



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 82 of 2009**

**JOYCE NELLY OCHOGO OKAL**

(Suing as administrator of the estate and  
on behalf of the dependants of

**GEORGE OTIENO OKAL ..... PLAINTIFF  
VERSUS**

**1. THE ATTORNEY GENERAL**

**2. THE PERMANENT SECRETARY**

**3. THE COMMISSIONER OF POLICE ..... DEFENDANTS**

**RULING**

1. The Plaintiff is the widow of one **GEORGE OTIENO OKAL** (hereinafter called the Deceased). The Deceased died on 27<sup>th</sup> July 1996 when the police helicopter he was piloting crashed at Marsabit in Eastern Province. He was then a police officer. The Plaintiff's suit is for damages arising out of the Deceased's death. She blames the Defendants for the accident. Particulars of their alleged negligence is pleaded. The suit awaits hearing and disposal.

2. On 14<sup>th</sup> May 2010 the Plaintiff applied by **chamber summons of the same date**. She seeks two main orders –

(i) That the Defendants “**do avail to the Plaintiff the Report of the Commission of Inquiry on the air crash, set up by the former President in July 1996**”.

(ii) That the 3<sup>rd</sup> Defendant “**do avail before the court the Report on the air crash compiled by the Police**”.

3. The grounds for the application are –

(a) That the Plaintiff has requested the Defendants to avail to her “**the Report of the Commission of Inquiry several times**” but that they have declined to do so.

(b) That the Plaintiff has been “**subjected to much agony and loss as she is unable to pursue compensation for the death of her husband**”.

4. The application is supported by the Plaintiff's affidavit annexed thereto. To this affidavit a number of documents are exhibited.

5. The Defendants filed grounds of opposition to the application. The points taken are that the application is incompetent and that the orders sought do not lie in law. No replying affidavit was filed.
6. The application was canvassed by way of written submissions. Those of the Plaintiff were filed on 23<sup>rd</sup> June 2010. The Defendants' submissions were filed on 5<sup>th</sup> July 2010. I have considered those submissions. No authorities were cited.
7. A commission of inquiry such as is alluded to in the application would have been established by the President of the Republic of Kenya under the **Commissions of Inquiry Act, Cap 102. Section 18** of that Act provides as follows –

**“Every commission, and every revocation of commission, under this Act shall be published in the Gazette, and shall take effect, without prejudice to the provisions of subsection (2) of section 4, from the date of publication”.**

**Section 4(2)** makes provision with regard to amending commissions, and whether or not the amended commission should begin the inquiry afresh.

8. The only evidence that the Plaintiff has provided of the establishment of the commission of inquiry to which she has alluded is a newspaper cutting which reported in part –

**“He (the President) ordered the setting up of a commission of inquiry to probe the crash...”**

The necessary Gazette notice (if there was one) establishing the commission is not annexed and none is referred to. There is no report, newspaper or otherwise, of the commission (if one was established) handing over its report to the President. There is simply no sufficient credible evidence of the establishment of such commission of inquiry or the existence of any report by such commission. The court cannot grant an order for the production of a report of a commission of inquiry whose existence is in doubt.

9. With regard to the report of an (apparently internal) investigation by the police, again the only evidence that the Plaintiff has provided of the existence of such investigation is a newspaper cutting. There is no credible evidence provided of the existence of such internal investigation (though in all likelihood there was one) or its report.

10. In the event, the Plaintiff's application is without merit. The same is dismissed, but with costs in the cause. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2013**