



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Loloi & 6 others (Criminal Case E014 of 2021)
[2025] KEHC 5152 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E014 OF 2021
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH LOLOI 1ST ACCUSED

EKWAR EKAI 2ND ACCUSED

MUSA ABDI AMADOK 3RD ACCUSED

DANIEL EROT 4TH ACCUSED

JOHN LOKOL 5TH ACCUSED

JOSEPH KOECH 6TH ACCUSED

ACHUKA LOKAALE 7TH ACCUSED

JUDGMENT

1. The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the 2nd day of October, 2021, at Kalobeyei trading centre in Turkana West Sub-County within Turkana County murdered Benson Lokaale alias Lochumbi.
2. The lead counsel for the defence was Mr. Ebenyo whereas Mr. Kakoi appeared for the prosecution.
3. Criminal law as an aspect of law vests the state with the duty to prove the guilt of the accused/accused persons beyond reasonable doubt. This doctrine is aimed at protecting fellow citizens against abuse of power by the state. The duty to prove the guilt of the accused charged of an offence of any kind beyond reasonable doubt extends to every element of the offence. The relevant Art. 50(2)(a) of the *Constitution* also provides in this regard that every accused person is presumed innocent unless the



contrary is proved by the state by adducing admissible evidence to prove every element of the crime as alleged including that the accused person before a court of law had the required intention to commit the crime in question and the acts so complained of the state were unlawful. That it is inevitable in a constitutional democracy in which the right to fundamental rights and freedoms are properly protected and respected. Therefore, any convictions based on suspicion and speculation are considered to be the hallmark of a tyrannical and unjust systems of law. This is the threshold I will test the evidence adduced by the prosecution as against the accused persons for the offence of murder as framed by the state against the accused persons.

4. It is on record that there are seven accused persons but proving their guilt is individualized unless the doctrine of common intention and conspiracy characteristic of the offence are proved beyond reasonable doubt.

Evidence: The state version

5. PW1 - No. 250417 PC Dan Kibet testified on behalf of the state. His evidence is that on the 2nd October 2021 at 1PM, he was manning a road block at Kalobeyei together with PC Warsame (PW3), Sgt. John Lokong, Cpl. Moses Muria when they saw an oncoming vehicle Reg. No. SSD 476J. The motor vehicle veered off the road but immediately came back to the road. In the ensuing events, it emerged that the driver had knocked down a child and the public was baying for his blood. As security officers they intervened to secure the life of the driver as against the public. However, the public could not hear of it and the public who were already armed with sticks and stones started pelting stones at the police officers. This conflict necessitated PW1 and his fellow police officers to seek reinforcement from Kakuma Police Station. The accused person before court were arrested for reasons that they were the ones who were armed with stones and sticks which they used attacking the occupants of the subject motor vehicle which was being driven for safety before it came to contact with the team manning the road block. In this attack, some of the occupants who suffered fatal injuries was the deceased who was rushed to the nearby hospital for medical treatment. The alleged victim of the road traffic accident apparently only suffered physical injuries which were not fatal. The suspects who were part of the members of the public armed with all manner of weapons, were apprehended and recommended for an indictment of murder contrary to section 203 of the Penal code.
6. PW2 PC John Waithera stated in court that during the incident he was attached Kalobeyei police post. He was able to recall that on the material day he was in charge of the day's entry when at approximately 1:15hrs he heard a noise emanating from the road. Shortly, he saw his colleagues PC Dan Kibet, James Kingongo, John Lokong and Emuya leading a group of five people to the police post who were being pursued by the public armed with stones and other crude weapons. It was PW2's testimony that two men among the five had taken refuge in his house for safety which he locked with a padlock. Notwithstanding that security measures according to PW2, the crowd moved swiftly with an intention to break into the house to inflict more harm to the two who had taken refuge in that house. He estimated the members of the crowd to be about 50 people. This prompted the police officers to fire gunshots into the air although the number kept increasing leading to a long struggle to secure the police post and other innocent citizens. According to PW2 as the circumstances prevailing at the time can be described as clear daylight, he was able to identify positively the 2nd, 3rd, 4th, 5th, 6th and 7th accused persons as part of the gang which was armed with stones throwing them at the persons rescued from the motor vehicle at the road block. Following the incident, PW2 learned that on 4th October, 2021, one Benson Lokaale, the victim of the attack from the members of the public had suffered fatal injuries.
7. PW3 No. 251757 PC. Mohammed Warsame gave his evidence on oath that on 2nd October, 2021 he was manning a roadblock with other police officers at around 1:15hrs. In the course of executing their



duties, a land Cruiser was driven on the same road and when it stopped the driver informed them that he had been involved an accident involving a young child and there was crowd in hot pursuit and therefore required police assistance. According to PW3 a decision was made that the five occupants in the motor vehicle be rescued by escorting them to the police post. However, the crowd followed closely towards the police post including the house of PW2 where the two managed to hide in a toilet. The rioters broke into the house dragging out one Benson and simultaneously started beating him using sticks and stones. As the events of the conflict were unfolding, a reinforcement team was dispatched from Kakuma Police station which facilitated to repulse the crowd from the police post. It was also the evidence by PW3 that he was able to positively identify the 1st accused, the 3rd accused, the 4th, the 2nd and 5th as part of the members of the public armed with stones and sticks pelting them against the five people who had been rescued at the road block. It was from this incident PW3 confirmed that Benson Lokaale who had sustained injuries passed on and became the victim for the offence of murder before this court

8. PW4 – No. 100128 PC Albert Lokong told the court that on 2nd October, 2021 he responded to a distress call involving a motor vehicle which was being pursued by the members of the public. He proceeded to Kalobeyei Police post where he found two passengers in the said motor vehicle were severely injured and one of them was lying in a pool of blood. That is when arrangements were made to have them taken to the hospital as some of the police officers kept guard to ensure the safety of the police officers and the other remaining occupants of the motor vehicle who had taken safety within the post. The suspects had already been apprehended and investigations commenced to establish their culpability for the offence.
9. PW5 John Karuga Kimani testified as an Assistant County Commissioner attached to Turkana West Sub-County. In the testimony of PW5, on the fateful day of 2nd October, 2021, there was a commotion between the road block and Kalobeyei Police post involving the members of the public and the occupants of the subject motor vehicle which was suspected to have hit a child while being driven along the same highway. On arrival at the scene, PW5 told the court that he noticed a crowd of people armed with stones, sticks and metal bars pursuing both the suspects of the motor vehicle accident and the police who were manning the road block along the Lodwar-Sudan Highway. He came to learn that the one of the suspect who was an occupant of the motor vehicle was fatally attacked. According to PW5, in this long blown conflict between the police at Kalobeyei Police post, the reinforcement sent by Kakuma Police station and members of the public he was able to identify the suspects before court as the ones who dragged the victim of murder in this case from inside the police post and inflicted the fatal injuries. He also acknowledged that the conflict was of such a nature that the police were overpowered as the members of the public were estimated to be more than fifty persons. He described the scene as chaotic.
10. PW6 NO. 235140 – Inspector Lawrence Omondi, the traffic commandant at Turkana West Sub-County gave evidence that on 3rd November, 2021, he was requested to conduct and identification parade upon the suspects who were accused of murder following the incident which took place on the 2nd October, 2021. In executing the duties of identification as per chapter 46 of the Standing orders, he ensured compliance with the standards and guidelines set out in the instruments before he went about to satisfy the criteria of having the witnesses identify the suspects from the members of the parade. In addition, PW6 told the court that he had with him the following witnesses: John Kimani Karugu, Lobeyo Patrick, John Lokong and Moses Emuria who were accommodated at the OCS office and could not see the accused and members of the parade. The seven parades put together by PW6 were responsive as the 1st accused, 2nd accused, 3rd accused 4th accused, 5th accused, 6th accused and 7th accused persons were positively identified. He produced the identification parade forms as Exh. 1-7 in



support of the state case on the element of placing the accused persons and the deceased at the scene of the incident.

11. PW7 No. 11778 PC Alison Sesi on oath confirmed that he was the investigating officer having been instructed by the DCIO Turkana West Sub-County to inquire on the nature, cause and death of the deceased which occurred in Kalobeyei Police Post. He took over the investigation and on recording witness statements, documenting the scene and following through the events between the road block and Kalobeyei Police post, he established that the members of the public had sought to pursue the suspects in a land cruiser being driven to South Sudan but in the course it had been involved in an accident. The victim of the accident was a young child who apparently suffered physical injuries which were not fatal. On arrival at Kalobeyei police post, there were seven suspect under guard awaiting further investigations. As this incident involved a huge crowd from the information gathered at the scene, he made arrangements for an identification parade which was conducted by PW6. It was from this identification parade, recommendation was made to place the accused persons squarely at the scene of crime. This was the narrative set out by the prosecution to disapprove the entrenched presumption of innocence in Art. 50(2)(a) of the Constitution
12. This court having flagged the evidence by the prosecution, it took a correct approach of weighing up all the elements which points towards the guilt of the accused from the account given by the seven witnesses. As it is the requirement of the law under Section 306 of the Criminal Procedure Code, a prima facie case was established in favour of the state as initiated and prosecuted by the prosecution under Art. 157(6) & (7) of the Constitution to place each of the accused on their defence.

The defence case.

13. DW1 Joseph Doloji denied the offence of having been involved in the death of the deceased on 2nd October, 2021. He heavily relied on the alibi defence that on the material day he was not at the scene of the crime at Kalobeyei Police post or at the road block. In all aspects, the accused said he was a stranger to the events being alluded to by the prosecutions' witnesses.
14. DW2 Ekai Ekwar also in his defence told the court that on 2nd October, 2021 was not involved in any crime of the nature being described by the prosecution. He was arrested at his house and he has kept wondering all along why he was indicted for an offence which he did not commit. He also invoked the defence of alibi that he was never anywhere at the scene of the crime being fronted by the state and its witnesses.
15. DW3 Musa Abdi Amadok also in his sworn statement told the court that prior to this incident, he was a boda boda operator and on the alleged day of some incident of murder at Kalobeyei police post, he was not at that scene and therefore denied committing the offence. According to him, he went about with his normal legal activities only later to be summoned to Kalobeyei stopped by the GSU, placed in a motor vehicle and thereafter subjected to an investigation for the offence of murder
16. DW4 Daniel Erot in his defence on the events of the 2nd October, 2021 he worked normally at Lucky Petrol station. In the defence alluded by the accused, he went home around 3PM and boarded a vehicle for Kalobeyei. On entry to a place to watch some news, he was arrested as one of the people who had committed the offence of murder by GSU. He denied to have ever been part of the members of the public who are pursuing the Land Cruiser motor vehicle all the way to Kalobeyei road block and the police post as stated by the prosecution witnesses.
17. DW6 John Lokol told the court that on 2nd October, 2021 he left his home for Kalobeyei shopping centre and that he was explained to that a motor vehicle has hit a young child while driving on the highway. It was during his return journey home from Kalobeyei centre he met GSU who arrested



him and placed him in their vehicle and inside he found some other people who were alleged to have committed the offence of murder. He denied the specifics of this offence.

18. DW7 Achuka Lokaale on oath told the court that he is a goat keeper and recalled that on the fateful day of the incident, he was involved in family matters for his wife had given birth and his goats were sick requiring veterinary services. He went about having this issues sorted out. However, in the course of the day he was arrested for committing an offence which he knows nothing about.

Analysis and Determination

19. The accused persons have been charged with the offence of murder contrary to Section 203 of the [Penal Code](#). The prosecution bears the burden of proving beyond reasonable doubt that each of the seven accused persons is guilty of the offence. This fundamental principle is embedded in Article 50(2)(a) of the [Constitution](#), which enshrines the presumption of innocence. As established in *Woolmington v DPP (1935) AC 462*, this burden remains with the prosecution throughout the trial. The court in the said case held:

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject (to the qualification involving the defence of insanity and to any statutory exception). If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

20. Glanville Williams in his book ‘Criminal Law’ second edition opines that the phrase ‘reasonable doubt’ is virtually indefinable. This concept of ‘reasonable doubt’ has been explained by justice Cookbur, as follows:

“It is business of the prosecution to bring home the guilt of the accused to the satisfaction of the minds of the jury; but the doubt to the benefit of which the accused is entitled to must be such as rational thinking, sensible man fairly and reasonably entertain, not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism. There must be doubt which a man may honestly and conscientiously entertain.”

21. The court must therefore scrutinize whether the prosecution has discharged this burden with respect to each element of the offence against each accused person.

22. The essential elements that the prosecution must prove in a murder case are:

The death of Benson Lokaale alias Lochumbi

That the death was unlawfully caused

That in causing death, the accused persons were actuated with malice aforethought.

That in the event of the perpetrators being more than one accused person, the doctrine of common intention must also be roped in, in the textual approach of proving the elements of the offence.

23. While the fact of death is established through the evidence of PW4, PW5, and other witnesses who confirmed that Benson Lokaale died following the incident of 2nd October 2021, the critical issues for



determination are the identification of the perpetrators and whether their actions were accompanied by malice aforethought. The unique aspect of this case is that it involves an allegation of murder committed by a mob, with seven specific individuals charged out of an estimated crowd of fifty people. This necessitates careful examination of two critical legal questions: first, whether the prosecution has reliably identified each accused person as a participant in the fatal assault; and second, whether the doctrine of common intention in its application would establish criminal liability for all accused persons.

24. On whether the murder was unlawfully caused, the basic mechanism for regulation of any criminal conduct subject to exceptions is to be found in the case of *Bratty v Attorney General for Northern Ireland* {1963} A.C. 386 where Lord Denning stated to the effect that:

“no act is punishable if it is done involuntarily, what is often called automatism, where an act is done by the muscles without any control of the mind such as spasm or reflex action or convulsion or act done by a person who is not conscious of what he is doing such as an act done by a person who is suffering from concussion or sleep walking.” (See also Textbook on Criminal Law 2nd Edition 2016 by William Musyoka) Law Africa Publishers pg 46) Further G. P. Fletcher (Rethinking Criminal Law, 1978) and H.L.A. Hart (Punishment and Responsibility 1968) 13 – 4 observed inter alia:

“That unlawfulness is the requirement which is excluded when what one does is justified or excusable all things considered.”

25. The list of grounds of justification in our Law that have been recognized fall within Section 17 of the *Penal Code* on self-defence and Section 208 of the *Penal Code* on provocation.
26. In our criminal justice system, the accused's conduct is evaluated against established statutory provisions to determine whether an act constitutes an unlawful offense meriting criminal liability. In cases of murder, criminal responsibility requires proving that the accused voluntarily committed an unlawful act with the intent to cause death or grievous harm, and that this act was the direct cause of the victim's death. This causal link between the deliberate action and the resulting death forms the essential foundation for establishing criminal culpability in homicide cases.
27. It is also trite that the accused is only punished for an offence he has committed and not what is still under conception in his mind. The test on causation of death under Section 213 of the *Penal Code* is put more succinctly by Snyman on Criminal Law 6th Edition {2014} (pg 88) where he stated on the Adequate Cause Theory as follows:

“According to the adequate causation theory, an act is a legal cause of a situation, if according to human experience in the criminal course of events, the act has the tendency to bring about that type of situation.” The test under this provisions being the underlying principle that the death of the deceased need not be caused by the immediate act of the accused. The accused would therefore be held responsible for another person's death although his act as not the immediate or sole cause.”

28. In the instant case, according to the evidence presented by the prosecution witnesses, particularly PW1 PC Dan Kibet, PW2 PC John Waitera, and PW3 PC Mohammed Warsame, a series of events unfolded that led to the tragic death of Benson Lokaale. These officers testified that on 2nd October 2021, they were manning a roadblock at Kalobeyei when a Land Cruiser motor vehicle approached them. The driver informed them that he had been involved in an accident with a young child and was



being pursued by an angry crowd. In response, the officers attempted to provide protection to the vehicle's occupants by escorting them to the Kalobeyei Police Post.

29. The subsequent events, as described by the prosecution witnesses, indicate that a large crowd, estimated to be approximately fifty people, followed the officers to the police post. According to PW2, despite security measures taken to protect the occupants of the vehicle, including locking two of them in his house, the crowd persisted in their pursuit. The witnesses testified that members of this crowd, whom they identified as including the seven accused persons, were armed with stones, sticks, and other crude weapons. PW2 and PW3 both stated that they observed the accused persons throwing stones at the persons who had been rescued at the roadblock.
30. In analysing the totality of the prosecution's case, there emerges a narrative of mob violence where individual actions coalesced into a collective assault with fatal consequences. The question of the unlawful cause of death is therefore established. The prosecution's evidence points to the accused persons as active participants in this collective action, armed with weapons and engaged in acts of violence directed at the deceased. The question before this court is whether this evidence sufficiently establishes, beyond reasonable doubt, both the individual participation of each accused person and their shared intention to cause death or grievous harm to the deceased.
31. In all crimes of murder, for an accused person to be found guilty, the fundamental element to be proven is that of Malice aforethought. As regard to proof of availability of malice aforethought in any indictment against an accused person, Section 206 of the [Penal Code](#) gives the following guidelines:
- “(a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
 - (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may be caused.
 - (c). An intent to commit a felony.
 - (d). An intention to facilitate the escape from custody of a person who has committed a felony.”
32. The court in *Rex v Tubere s/o Ochen* (1945) 12 EACA 63 held:
- “The court has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say of a spear or knife than from the use of a stick”
33. In the present case, malice aforethought can be discerned from the deliberate and coordinated actions of the accused persons throughout the incident. The evidence from the prosecution witnesses indicates that the accused persons, armed with stones and sticks, pursued the vehicle occupants even after they had taken refuge at the police post. Their determination to reach the deceased despite police protection, physically dragging him from the sanctuary of the police post, demonstrates a calculated intent rather than a momentary impulse. This forcible extraction of the victim from official protection, followed by a collective assault with weapons capable of inflicting serious harm, strongly suggests premeditation and a clear intention to cause either death or grievous bodily harm.



34. The nature and circumstances of the assault further reinforce the presence of malice aforethought. Multiple assailants simultaneously attacking a single, already subdued individual with stones and sticks indicates an application of force that the accused persons must have known carried a high probability of fatal consequences. Their persistent aggression in the face of police intervention, the collective nature of the assault, and their choice to arm themselves with potentially lethal implements all point to a conscious decision to inflict serious harm, establishing the mental element required for murder under Section 203 of the *Penal Code*.
35. In this case, malice aforethought within the ingredients of the Tubere case (supra) and Ernest Asami Bwire Abanga alias Onyango v. Republic No. 32 of 1990 is deemed to be manifested by the use of various manipulated weapons by the accused persons acting in concert and with a common intention where they inflicted jointly and severally the following multiple injuries as established by the pathologist Dr. Kidalo in the post mortem report dated 6th October, 2021; Bruise Large (10x7CMs) on the right subcostal margin; Bruise (ecchymoses) on the right upper arm; wound and bruising on the occipital region with depressed skull fracture; stitched wound on the Anterior fontanelle region and stitched wound on the left cheek; extensive linear bruising on the trunk posteriorly both left and right regions; four bruises on the right costal region and depressed skull fracture on the occipital region; cerebral haemorrhage and cerebral contusion.
36. This medical evidence tells a story that malice aforethought is a subjective condition of the mind discoverable only by words and unlawful conduct of the accused person. It is therefore frequently necessary for a trial court to infer malice aforethought from the acts committed by the accused person as prescribed under section 206 (a) and (b) of the *Penal Code*. It has sometimes been said that every homicide is presumed to be committed with malice aforethought and it devolves upon the accused to prove circumstances which will justify, excuse or mitigate the act. However as for the accused persons in this case, no evidence of such mitigation, justification or excuse was presented to controvert the proven facts on this heinous crime by the prosecution within the provisions of section 107(1) of the *Evidence Act*.
37. To present a complete discussion, we must incorporate the element of common intention. The prosecution case falls under Section 21 of the *Penal Code* which expressly defines the concept of common intention. It provides as follows:
- “When two or more persons form a common intention to prosecute unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of that purpose, each of them is deemed to have committed the offence.”
38. A decision that is on point on the question of common intention is that of Ismael Kiseregwa & another v Uganda CA CR Appeal No. 6 of 1978 where the court said:
- “in order to make the doctrine of common intention, applicably it must be shown that the accused shared with the actual perpetrator of the crime, a common intention to pursue a specific unlawful purpose, which led to the commission of the offence. If it can be shown that the accused persons shared with one another a common intention to pursue a specific unlawful purpose, and that prosecution of that unlawful purpose an offence was committed, the doctrine of common intention would apply irrespective of whether the offence was murder or manslaughter. It is now settled that an unlawful common intention does not imply a pre-arranged plan, common intention may be inferred from the presence of the accused persons, their actions and the omission of any of them to disassociate himself



from the assault. It can develop in the course of events though it might not have been present from the start. It is immaterial whether the original common intention was lawful so long as an unlawful purpose develops in the course of events. It is also irrelevant whether the two participated in the commission of the offence. Where the doctrine of common intention applies, it is not necessary to make a finding as to who actually caused the death."

39. The doctrine of common intention, as articulated in Section 21 of the *Penal Code*, finds clear application in the circumstances of this case. The evidence establishes compelling grounds to conclude that the seven accused persons formed and acted upon a shared criminal purpose. Although the initial gathering formed in response to a vehicle accident involving a child, the prosecution evidence demonstrates that this quickly evolved into a coordinated attack with lethal intent. Multiple witnesses testified to seeing the accused persons armed with stones and sticks, collectively pursuing the vehicle occupants to the police post despite law enforcement intervention. Most significantly, the testimony that the accused persons physically dragged the deceased from police protection before collectively assaulting him indicates a unified purpose that transcended individual action. Their coordinated efforts to overcome police protection, their simultaneous assault on the deceased, and their shared use of weapons capable of inflicting serious harm collectively establish that these seven individuals, despite being part of a larger crowd, operated with a common intention to cause grievous harm or death to Benson Lokaale.
40. Finally, the question of identification of the accused persons is essential. The prosecution conducted an identification parade led by Inspector Lawrence Omondi (PW6), who testified that he arranged for seven separate parades in which the accused persons were positively identified by witnesses John Kimani Karugu, Lobeyo Patrick, John Lokong, and Moses Emuria. While identification parades can provide valuable corroborative evidence, their reliability depends on strict adherence to procedural safeguards designed to prevent mistaken identification or suggestion.
41. The Court of Appeal in *David Mwita Wanja & 2 others vs. Republic* [2007] eKLR emphasized on the importance of a properly conducted identification parade and expressed itself as follows:

"The purpose for, and the manner in which, identification parades ought to be conducted have been the subject matter of many decisions of this court over the years and it is worrying officers who are charged with the task of criminal investigations do not appear to get it right. As long ago as 1936, the predecessor of this Court emphasized that the value of identification as evidence would depreciate considerably unless an identification parade was held with scrupulous fairness and in accordance with the instructions contained in Police Force Standing Orders. See *R v Mwangi s/o Manaa* (1936) 3 EACA There are a myriad other decisions on various aspects of identification parades since then and we need only cite for emphasis *Njihia vs. R* [1986] KLR 422 where the court stated at page 424: -

It is not difficult to arrange well-conducted parades. The orders are clear. If properly conducted, especially with an independent person present looking after the interests of a suspect, the resulting evidence is of great value. But if the parade is badly conducted and the complainant identifies a suspect the complainant will hardly be able to give reliable evidence of identification in court. Whether that is possible, depends upon clear evidence of identification apart from the parade. But of course if a suspect is only identified at an improperly conducted parade, it will be concluded by the witness that the man in the dock, is the person accused of the crime; and it will be difficult, if not impossible, for the witness to dissociate himself from his identification of the man on the parade, and reach back to his impression of the person who perpetrated the alleged crime."



42. The protocol for conducting an identification parade is formally established in Chapter 42, Paragraph 7 of the National Police Service Standing Orders. My analysis will assess whether the identification parades conducted for each witness complied with these prescribed procedural requirements.
43. Upon careful examination of the evidence, I find that the identification parades conducted by Inspector Lawrence Omondi (PW6) were properly executed in accordance with Chapter 42, Paragraph 7 of the National Police Service Standing Orders. The identification forms produced as Exhibits 1-7 demonstrate adherence to the procedural requirements. PW6 testified that he ensured the witnesses were accommodated in the OCS office where they could not see the accused or other parade participants prior to the identification process. Each parade consisted of at least eight individuals of similar appearance to the accused, as required by the Standing Orders. The witnesses were brought in individually to view the parade and make their identifications without interference or suggestion. Furthermore, PW6 confirmed that all participants in the parade were informed of their right to position themselves wherever they preferred in the lineup, adding another layer of procedural fairness to the process.
44. The reliability of this identification evidence is strengthened by the fact that multiple witnesses independently identified the accused persons during these parades. PW3 specifically identified the 1st, 2nd, 3rd, 4th, and 5th accused as part of the group armed with weapons at the scene. PW5, the Assistant County Commissioner, provided corroborating testimony that placed the accused persons at the scene, specifically identifying them as the individuals who forcibly removed the deceased from police protection before inflicting the fatal injuries. While identification evidence must always be approached with caution, the procedural safeguards employed in conducting these parades, coupled with the multiple independent identifications by witnesses who observed the accused under conditions favourable to accurate observation, establish sufficient reliability to support the prosecution's case on this critical element.
45. The court has duly considered the alibi defenses presented by each of the accused persons. DW1 through DW7 all denied being present at the scene, variously claiming they were engaged in other activities elsewhere at the time of the incident. However, these claims were not supported by any corroborative evidence that would create reasonable doubt against the positive identification evidence presented by the prosecution. The law on alibi defense is well established. While the accused bears no burden to prove their alibi, once the prosecution has presented credible evidence placing the accused at the scene of the crime, a mere assertion of absence without supporting evidence is insufficient to displace that positive identification. In this case, the combined effect of the witness testimonies and the properly conducted identification parades provides compelling evidence that overcomes the unsupported alibi defences presented by the accused persons.
46. For those reasons and having thoroughly examined the elements of the offence under Section 203 of the [Penal Code](#), I find that the prosecution has successfully proven its case beyond reasonable doubt. The evidence establishes that Benson Lokaale died as a result of injuries inflicted during the incident at Kalobeyi roadblock and police post. The death was unlawfully caused through acts of violence perpetrated by a group that included the accused persons. I find each of the accused persons guilty of the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

Decision on Sentence

47. The seven accused persons; Joseph Loloj, Ekwar Ekai, Musa Abdi Amadok, Daniel Erot, John Lokol, Joseph Koech, and Achuka Lokaale stand convicted of murder contrary to Section 203 as read with



Section 204 of the *Penal Code*, following the judgment of this court that examined the evidence and established their guilt beyond reasonable doubt.

48. This case presents a troubling illustration of mob violence, where individual actions merged into collective brutality with fatal consequences. on 2nd October, 2021, at Kalobeyei trading center, what began as a response to an alleged road accident involving a child escalated into a deadly assault on Benson Lokaale. The evidence before this Court demonstrated that the accused persons, among a larger crowd estimated at fifty people, pursued the occupants of a vehicle to a police post, overcame law enforcement protection, and subjected the deceased to violence that ultimately claimed his life.
49. In arriving at an appropriate sentence, I am guided by the landmark decision in *Francis Muruatetu & Another v Republic* [2017] eKLR, which established that courts must consider several factors including: the offender's age, whether they are first-time offenders, their character and record, remorseful ness, and prospects for rehabilitation and social reintegration, among other relevant considerations.
50. The Judiciary of Kenya Sentencing *Policy Guidelines of 2023* further direct that sentences must serve multiple objectives: retribution for criminal conduct; deterrence against future similar offenses; rehabilitation to promote reform; restorative justice to address damages; community protection; and denunciation of criminal behaviour. The challenge lies in striking a balance between these sometimes competing objectives.
51. In mitigation, learned counsel Mr. Karanja submitted that the accused persons are people of young age which makes them great candidates for a non-custodial sentence. That they have the capacity and the advantage of time to be able to build their lives once more and make better decision for the benefit of his future.
52. Learned counsel further submitted that the 3rd accused specifically further desires to go back to school and pursue his further education which he had not completed at the time of his arrest. That the 1st accused person has been sickly from the commencement of this trial up to now. He has been suffering from a series of ailments ranging from skin conditions to respiratory illnesses.
53. According to counsel, the accused persons in the course of this matter have expressed remorse for their actions and regretful for the life lost, sorry to the family of the deceased for losing their loved one and pray that the court sentences them to a non-custodial sentence. Finally, he submitted that the families of all the accused persons are fully dependent on them. That for the period that the accused persons have been incarcerated at the Lodwar prisons, the families have been exposed to untold suffering that continues to date.
54. Several aggravating factors weigh heavily in this case. First, the concerted nature of the attack demonstrates a deliberate pursuit of violence rather than a momentary lapse of judgment. The accused persons followed their victim to a place of safety, a police post indicating determination to harm rather than a spontaneous reaction. Second, they employed weapons including stones and sticks against an individual who posed no immediate threat to them. Third, and perhaps most significantly, they deliberately undermined law enforcement by attacking an individual under police protection, showing profound disregard for societal order and rule of law.
55. The medical evidence presented through witnesses established that Benson Lokaale suffered fatal injuries as a direct result of this attack. The violence escalated beyond what could conceivably be justified by the initial road incident, particularly given that the child involved in the alleged accident reportedly suffered only non-fatal injuries.



56. Having carefully weighed these factors within the framework of our sentencing guidelines and jurisprudential principles, I find that this case warrants a substantial custodial sentence. The accused persons' actions resulted in the death of Benson Lokaale, undermined the authority of law enforcement, and represented a dangerous manifestation of mob mentality that threatens the very foundations of orderly society.
57. The fundamental purpose of sentencing as evinced in our legal system is to protect the society and to contribute along with crime prevention initiatives, to lay emphasis on respect for the law and the maintenance of a just, peaceful and safe society by imposing the prescribed sentences by the legislature. This denunciation of unlawful conduct and harm done to the victims of the offence promotes a sense of justice and public confidence. Essentially, whenever a trial court imposes certain sanctions as punishment to the crime committed by the respective offenders, at the end of the day it promotes a sense of accountability and responsibility for those found culpable. This is what will mirror prominently in exercising discretion by this court in the process of weighing both the aggravating and mitigation factors while subjecting the facts of this case to the various parameters on sentencing as analysed elsewhere in this ruling. As a matter of emphasis, the right to life is at the pinnacle of the fundamental rights guaranteed in Art. 26 of our constitution. Hence anyone who violates this right by committing the offence of homicide, he will also be construed to have been infringed Art. 25 of the Constitution which prohibits cruel and inhuman, and degrading treatment of another human being by use of dangerous weapons targeting various limbs like in this case the deceased suffered severe multiple stab wounds which for the purposes of this case is mentioned while dealing with the element on malice aforethought.
58. Consequently, I hereby sentence each of the seven accused persons Joseph Loloi, Ekwar Ekai, Musa Abdi Amadok, Daniel Erot, John Lokol, Joseph Koech, and Achuka Lokaale to thirty (30) years imprisonment. This sentence reflects both the gravity of the offense committed and serves as a necessary deterrent against mob violence while providing adequate time for rehabilitation. The sentence shall run from 15th November, 2021 pursuant to the provisions of section 333(2) of the Criminal Procedure Code.

DATED AND SIGNED AT ELDORET THIS 29TH DAY OF APRIL, 2025

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R. NYAKUNDI

JUDGE

