



**Republic v Muchori (Criminal Revision E010 of 2025)
[2025] KEHC 8000 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E010 OF 2025**

DR KAVEDZA, J

JUNE 9, 2025

BETWEEN

REPUBLIC APPLICANT

AND

EDWARD ABRAHAM KURIA MUCHORI RESPONDENT

RULING

1. Following the death of one Esther Muindi on 27th August 2020, an inquest was conducted by Kibera Chief Magistrates Court Inquest No E006 of 2022. The inquest court determined that the deceased died as a result of being hit by a motor vehicle Registration No KCG 250P.
2. In the ruling in the Inquest Court, the learned Magistrate found that the driver of the motor vehicle was not criminally culpable for the accident. The file was closed without any further action.
3. The Applicant, aggrieved by the ruling delivered on 14th November 2024 in Kibera CM's Inquest No. 006 of 2022, filed the present application under sections 362 and 364 of the *Criminal Procedure Code*. The Applicant seeks a revision of the orders of the trial court i.e. that the Court calls for and examines the record of proceedings to satisfy itself as to the legality, correctness, or propriety of the lower court's decision. Additionally, the Applicant prays for the ruling to be reviewed, varied, or reversed, and substituted with a finding that sufficient evidence exists to warrant charging the Respondent with the offence of causing death by dangerous driving contrary to section 46 of the *Traffic Act*.
4. The application is supported by an affidavit dated 8th January 2025 sworn by Opundo James Omondi learned prosecution counsel. It is deponed that the Learned Magistrate failed to evaluate the evidence objectively and exonerated the Respondent, despite overwhelming evidence showing that the deceased was fatally injured by a vehicle driven at high speed in a busy area. The Respondent was at all material times the suspect in the proceedings, having been identified as the driver of the vehicle that knocked down the deceased, Esther Muindi.



5. The Applicant further contends that the magistrate disregarded critical eyewitness testimony, particularly that of PW1, who observed the Respondent driving at high speed moments before the collision. The Applicant also argues that the magistrate failed to consider other material evidence, including the sketch plan and post-mortem report, which indicated that the accident occurred in a straight, visible stretch of road within a shopping centre, and that the vehicle impact was severe. Notably, there were no skid marks, suggesting the Respondent failed to brake.
6. It is argued that the Learned Magistrate misapplied the law by attributing fault to the deceased for not using a designated crossing, effectively introducing the concept of contributory negligence, which is not a defence to a charge under section 46 of the [Traffic Act](#). The Applicant avers that such reasoning amounts to an error of law and an overreach of the court's inquest jurisdiction, which is limited to determining whether anyone should be charged, not establishing criminal liability.
7. The Applicant urges the Court to exercise its revisionary powers, set aside the impugned ruling, and direct that the Respondent be charged before a competent court.
8. The application was canvassed by written submissions which have been duly considered and there is no need to rehash them.
9. These are revision proceedings. The applicants have invoked section 362 of the [Criminal Procedure Code](#), which empowers the High Court to recall any criminal proceedings conducted by any subordinate court, for the purpose of satisfying itself as to the correctness, legality or propriety of any finding or order, and to satisfy itself as to the regularity of the proceedings.
10. The proceedings conducted before the trial court were criminal proceedings. Firstly, because they are provided for under a law which governs criminal proceedings, and secondly, as the outcome determined the criminal liability of the persons named in the final order. The magistrates who conducted the proceedings preside over a subordinate court, within the meaning of Article 169 of the [Constitution](#). I, therefore, have jurisdiction to examine the proceedings in Kibera CMC Inquest No. E006 of 2020.
11. The purpose of conduct of inquest proceedings is to primarily determine the cause of death, particularly where it is suspected that the same was by the hand of another. Where the persons responsible for the death are known, there would be no need to conduct an inquiry, the suspects ought to be arrested and arraigned to answer to a charge of either murder or manslaughter, or any other related offence. The inquest would be conducted where there is doubt or where the causation is clouded in some mystery, for the court to unravel the mystery. Where there is no mystery, or the circumstances are fairly clear, then the applicant need not ask the court to conduct an inquest.
12. In this case, the police conducted investigations, and compiled a report which they presented to the Director of Public Prosecutions. The Director of Public Prosecutions upon reviewing the file recommended that a public inquest be conducted.
13. During the inquest proceedings, the trial court heard the evidence of five (5) witnesses. PW1 Mary Nthenya Kimeu testified that on 27th August 2020 at around 12:40 pm, she and the deceased were crossing the road near Lenana School at Karen Shopping Centre. She crossed first and waited on the other side. She then saw a vehicle speeding towards Karen hit the deceased as she was crossing the second lane. The impact flung the deceased into the air and onto the vehicle's bonnet before she landed by the roadside. PW1 ran to her aid and found her unconscious, facing upwards and foaming at the mouth. An ambulance took her to the Military Hospital. PW1 was later informed by a police officer that the deceased had died, and her body was moved to the City Mortuary.



14. Anne Muindi PW2, the deceased's mother, confirmed that she later identified the body at the mortuary during the post-mortem. The deceased was 21 years old at the time.
15. Edward Abraham Kuria Muchoni PW3, the driver of the Mercedes Benz KCG 250P, stated that a woman suddenly jumped in front of his vehicle. He swerved left, she jumped left; he swerved right, and she jumped right, leading to a collision on the vehicle's front left side. He stopped, assisted at the scene, and went to the hospital, where he was informed she had died.
16. PW4, a motor vehicle inspector, confirmed the vehicle had no pre-accident defects but showed damage on the front grill and bonnet.
17. PW5, a pathologist, gave the cause of death as multiple injuries due to blunt force trauma consistent with a road accident.
18. PW6 and PW7, both police officers, confirmed the accident occurred on a straight stretch of road not designated for pedestrian crossing. A sketch plan was produced showing the point of impact between two lanes facing Karen direction.
19. Upon evaluating the evidence as a whole, the trial court found that the deceased, Esther Muindi, was the proximate cause of the accident. The court concluded that she crossed the road at an undesignated point, contrary to the expected conduct of a pedestrian, and was subsequently struck by motor vehicle registration number KCG 250P, leading to her death.
20. The applicant argued that the doctrine of causation is not expressly provided for in the *Traffic Act*. However, causation is implicit in the statutory provisions under sections 46 and 47 of the Act. Applying the principle of "but for" causation, had the deceased not crossed the road at an undesignated point, she would not have been exposed to the risk that resulted in her death. This establishes a clear link between her actions and the unfortunate outcome.
21. Further, section 119 of the *Evidence Act* permits the court to draw presumptions of fact. On this basis, the driver of KCG 250P cannot be said to have acted negligently or unlawfully. There was no evidence suggesting that he was speeding, distracted, or in violation of the *Traffic Act* or Highway Code. The general test for safe driving is whether a driver maintained sufficient distance and reaction time to respond to road conditions or hazards ahead. No evidence was led to show that the driver failed this test.
22. The court is satisfied that the driver conducted himself responsibly. The evidence indicates that he was driving at a reasonable speed, did not attempt to flee the scene, and took prompt action to report the accident to the police. These actions are consistent with the conduct expected of a careful and law-abiding driver under the law.
23. On the procedural aspect, the inquest proceedings were conducted within the jurisdiction and authority of the trial court under sections 386 and 387 of the *Criminal Procedure Code*. There is nothing on record to suggest any irregularity or illegality in the conduct of the inquest as would warrant revision under section 362 of the *Criminal Procedure Code*.
24. The upshot of the above analysis is that the application is found to be lacking in merit and is accordingly dismissed in its entirety.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF JUNE 2025

D. KAVEDZA



JUDGE

In the presence of:

Ms. Kuria h/b for Awour of the victims

Mutuma for the Applicant

Tonny Court Assistant

