



**Republic v Mwai (Criminal Case E005 of 2024)
[2026] KEHC 2628 (KLR) (Crim) (3 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E005 OF 2024
KW KIARIE, J
MARCH 3, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

BENARD GICHERU MWAI ACCUSED

JUDGMENT

1. Benard Gicheru Mwai is charged with two counts of murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 25th day of December 2023, at Kibao village, Lereshwa location, in Kipipiri Sub-County within Nyandarua County, jointly with another, he murdered Margaret Wangeci Nguhiu.
3. In count two, the particulars of the offence are that on the 25th day of December 2023, at Kibao village, Lereshwa location, in Kipipiri Sub-County within Nyandarua County, jointly with another, he murdered Joseph Kimani Nguhiu.
4. The two victims were discovered murdered in a gruesome manner. Margaret Wangeci Nguhiu's bloodied body was near the gate, covered with a mattress and blankets. Joseph Kimani Nguhiu's body was found in the kitchen, bearing severe head and chest injuries along with multiple stab wounds.
5. Benard Gicheru Mwai, the accused, was linked to the incident by a shoe (croc) that was found in one of the houses and semen that was in the high vaginal swab obtained from Margaret Wangeci Nguhiu, one of the deceased.
6. In his defence, the accused contended that the croak was not his and that on the 25th December 2023, he had sexual intercourse with Margaret Wangeci Nguhiu, his girlfriend.



7. The issues to be determined are:
 - a. Whether the shoe (croc) found at the scene belonged to the accused; and if it was,
 - b. Whether it could link him to the offence;
 - c. Whether the semen from Margaret Wangeci Nguhiu's high vaginal swab can link him to the offence; and
 - c) Whether the offence of murder was proved against the accused.
8. It is not disputed that the accused and Margaret Wangeci Nguhiu were lovers. It was not clear whether the accused and Margaret lived together occasionally or whether the alleged relationship was occasional. Witnesses kept referring to where the body of Margaret was found as her house. James Kariuki Ng'ang'a (PW5) at one point stated that the shoe was found in the bedroom in the house of Margaret's mother. Though he later changed and said the bedroom was in the house the accused and the deceased Margaret were using, the logical conclusion to make is that the house the two were using was in the home of the deceased's mother. This explains why Joseph Kimani Nguhiu was found murdered in the kitchen in the same home. This deceased was a brother of Margaret.
9. Crocs are widely worn shoes. The accused argued that the Croc found in the house and presented as evidence was larger than the size he typically wears. However, the investigating officer did not provide evidence to confirm that the Croc in the photograph was the size the accused wears. Merely indicating the colour is insufficient. The prosecution was required to present evidence regarding the accused's usual shoe size and the size of the Croc produced. The burden of proof regarding shoe size rested on the prosecution, not on the accused.
10. Because it was well known that the accused and Margaret were living together, discovering the croc in the house was not surprising, even if it was proven to belong to the accused. Evidence pointing to his participation in the offence was required.
11. The accused said that he had sexual intercourse with the deceased Margaret on the 25th December 2023. The finding of his semen in the high vaginal swab would therefore not make him the culprit of her murder.
12. The evidence presented against the accused was of his relationship with Margaret Wangeci Nguhiu. This is suspicion of the weakest kind. The Court of Appeal in the case of *Sawe vs Republic* [2003] KLR 354 held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt, which must be proved by evidence beyond a reasonable doubt.
13. Based on the evidence, I find that the prosecution has not proven both charges of murder. As a result, I acquit the accused and release him unless he is detained for another lawful reason.

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

KIARIE WAWERU KIARIE

JUDGE

