



**Kiarie v Republic (Criminal Revision E168 of 2024)  
[2025] KEHC 10233 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10233 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E168 OF 2024**

**A MSHILA, J  
JULY 11, 2025**

**BETWEEN**

**KENNEDY KIARIE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before court is an application by way of Notice of Motion dated 4<sup>th</sup> November, 2024 and brought under Article 50 and 47 of the Constitution and Section 362 of the Criminal Procedure Code. The Applicant sought for orders:-
  - a. That this Honourable Court be pleased to call for peruse and review the findings and/or orders contained in the ruling dated 15<sup>th</sup> August, 2024, issued in *Kiambu Magistrate's Inquest Case No. E002 of 2018*.
  - b. That this Honourable Court set aside the orders made by the Honourable Magistrate and recommend the following actions;
    - i. Further open and impartial police investigations into the matter and/or
    - ii. Any other action that this Honourable Court may deem fit and just in the circumstances.
  - c. That pending the hearing and determination of this application, there be a stay of the orders issued by the Honourable Magistrate on 15<sup>th</sup> August, 2024.
2. The application is premised on the grounds that the Hon. Magistrate made findings that went beyond the expectations of an inquest hence if allowed to stand would be prejudicial to the applicant.



3. Kennedy Kiarie in his affidavit in support deposed that he filed this application after being aggrieved by the ruling delivered on 15<sup>th</sup> August, 2024 in *Kiambu Chief Magistrate's Inquest No. E002 of 2018*. The Hon. Magistrate considered all the evidence presented and went beyond the scope of the inquest and included speculation on matters not substantiated by the evidence before the court. The court was urged to review the orders of 15<sup>th</sup> August, 2024 and issue new orders.
4. The parties were directed to canvass the application by way of written submissions.

### **Applicants' Submissions**

5. The Applicant submits that the High Court has powers to call for records of the subordinate courts and examine their legality, correctness, regularity and propriety. Reliance was placed in the case of *Joseph Mbuvi Ndavi v Republic* (2019) eKLR. The court was said to have jurisdiction to correct manifest irregularities and illegalities. The Applicant submits that the findings of the Hon. Magistrate is full of irregularities and illegalities as such it is only fair that this Court should correct them. There is no provision for appeal after the orders made in an inquest. The Magistrate was said to have acted arbitrarily and contrary to the law by failing to comply with the provisions of the law governing inquests. Reliance was placed in the case of In *Dennis Rosana Manyibe & 4 others v Office of Director of Public Prosecution & 2 others*, Criminal Revision number E001 of 2022 Kakamega. Further, the Magistrate was accused of acting outside the jurisdiction of an inquest court as she evaluated the evidence and made findings thereon which was beyond her scope. Lastly, it was submitted that the findings of the Magistrate are binding and prejudicial to the Applicant as they deny him his right to a fair hearing.

### **Issues For Determination**

6. Having considered the application by the Applicant and submissions, the main issue arising for determination is whether the Applicant is deserving of the order for injunction sought.

### **Analysis**

7. The Applicant herein has approached this court due to its revisionary power over the Subordinate Courts; The lower court heard an inquest into the death of Sarah Wambui Mungai *vide Inquest Case No. 2 of 2018* who died on the night of the 6<sup>th</sup> day of February, 2016. The prosecution called 17 witnesses to shed light into the circumstances leading to the death of the deceased.
8. In the end, the court made its finding and recommended that the Applicant herein should stand trial for his actions *vide* its ruling dated 15<sup>th</sup> August, 2024.
9. It is this ruling that has aggrieved the Applicant causing him to file this revision. According to the Applicant, he is dissatisfied with the lower court's ruling as the Hon. Magistrate went beyond the expectations of an inquest. The findings were not supported by any evidence and that the Magistrate disagreed with the post-mortem report with regard to the cause of death which was not an issue in the inquest.
10. He contended that if the findings of the court are allowed to stand, the same would be binding and prejudicial to him.
11. This court has perused the finding of the lower court dated 15<sup>th</sup> August, 2024 and is satisfied that the Magistrate's Court acted beyond its scope as the court's mandate was limited to recording its opinion and sending the same to the Director of Public Prosecutions if it was of the opinion that an offence has been committed.



12. The lower court in its finding, other than making its recommendation, the court went further to analyse the evidence, the post-mortem report, the unlikely defences by the Applicant and the possible charges as against the Applicant which according to this Court is found to be prejudicial to the Applicant herein in the event he were to be charged with any offence.

### **Findings and Determination**

13. For the forgoing reasons this Court makes the following findings and determinations;
- i. The application is found to be partially with merit;
  - ii. The finding of the lower court that the Applicant should face trial is hereby upheld.
  - iii. This court will only expunge the paragraphs of the findings that are found to be prejudicial to the Applicant being paragraphs 49, 50, 51, 52 and 53.

Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

N/A for the Applicant

Gacharia - for the Respondent

