tel No.07XXXXXXXX25 Pexhibit 18.
- (c) A poster headed “Queens Ministry” with inscription “save the date 4th -10th April 2022 at Mombasa Main Altar’ Pexhibit 19.
- That the poster had a Tel No.07XXXXXXXX18.
- (d) A book written in French “Trust Decis Forte” and inside the note book were several writings in English – Pexhibit 29.



- (e) A leaflet bearing the name Isaac Juma Wanyonyi email IsaacJuma1976@gmail.com and mobile number 07XXXXXXXX0. He tendered the leaflet as Pexhibit 30.
 - (f) A baby shawl blue in colour written 1998 series yankee (Pexhibit 4).
 - (g) A mobile phone make Techno with twin sim Imei No.35XXXXXXXXXXXX41 and Imei 35XXXXXXXXXXXX58 for 2nd line (Pexhibit 23).
100. He stated that he prepared an inventory which was signed by the following officers, IP Joseph Adongo, himself, PC Dickson Nzuki, PC Collins Nyangori, PC Kelvin Owiti and the suspect Isaac Juma Wanyonyi. He tendered the inventory as Pexhibit 12.
 101. He clarified that the 2nd accused signed the inventory by writing down his name, his identity card number and signing it. That the Airtel number found on the leaflets demanding ransom bore the mobile number belonging to the 2nd accused.
 102. When placed on their defence both the accused persons denied committing the offence. The 1st accused gave sworn defence while the 2nd accused gave unsworn defence.
 103. John Mukuyuti Masinde (DW1) the first accused in this case stated that he used to work as a teacher. He stated that PW1 was his 2nd wife and that the deceased was a granddaughter. That he did not kill her.
 104. He stated that he married PW1 when she was 35 years old with 2 children and that the last 4 years of their relationship were frosty due to issues of infidelity but they tried to reconcile.
 105. He stated that he left home on 3/10/2021 to Nairobi to look for money as he had a building project. That while he was away in Nairobi, Rose (PW1) moved out of their house in Kiungani. That he arrived back home on 23/10/2021 from Nairobi to find no one at home. He stated that when he called Rose (PW1) she told him she was away at their home. That the following day on 24/10/2021 he met her in Town and talked. That she told him she was angry. That on 27/10/2021 he went and met her in a hotel she was working. That she served him and he gave her Kshs.50/- for child upkeep and they agreed she would go back home though she stated she wanted a new house.
 106. He stated that he had no issues with his grandchildren and that he had sorted the issues he had with Rose and would go home once he finished building a house. That he has no debts with her and that he spent the whole day on 27/10/2021 with Rose and other friends and did not meet the deceased.
 107. He stated that he saw Ann Masinde (PW9) during Identification Parade. That she is a child and what she said was not true and that she was conflicted because she said she saw him when going to church but also said she saw him while coming from church. He tendered the statement as Dexhibit 1.
 108. He denied knowing the 2nd accused and that he saw him on 31/5/2022 here in court. He stated that he knew Rose (PW1) was staying with her parents or that is what he thought.
 109. He stated that the children of PW1 know him well and that the deceased child knew him also because she was a grandchild and he brought her up. He questioned why the initial report booked was that of a missing child and that he was only mentioned as a suspect. He tendered OB extract as Dexhibit 2.
 110. He accused PW1 of trying to fix him so that she could get a chance to move with a young man. He stated under cross-examination that he had no issues with his grandchildren adding that Shantel was a twin to Brighton. That the children knew him as grandpa and when they saw him in Identification Parade they rushed to him. He suspected that PW1 coached Brighton (PW4) to testify that he saw him carrying the deceased child. That the police did not recover anything from his house. That he gave out his sample handwriting but the handwriting expert did not implicate him.



111. Isaac Juma Wanyonyi (DW2) in an unsworn defence stated he was a teacher at Kitale High School. He denied the offence terming it as untrue.
112. He stated that he did not know the deceased child. He denied having an alias name stating the he was only known by his name and only heard alias name in this court.
113. That on 3/6/2021 he was at a hotel known as Khwesa Hotel in Kiminini where he ordered for a meal. That after 10 minutes a short, skinny and dark person arrived. That he was in a silver coloured suit and brown shoes with a red purple tie. That the man asked for Isaac and that he told him he was unhappy with him for interfering with his relationship with one Caroline Anyango, a colleague teacher. He stated that the said Caroline had complained to him of being forced into a relationship with another guy.
114. He stated that the guy told him to stay away from Caroline and that instead he told Caroline to stay away from the skinny short guy. That he later found out that the skinny short fellow was a police officer and warned Caroline that the fellow could shoot her. That Caroline went to Kisumu and he assisted her with fare.
115. He stated that Nzuki was not happy and on 9/9/2021 at 3am he stormed into his home with 7 police officers and beat him up. That he searched for a machete because he thought that they were thugs but was put in a small private car in the boot with his face covered. That after 3 hours they stopped. That he felt they were underground and could hear music from up. That he was placed in a small room and locked up.
116. He stated that the following day on 10/9/2023 at around 2.45pm Nzuki went and told him;
“sasa nimekupata.”
and told him he would kill him. That he remained silent and they locked him up. That on 13/9/2023 the door was opened and water and bread was thrown in before the door was closed again. That he had not known who it was, that the same thing then happened for 3 consecutive days. That after a week Nzuki went and told him that they needed to make a deal. That it was a matter of life and death. That he did not know what the deal was but he agreed.
117. He stated that Nzuki told him that because he knew how to use a laptop he should type some things but he declined. That he was told that after typing few messages things will be ok. That he took a diary and he began typing on the laptop and the diary. That the messages did not tally. That the hard copy messages demanded money from 6 persons. That after that he stayed for another 4 days. That on 16/10/2021 he was taken to Kiungani in Kiminini at 22hours in a police vehicle.
118. That he was interrogated by DCI officers over murder. That he was told that investigations were going on over a missing child who had been found dead. That he denied any involvement. He stated that the following day Nzuki appeared with DCI and stated that he was the person and that he was Paul but he informed him that he was Isaac. That Nzuki told him that he would rot in jail.
119. He insisted that he was not Paul but Isaac and did not know what happened.
120. At the close of defence, written submissions were filed by both the defence and the State. For ease of reference and time I will refer to them in the analysis of the evidence tendered and the determination of this case.



121. The accused persons herein are charged with murder contrary to section 203 of the Penal Code. That section reads;

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

The above provision creates the offence for which the accused persons stand accused of committing and the above provisions show that for the charge to be sustained the following ingredients must be established and proved by the prosecution;

- a. Fact of death and its cause.
- b. Actus reus –that the accused caused or are linked with the unlawful cause of death of the deceased.
- c. Malice aforethought or the mens rea

122. This court for ease of determination or disposal of this case will have a look at each element separately and I will begin with the first ingredient, the fact of death and its cause.

(i) Fact of death and its cause.

This element is not contested in this case. The prosecution has described the harrowing condition of how the body of the deceased child was found. Doctor Dennis Nanyingi (PW5) who performed the Post Mortem examination on the body of deceased gave a vivid description of how he found the body with post mortem changes. That he found maggots at adult stage on the body with skin surface of the body having turned yellowish greenish discolouration. The doctor noted that the time of death as of 4/11/2021 when he did the autopsy was less than one week and that he noted inter alia peripheral cyanosis and cuts on the face and scalp and that he found the wind pipe at the neck semi collapsed. He concluded that the cause of death was external hemorrhage/asphyxia secondary to strangulation. This means that the deceased child was strangled to death.

123. Jane Naliaka (PW7) a sister to Rose (PW1) who is the grandmother to the deceased child stated that she attended the Post Mortem examination with PW1 and identified the body of the deceased child before autopsy was performed. The doctor (PW5) tendered the Post Mortem report as Pexhibit 8 which proved beyond any reasonable doubt that the deceased child was murdered and the cause of death was asphyxia secondary to strangulation. The fact of death and its cause is therefore well established and proved to the required standard. The big question is who caused the death which is the next issue for determination.

124.

(ii) Actus Reus

This is the most contested issue in this case. The prosecution through the office of Director of Public Prosecution in its written submission dated 30/1/2026 done by Mr Mark Mugun, the Principal Prosecution Counsel submits that the 1st accused was seen and positively identified by Shantel (PW2) and Brighton (PW4) and that the two knew him as “kuka.”. The State submits that the 1st accused himself admitted that he used to live with PW1 and the children knew him and that apart from PW2 and PW4, Anne Masinde (PW9) also saw the 1st accused carrying a child covered in a blue baby blanket/shawl. The State further points out that 1st accused was seen pushing something under the door of PW1 and that the dropped items were later



discovered to be letters demanding ransom containing telephone numbers associated with 2nd accused. That the police later ransacked the house of 2nd accused and discovered and recovered half of blue baby blanket/shawl which was exact replica of the blanket found in the house of PW1. Mr Mugun submits that the items discovered in the house of 2nd accused contained the same telephone numbers that were carried by the ransom notes and that the police found other similar notes demanding the same ransom.

125. The prosecution submits that under Section 111 of *Evidence Act*, the burden of proof shifted to 2nd accused to explain why his handwriting was found on the notes demanding ransom. He relies on the case of R –vs- Thomas Wekesa Nyongesa alias Tom (2025) KEHC where the court found that the note left besides the body of deceased positively linked the accused with murder and that the report by forensic document examiner was conclusive and reliable.
126. The 1st accused on the other hand through written submissions done by his learned counsel M/s Bikundo & Co Advocates has poked holes on the evidence tendered by the prosecution linking him with the commission of the offence.
127. He submits that no one saw the 1st accused committing the offence and that the prosecution’s case hinges on circumstantial evidence. He submits that the circumstantial evidence relied on by the State is not cogent or firm. He points out that the evidence of PW4 was unsworn and uncorroborated adding that it would be unsafe for this court to place reliance on it and has pointed out a number of contradictions and inconsistencies of evidence tendered by PW4, PW1 and PW11. I will shortly consider the same in the evaluation of the evidence tendered in this case as a whole.
128. It is true that the prosecution’s case with respect to the crucial element of actus reus is reliant on circumstantial evidence. There was no eye witness who saw any of the accused herein killing the deceased child. Circumstantial evidence maybe indirect evidence but at times it can be as powerful as or even more reliable than direct evidence in certain circumstances especially when considered cumulatively with other reliable facts tendered. It can be used to draw inferences that conclusively point that the accused and no one else committed the offence. The locus classicum case in this area is the case of Ahamad Abolfathi Mohammad & Anor –vs- R (2018)KECA 743 (KLR) where the court referenced the words of Lord Heward CJ in R –vs- Taylor (1928) Cr.App R.21 where he observed;

“It has been said that the evidence against applicant is circumstantial, so it is but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial evidence.”

The court then pointed out the guidelines or conditions which must be met before a court can rely on circumstantial evidence to render a conviction. The same were set in Abanga Alias Onyango –vs- Republic (Cr App No.32 of 1990) where the Court of Appeal made the following observations;

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests namely;

- i. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.
- ii. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, and



- iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.”

129. In the case of *Sawe –vs- Republic (2023) eKLR* the court made similar observations but added that for circumstantial evidence to be used to render a conviction, there should be no evidence or facts that negate the drawing of inference that the accused committed the offence and that the burden of proving the existence of circumstances from which to draw inference, always rests on the prosecution.
130. The provisions of Section 3(2) of the *Evidence Act* provides the anchor upon which a court can use circumstantial evidence to draw an inference or make a conclusion of fact.
131. Having set out the legal position in regard to the place of circumstantial evidence in trials in Kenya, I will now take a look at the evidence placed before me in respect to the element of actus reus. This court will consider the evidence tendered against each accused visa vis the defence raised.
132. In regard to the 1st accused, John Mukuyuti Masinde, the evidence tendered showing that he once lived with PW1 as husband and wife is undisputed. It is also not disputed that the 1st accused stayed long enough with the children and even the grandchildren of PW1 for the children to know him well. PW2 and PW4 both minors aged about 5 years at the time of trial referred to the 1st accused as “Guko’, Kuka’ or grandfather.
133. Faith Barasa (PW3), the oldest child to PW1 and the mother to the deceased child stated that she knew the 1st accused as ‘uncle’ and that he used to live with them before their mother (PW1) separated with him.
134. The evidence linking the 1st accused with the disappearance of the deceased child on 27/10/2021 is both direct and circumstantial with respect to last seen doctrine. It was direct in view of evidence of PW4 (Brighton) and Anne Masinde (PW9) who last saw the deceased child alive being taken by the 1st accused. I have already set out what each of the above witnesses stated during trial. I will only highlight the crucial facts of the evidence that I consider critical or important in the determination of this case.
135. Brighton (PW4) aged 5 years at the time of testifying gave unsworn evidence given his age and after the trial the judge saw it fit after conducting voire dire examination. However what the child told this court was critical. He stated that he saw ‘kuka’ whom he identified as the 1st accused taking away the deceased child from their house towards Toll Area. Apparently Shantel (PW2) and other children were playing at the other side of the house and it was only PW4 who was left with the deceased child. PW4 says that he asked the 1st accused where he was taking the deceased child and he told him that he was taking her into the house and he did so. The 1st accused knew the house had a back door and he used the back door to take the child but unknown to him, PW4 had by then rushed to the back of the house for a short call. This is how he put it;

“I had gone for a short call at the back of the house and saw Guka carrying the child (Guka) using the back door.....”

136. This court finds this narrative given by a child aged 5 years to be so natural and credible because for a child to tell you that he/she had gone for a call of nature and in the process made some observations, tells you that the child is speaking the truth and could not have possibly been coached as the 1st accused stated in his defence.



137. The 1st accused in his final submissions downplayed the evidence of PW4 on account that it was unsworn and uncorroborated but looking at the evidence before me, there is corroboration. PW4 says that the deceased child was lying on a blue blanket which was used to take the deceased child. He identified the blanket here in court and the same was tendered as Pexhibit 4.
138. That piece of blanket (Pexhibit 4) was duly identified by PW1 who told this court that she had cut 2 pieces from the same blanket and kept another piece in the house. PW11 the investigating officer in the case recovered the other piece from PW1 and tendered it as Pexhibit 5. During trial, the investigating officer placed the 2 pieces together and the 2 not only fitted but matched perfectly well and this court duly noted the matching colours and the print.
139. The evidence of PW9 who stated that she saw the 1st accused carrying the child at the material time using the same baby blanket/shawl corroborated the evidence of the minor (PW4).
140. What is even more telling is that PW2 who is a twin sister to PW4 gave the same consistent narrative. That she was playing with her friends at the compound and had left the deceased child with PW4. She stated that PW4 later informed them that ‘kuka’ or ‘Guko’ (1st accused) had taken the deceased child.
141. The defence has pointed out that if it was true that the children knew who had taken the child, they could have informed PW1 immediately she arrived home. That is true but this court notes that given the age of the children (5 years), they could have been traumatized in fact PW4, while testifying during trial had to be protected to testify after he got terrified upon seeing the 1st accused. The same thing happened when PW2 and PW3 were called to testify and the court had to use a protective witness box where they could not see the 1st accused directly that they were able to testify.
142. The 2 minors (PW2 and PW4) positively identified the 1st accused during the Identification Parade which I find corroborative to what PW4 told this court.
143. The other piece of evidence that links the 1st accused with the offence is that he used to live with the grandmother (PW1) of the deceased child and as the investigating officer (PW11) stated the 1st accused was not very pleased when PW1 told him they were breaking up. During his defence in this court, this court reading between the lines saw a person who was annoyed. In fact he stated that PW1 was possibly leaving him for a younger man and that could have caused the kind of disappointment that he could not hide in his defence. He stated that he tried reconciliation but in vain. So when the investigating officer made the conclusion that he demanded for the money he had possibly used on PW1 through the notes tendered in court, the same is not far-fetched.
144. The 1st accused has contended that the evidence of PW4 was inconsistent and contradictory in the sense that at one point he said he liked ‘kuka’, then in another sentence he says he did not like him. I have however looked at the evidence and note that he stated that she liked the 1st accused in his evidence in chief but during cross-examination he stated that ‘kuka’ had taken away the deceased child and did not like him. That in my view should be taken in the context in which the question in cross-examination was framed and it is obvious that when the child recalled that the 1st accused had taken the deceased child it was logical that he could not like him in the same breadth. This court does not find the cited inconsistency material in any manner that can negate the inference being drawn that because the 1st accused was last seen with the deceased child by two credible witnesses (PW2 and PW9) and later that child was found murdered in a sugar plantation, then the only inference that can be drawn is that he was responsible or part of the people with the act that caused the death of the deceased child. This court finds that the circumstantial evidence against the 1st accused is so overwhelming. The defence have wondered why PW9 did not immediately raise an alarm but the witness gave sufficient explanation during cross-examination. She stated that she knew 1st accused used to live with PW1 and



did not immediately sense danger or suspicion that the 1st accused was out to some mischief. That it was only later when she was informed by PW1 that the child was missing that she came to realize that the 1st accused was upto no good. His action of intimidating PW9 to make her not pick him during Identification Parade was well illustrated by both PW9 and PW11.

145. The 1st report or initial report made on the OB by PW1 and which extract was tendered by 1st accused as Dexhibit 2 indicates that PW1 booked a report of a missing child and clearly indicated that she suspected the 1st accused. This shows that the prosecution's case going by the evidence is consistent and points towards the 1st accused contrary to what he contends in his final submissions. I find based on the above that the element of actus reus has been well established and proved by circumstantial evidence with respect to 1st accused person.
146. Now turning to the 2nd accused, it is also clear that the prosecution's case against him is also circumstantial. The evidence tendered by the investigating officer (PW11) and PW12) PC Zaddock Wafula provided a positive link of the 2nd accused with the murder of the deceased child. The basis of the findings of this court is because of the following facts proved by the prosecution.
- i. The 2nd accused lived in the same plot with the grandmother (PW1) of the deceased child. That is not disputed. Peter Waweru Kamau (PW6) the landlord gave that evidence and tendered the rent book (Pexhibit 9) which indicates that both the 2nd accused and PW1 lived in the same place. The proximity of the 2nd accused to PW1 where the deceased child resided provided the opportunity for both the kidnapping of the child and the delivery of ransom notes to PW1.
 - ii. PW9 (Anne Masinde) who also lived in the same plot testified that she actually saw 2nd accused drop the leaflet or notes on 29/10/2021 at around 7am. This is what she said;
"I peeped through the window and I saw someone standing in front of the door to Rose's room. He looked everywhere and bent down. He left a small paper and walked out. Shortly Rose came out of her room and saw the paper....."
She stated that there was light emanating from her room which illuminated outside and enabled her recognize the 2nd accused.
 - iii. PW9 was able to pick out the 2nd accused positively in an Identification Parade and recognized him though she never interacted with him.
 - iv. The 2nd accused according to the landlord was not straightforward in his dealings and kept on lying to him about where he worked and his true identity.
 - v. The forensic evidence of PW8 (Inspector Martin Kitai) perhaps gave the strongest link of the 2nd accused with the commission of the offence. PW8 found that the handwriting of the ransom notes tendered as Pexhibit 1,2,3,6(a) and 6(b) by PW11 were all authored by the 2nd accused after forensic analysis. He gave vivid account of the analysis carried out. This court has looked at the exhibits and even from a layman point of view it is apparent that the handwritings are the same and authored by same person.
 - vi. The messages on the ransom notes have already been noted above but in summary they threatened that unless initial Kshs.128,000/- was paid something bad would happen to the kidnapped child. The amount later was increased to Kshs.280,000/- and the numbers used to demand the payment were directly linked to the 2nd accused. PW1 says she sent Kshs.20/- to No.07XXXXXXXXX0 and the recipient's name that popped up was Isaac Juma Wanyonyi (the 2nd accused herein).



- vii. When PW12 conducted a search in the house of the 2nd accused items recovered clearly gave him away. A simcard holder bearing mobile number 07XXXXXXXX3 (Airtel line) (Pexhibit 13) was recovered. The same line is captured in the 1st note dropped in the house of PW1. That note was tendered as Pexhibit 2. The note read; “Hey woman, the girl is taken and I want my Kshs.128,000/- by 28/10/2021 Tuesday at 5pm or she will die.....”
- The note further read; “NO JOKES AND GAMES.....send my money via 07XXXXXXXX3.” The 2nd note also reflects the same Airtel Line. A similar letter (Pexhibit 6(b) was recovered in the house of 2nd accused demanding the same ransom and stating the money be sent to 07XXXXXXXX0. PW1 as observed above sent Kshs.20/- to that number and the 2nd accused person’s name came out as the recipient. The Mpesa statement clearly detailing that transaction was tendered by PW11 as Pexhibit 7. The evidence against the 2nd accused is so overwhelming and the prosecution’s contention that the 2nd accused did not offer any explanation to explain how the indictive items were recovered from his house is legitimate. Legitimate because when placed on his defence he gave a different narrative on the issues at hand. He said one PC Nzuki a police officer had issues with him over a girlfriend but the dates he gave about the alleged incidents were totally unrelated to this case.
- viii. Another critical piece of evidence that indicates that both the 1st and 2nd accused were acting in cahoots was provided by PW11 who tendered a red diary of 2016 (Pexhibit 9). One of the notes demanding ransom Pexhibit 6(b) is on a note of paper torn from the diary of 2016. That diary was tendered as Pexhibit 9 and it belongs to the 1st accused with his name and address on it. The note was proved by forensic expert (PW8) to have been authored by 2nd accused. The said diary was recovered from the 1st accused upon his arrest and search on 30/10/2021. This court notes that the police in this matter particularly the investigating officer did a splendid job piecing the evidence together that when taken cumulatively the same overwhelmingly points towards both the 1st and 2nd accused as the culprits who caused the death of the deceased child.
- ix. The recovery of the baby blanket (Pexhibit 4) itemized at No.19 in the inventory (Pexhibit 12) of items recovered from the home of 2nd accused perhaps was one of the most crucial recoveries linking both the accused persons with the element of actus reus. As I have observed above, when PW11 (the investigating officer) testified the prosecutor (Mr Mugun) asked that the blue blanket recovered from 2nd accused’s house be spread on the floor together with the blanket recovered from PW1. The two blankets fitted perfectly. The evidence of PW1 in this regard goes to form a strong chain of evidence linking both the accused with the cause of death. This is because the notes authored by the 2nd accused indicated that unless the demanded ransom was paid, the child would die. The ransom was never paid and the child was found murdered in a sugar plantation strangled to death, tied and put in a sack. This court is satisfied beyond reasonable doubt that the element of actus reus is proved to the required standard.

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(iii) Malice Aforethought

It is very clear from the evidence tendered that motive was clearly established. The motive was a ransom of **Kshs.280,000/-**The manner in which the deceased child was murdered and the way the body was found was most horrifying so much that the investigating officer was unable because of trauma to attend a Post Mortem examination. The doctor gave a harrowing picture of the state of the body. That the body of the deceased child had been tied with legs and hands tied to the head. The manner in which the murder was carried out even without



considering the ransom demanded showed that under Section 206 of the Penal Code, malice aforethought can be inferred. The accused persons mercilessly killed an innocent child in a most foul manner because of a relationship that went sour and because of money. That child was innocent to what the accused persons were demanding from her grandmother which is most regrettable thing in this case. Suffices to state that this court finds that the prosecution's case against the accused persons is overwhelming. They are both found guilty as charged and accordingly convicted.

DELIVERED, DATED AND SIGNED AT KITALE THIS 28TH DAY OF APRIL , 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Bikundo for the 1st accused and holding brief for

Rutto for the 2nd accused

Mugun for the State

Duke- Court assistant

