



**Republic v Waweru (Criminal Case 61 of 2023)
[2026] KEHC 2506 (KLR) (Crim) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 61 OF 2023
KW KIARIE, J
MARCH 3, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES KAMAU WAWERU ACCUSED

RULING

1. James Kamau Waweru is charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 9th day of August 2022, at Magumu Location, in South Kinangop Sub-County within Nyandarua County, he murdered Alice Wangui Kihugu.
3. When Ian Mbugua raised an alarm that Jemo had stabbed his mother, some neighbours rushed to the scene. Ian Mbugua implicated the accused.
4. Lydia Wanjiru (PW1) was among the first neighbours to arrive at the scene. She testified that Ian claimed Jemo had stabbed his mother, but she was unsure which Jemo he meant. She observed Ian running toward the house while walking on the highway away from their home. She also mentioned that Ian and his mother frequently quarreled.
5. Elisha Githua Gicheru (PW2) said that upon arrival, he found Ian standing at their gate.
6. George Mwaura Gachara (PW4) testified that two weeks before the deceased's death, she told him her son had stolen James Kamau's laptop. Ian also admitted to this and promised to return the laptop.



7. The prosecution did not call Ian Mbugua as a witness to clarify which Jemo he was referring to and who witnessed the incident. It is widely known that Jemo is a common nickname for James. The Court of Appeal in the case of *Bukenya vs Uganda* [1972] EA 549 (Lutta Ag. Vice President) held:

The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.

Where the evidence called is barely adequate, the Court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution.

8. Ian Mbugua was a material witness. The only logical inference is that if he had been called, his evidence probably would not have supported the prosecution's case.

9. The investigating officer overlooked the suspicious conduct of Ian Mbugua. He should have been investigated to determine his involvement in his mother's murder, if any.

10. Having considered the evidence on record, the question is whether the prosecution has established a prima facie case against the accused. In *Black's Law Dictionary*, 10th Edition, a prima facie case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption.
2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.

11. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt vs R* [1957] E. A 332 at 334 and 335 defined a prima facie case as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.

12. Article 50 (2) (i) of *the Constitution* of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

13. In this situation, if the accused exercises his constitutional rights as previously stated, I cannot find him guilty based on the current evidence. Thus, the prosecution has not proven a prima facie case against him. I therefore acquit him of the murder charge under section 306(1) of the Criminal Procedure Code. The accused is entitled to liberty unless lawfully detained for another reason.

DELIVERED AND SIGNED AT NYANDARUA, THIS 3RD DAY OF MARCH 2026

KIARIE WAWERU KIARIE

JUDGE

