



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VOI**

**HCCR REVISION NO. E021 OF 2021**

**REPUBLIC.....APPLICANT**

**VERSUS**

**1. STEPHEN MWALINDINDI**

**2. PHILIP MWANDEZI**

**3. GRANTON TOLE MAGHANGA**

**4. DAVIS MANG'OLA MWANDEZI**

**5. STEPHEN KAPOLA TOLE**

**6. KENNEDY TOLE.....RESPONDENTS**

**RULING**

1. The Director of Public Prosecution vide letter dated 14/01/2021 wrote to the court pursuant to section 388(2) CPC requesting for the ruling dated 12/01/2021 in Inquest Case No. 1 of 2018 (in the matter of **Mzee Willington Mwadisha** (deceased)) to be set aside and the Inquest Case NO. 1 of 2018 to be re-opened for further investigations in Order for parties to have Justice.

2. The Application was premised on grounds that the suspects in inquest proceedings were never afforded the right to be heard before a recommendation was made by the trial court for the suspects to be charged with murder. Nevertheless, the applicant avers that indeed the suspects testified in the Inquest proceedings, but their testimony was not captured in the ruling by the trial court and that the trial court did not give the reasons why it did not believe the account of the suspects, which is contrary to Section 169(1) of the Criminal Procedure Code.

3. The application for revision is not opposed by the Respondents.

**The Determination**

4. I have carefully considered the Applicant's application.

5. On what should be contained in a judgment, Section 169(1) of the Criminal Procedure Code provides:

*169(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by or under the direction of the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.*

*(2) In the case of a conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced.*

*(3) In the case of an acquittal, the judgment shall state the offence of which the accused person is acquitted, and shall direct that he be set at liberty.*

6. I have had the opportunity to go through the ruling of the trial court regarding the issues raised by the Applicant and have found the same to be partially credible.

7. In the inquest proceedings, it is evident that the suspects were all put on their defence and all of them gave sworn testimony and were thereafter cross-examined by the learned prosecutor. However, in the trial magistrate's ruling, it is indicated as follows:

***“the prosecution closed the said inquest hearing and counsel for the suspects opted not to submit on the said proceedings.”***

8. It is evident that the trial court did not capture the suspects' defence in the ruling dated 12/1/2021 and consequently, it would appear that the recommendation by the trial magistrate was arrived at without considering the suspects' defence, thereby denying the suspects the right to be heard.

9. Since there is no objection from the Respondents, this Court has a duty to allow the applicant's application dated 14/01/2021. For this reason, I make the following orders: -

***a) That the ruling in respect of Inquest No. 1 of 2018 inquiring into the cause of the death of one Mzee WILLINGTON MWADISHA is hereby set aside and the Inquest No. 1 of 2018 is hereby re-opened for fresh proceedings and determination before a different magistrate other than Hon. E. M. Nyakundi.***

Orders accordingly.

**Dated, Signed and Delivered at Mombasa this 23<sup>rd</sup> day of August, 2021.**

**E. K. OGOLA**

**JUDGE**