

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
(CRIMINAL DIVISION)

CRIMINAL REVISION NUMBER 4 OF 2016

REPUBLICPROSECUTOR

VERSUS

FRANCIS MURIUKI WANDETO.....DECEASED

RULING

This is a revision pursuant to the provisions of Section 362 of the Criminal Procedure Code. The power of the High Court under the said section is to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

On 27th October 2014, D. N. Musyoka A.g P.M, Karatina ordered that an inquest be conducted to establish the cause of death of a one **Fancis Muriuki Wandeto**-deceased. Pursuant thereto the inquest being number **12** of **2014** commenced on 9th December 2014 and four witnesses testified on the said date. Further hearing proceeded on 29th June 2015 and two witnesses testified and further hearing was scheduled for 3rd August 2015 but on the said date the prosecutor informed the court that he was not able to get in touch with the investigating officer and sought for an adjournment. The matter was adjourned to 12th October 2015.

On 12th October 2015 the prosecutor informed the court that the Doctor and the motor vehicle inspector were not bonded and the case was adjourned to 16th November 2015 but on the said date the prosecutor had no witnesses and applied for a last adjournment. The court granted a last adjournment to 12th January 2016 and on the said date the seventh witness testified and the prosecutor applied for an adjournment giving the reason that a Dr. Muchiri who was to testify had not worked with Doctor Ndirangu. Counsel appearing for the driver Jacob Koome opposed the application for adjournment. The court in a brief ruling disallowed the application for adjournment and the prosecutor closed his case.

When the learned Magistrate retired to write the verdict, she noted that 6 witnesses had testified (*even though from the record they are 7 and not 6*) and that the remaining witness who was the investigating officer and whose evidence would probably include sketch plans for the accident scene was a vital witness without which the magistrate could not come up with a fair and just ruling. The magistrate observed that the inquest was closed pre-maturely and since her court was *functus officio*, this necessitated a revision by the high court, hence the file was forwarded to the high court to *examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings* in accordance with the above cited provision.

An inquest is a judicial inquiry in common law jurisdictions, particularly held to determine the cause of a person's death. It is an inquiry to examine witnesses on oath who can give any relevant evidence or information in order to establish who the deceased was, and how, when and where the deceased came by their death. The inquest is an inquiry to establish material facts. It is usually the "how" question that is the main focus of the inquest. It is a fact finding process. It does not deal with issues of blame or responsibility for the death or issues of criminal or civil liability.

It is very much in the public interest to have a court decision after an inquest that establishes the material

facts and safeguards the legal rights of the deceased's family and other interested persons including the state. Such a necessary determination can only be arrived at after hearing all the relevant witnesses. For this reason, I find that the inquest was closed pre-maturely and in the process crucial evidence was locked out which in my view is inappropriate. Such a scenario makes it impossible for the court hearing the inquest to arrive at a fair determination in addressing the questions before it. The end result will obviously be a miscarriage of justice which is not appropriate. I there find that it was in appropriate for the inquest to close pre-maturely.

In view of the foregoing I find that it was not be in the interests of justice and public good to close the inquest before all the crucial evidence was tendered before the court to facilitate a just determination. For this reason, I make the following orders:-

1. That the proceedings in respect of inquest number **12** of **2014** inquiring into the cause of the death of a one *Francis Muriuki Wandeto* be re-opened and that the same do proceed for further hearing and final determination.
2. That the remaining witness or witnesses be availed to give evidence.

Orders accordingly

Dated at Nyeri this 26th day of February 2016.

John M. Mativo

Judge
