

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CRIMINAL APPLICATION. 904 OF 2002

AKINYI ROSELINE OMOLLO-MUSAU

DR. JACOB KIBOR

DIKCKSON M. MWENZE.....APPLICANTS

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Following a road traffic accident that took place on 10th August, 2001 at Kimende along Nairobi-Naivasha road the Republic instituted inquest No.3 of 2002 before the Senior Resident Magistrate's Court at Limuru.

The said inquest fell under the provisions of section 386 of the Criminal Procedure Code. Considering the nature of inquest proceedings one Akinyi Roseline Omollo Musau and two others have moved this court for orders to restrain the lower court from hearing, determining or in any other manner whatsoever dealing with the said inquest; to declare the said proceedings irregular an abuse of the court process and subversion of justice; that the same should be terminated and orders be given in the interest of justice.

The notice of motion which is supported by an affidavit sworn by Akinyi Roseline Omollo-Musau sets out the grounds and reasons upon which fear is expressed that the inquest is likely to lead to a miscarriage of justice. The state oppose the application.

I have perused the lower court record alongside the present application. I have also heard both counsel herein.

There is a very serious allegation that the police have conducted poor investigations in the grisly accident where several lives were lost. The relatives of the deceased have not been called to testify and all indications are that the court is likely to hold that the driver of the car not the bus is to blame for the accident.

The sketch plans, the distances and positions of the vehicles involved tend to show, prima facie, that the bus driver could have been on the wrong. An inquest which by its name is inquisitorial, may not, with respect, determine the contentious issues herein, especially where the participation of the aggrieved parties is limited.

Because of the orders that I am about to make in this matter,. I do not wish to say more on this matter save to observe that the inquest appears flawed. I must in the interests of justice order its immediate termination. Having done so, I direct that the Director of public prosecutions shall cause fresh investigations to be instituted with particular emphasis on identifying the right witnesses to call and thereafter consider filing appropriate traffic proceedings against the offending parties.

As this is an old matter, expeditious but quality investigations are called for and both counsel should make it their duty to ensure that this is done.

Order accordingly.

Dated and delivered at Nairobi this 24th day of March, 2003

MBOGHOLI MSAGHA

JUDGE