



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

CRIMINAL REVISION NO. 132 OF 2014

(IN THE MATTER OF SAMUEL MATHENGE WAMBUGU (DECEASED))

REPUBLIC.....APPLICANT

RULING

By a letter dated 18th March, 2014, the police officer in charge of Nanyuki police station wrote to the Chief Magistrate, Nanyuki law courts notifying her of the sudden death of one Samuel Mathenge Wambugu whose body was recovered off the road leading to Laikipia airbase military camp on 1st March, 2014. According to the police officer, the body had bruises on the lower left segment the deceased's ribs.

In writing to the learned magistrate, the officer cited and invoked, correctly in my view, **section 386** of the **Criminal Procedure Code (Cap 75)** of which the pertinent parts as far as this application is concerned says:-

386. Police to inquire and report on suicide, etc.

(1) The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving information that a person—

(a) has committed suicide;

(b) has been killed by another or by an accident;

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or

(d) is missing and believed to be dead;

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the Minister, shall proceed to the place where the body of the deceased person is, and shall there make an investigation and draw up a report on the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), the marks appear to have been inflicted; and the report shall in the case of paragraph (a), (b) or (c); be forwarded forthwith to the nearest magistrate empowered to hold inquests; and in the case of paragraph(d) shall immediately send to the Director of Public Prosecutions through the

Commissioner of Police as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.

The deceased death's must have been occasioned in either of the circumstances described in **section 386(1)(a)(b) or (c)** and this must have informed the police officer's decision to write to the magistrate as he did.

In a letter dated 25th September, 2014 responding to the officer's information on the deceased's death, the learned magistrate wrote:-

"It's apparent that the deceased was murdered. The person or persons who committed the heinous act are unknown.

Its (sic) therefore ordered that this file be forthwith closed."

The learned magistrate's response was that brief.

The Director of Public Prosecution was not satisfied with the magistrate's decision and in a letter dated 23rd October, 2014, addressed to the Deputy Registrar, High Court at Nyeri, he sought for revision of this decision on the following grounds:-

(1) The learned magistrate simply perused the police file and made a ruling without hearing evidence in a public inquest

(2) That, deceased (Samuel Mathenge Wambugu) died suddenly and in circumstances that ate (sic) suspected to be homicide.

(3) That, in the circumstances, inquest in such a matter ought to be transparent and thorough, and, as such, calling for a public inquest.

(4) That, a desk top inquiry, as done by the learned magistrate, only deepen suspicious, anxieties and tension in the minds of the general public, friends and relatives of the deceased due to lack of openness and public participation."

With that, the Director of Public Prosecutions asked this court to vary the decision of the learned magistrate and order for a full public inquest.

A reading of **section 386 (1)** together with **section 387 (1)** of the **Criminal Procedure Code** shows that where information is given to a magistrate regarding a deceased person's death either as result of suicide, or as a result of accident or has been killed by somebody else or the death has been occasioned by an offence committed by some other person, the magistrate has the discretion to conduct an inquest into the cause of the deceased's death; it is necessary to reproduce here **section 387 (1)** verbatim for better understanding.

387. Inquiry by magistrate into cause of death

(1) When a person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in section 386(1) a magistrate so empowered may, but shall in the case of a missing person believed to be dead, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. (emphasis mine).

This provision of the law vests the magistrate with discretion to take either of the two directions-to

conduct an inquiry or to decline; however, whenever a decision is influenced by the exercise of discretion as was the case in the decision in question, it must be demonstrated that the discretion was exercised judiciously and not capriciously. As it were, exercise of discretion is not a wild card at the disposal of judicial officer to be used at his or her whims; to the contrary, it is only a tool that the law makes available in certain instances for fair administration of justice.

In the information given to the learned magistrate, the police recommended a public inquest to be conducted into the death of the deceased; their recommendation was no doubt based on their investigations the outcome of which must have influenced the learned magistrate to conclude that the deceased was murdered.

The investigation report intimated that prior to the deceased's death, there existed differences between the deceased and some of his workmates one of whom appears to have been aware of the circumstances under which the deceased died.

In these circumstances, it would appear to me that the learned magistrate was hasty in concluding, without conducting an inquest, that the deceased was murdered by unknown persons. I would conclude that in coming to this decision which, in the circumstances, appears premature, the learned magistrate misdirected herself in exercise of her discretion and arrived at a wrong decision.

For the foregoing reasons, and in exercise of the powers conferred upon this court under **section 364** of the **Criminal Procedure Code** I reverse the decision and or the order of the learned magistrate made on 25th September, 2014 and in its place direct that a public inquest be conducted into the death of Samuel Mathenge Wambugu pursuant to the relevant provisions of **section 386** of the **Criminal Procedure Code** by a magistrate other the one rejected the inquest.

Dated, signed and delivered on 20th April, 2015

Ngaah Jairus

JUDGE