



Ginono & another v Republic; Ndung'u & another (Interested Parties) (Criminal Revision E022 of 2025) [2025] KEHC 12677 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E022 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025**

**IN THE MATTER OF THE INQUEST INTO THE DEATH
OF THE LATE DANIEL NCHAGWA BURERE (DECEASED)
AND IN THE MATTER OF AN APPLICATION FOR REVISION
OF THE RULING OF INQUEST OF THE RUIRU CHIEF
MAGISTRATE'S COURT IN INQUEST CASE NO E002 OF 2024**

AND

**IN THE MATTER OF AN APPLICATION FOR REVISION OF THE ORDER OF INQUEST
OF THE RUIRU CHIEF MAGISTRATE'S COURT IN INQUEST CASE NO E002 OF 2024**

BETWEEN

THOMAS BURURE GINONO 1ST APPLICANT

JAMES GINONO BURURE 2ND APPLICANT

AND

REPUBLIC RESPONDENT

AND

DAVID NJOROGE NDUNG'U INTERESTED PARTY

SAMSON WAWERU INTERESTED PARTY

RULING

Brief Facts

1. The application for determination dated 25th March 2025 seeks for orders of revision of the ruling of the learned magistrate for an inquest in Ruiru Chief Magistrate Inquest No. E002 of 2024; Republic vs Daniel Nchagwa Burure and calling of the record in the said matter for examination for purposes of



satisfying itself as to the correctness, legality and propriety of the ruling and order dated 24th January 2024. The applicants further seek for the ruling and orders in the said inquest to be set aside and discharged and the court issue orders that the driver of motor vehicle registration number KDK 049S, being the 2nd interested party, be charged accordingly for causing the death of Daniel Nchagwa Burure (the deceased). In the alternative, the applicants seek for the orders for an inquest as to the death of Daniel Nchagwa Burure be conducted de novo.

2. The 2nd applicant avers that he is an elder brother of the deceased and the 1st applicant is the father to the deceased. The applicants state that the deceased was missing for a period of time around February 2023 and they sought out to look for him. The 2nd applicant states that he received an anonymous phone call from a stranger, using a private number, who informed him that his brother's body was in a mortuary at Mama Lucy Kibaki Hospital in Kayole. The stranger further said that the body had been there for almost one month.
3. The 2nd applicant states that upon arriving at Mama Lucy Hospital he was informed that the deceased was brought to the morgue by one policeman and three gentlemen on the night of 26th January 2023. The deceased did not have any identification on him but he noted that at the morgue registry all the deceased's names were recorded correctly together with his identity card number which were verbally provided for by the policeman. The body was brought by strangers who identified themselves as the tout of the suit motor vehicle registration number KDK 049S, belonging to Super Metro Sacco, and one policeman who started claiming the body stating that it had overstayed at the morgue. The morgue staffers refused the request stating that the body needed to stay at the morgue for at least three months before it could be released to the police and further they did not have a court order. The 2nd applicant states that he was further informed that the deceased was in the company of a friend one Mr. Edwin on the fateful day when he was knocked down and he had also been looking for the deceased from the day of the accident.
4. The 2nd applicant avers that he procured a police abstract and enquired why the deceased had been taken to Mama Lucy Hospital despite having an officer present at the scene of the accident and the accident having occurred at Githurai.
5. Upon deliberations by the family, the 2nd applicant states that they instituted a civil suit against the interested parties vide Ruiru MCOMMSU/E052/2024. On 13th March 2025, the 2nd applicant states that he was informed that the advocates for the defendants informed the court that they intend to file inquest proceedings as part of their evidence which they did vide Ruiru Inquest No. E002 of 2024. The 2nd applicant avers that the interested parties filed the inquest without the knowledge of the family.
6. The 2nd applicant disputes the inquest findings on the premise that the trial magistrate went too far over and beyond what was required of him/her and amount to findings of guilt on the part of the deceased and acquitted the suspect which is not within the province of an inquest trial; the inquest findings will be admitted as evidence in Ruiru MCOMSSU E052 of 2024 to the detriment of the plaintiffs as it apportions blame to the deceased and acquits the suspect; the inquest court overstepped its mandate of issuing an opinion by imputing liability and blameworthiness; the learned magistrate was biased by only relying on the police sketches provided by the state and did not satisfy as to the correctness of the allegations in the police sketches before making its findings; the learned magistrate did not venture into investigating the cause of death of the deceased by calling witnesses and the cause of death was known so the inquest was superfluous.
7. The respondent filed grounds of opposition dated 10th July 2025 and states that it is not enough to merely state that the rights of the applicants have been violated and infringed without specifically stating the nature of violations. The respondent argues that Article 157(6)(a) of *the Constitution*



mandates the Director of Public Prosecutions to institute and undertake criminal proceedings against any person before the court, other than a court martial, in respect of any offence alleged to have been committed. Further the Director of Public Prosecutions does not require the consent of any person or authority for commencement of criminal proceedings and in exercise of his powers or functions, shall not be under the direct control of any person or authority.

8. The respondent states that the instant application is premature as the Director of Public Prosecutions has not made a decision whether or not to prefer any charges if any. Further, the applicants have not demonstrated any issues for the court to determine.
9. Parties put in written submissions however the respondent elected not to put in written submissions.

The Applicants' Submissions

10. The applicants refer to Article 165(6) & (7) of *the Constitution* and Section 362 of the Criminal Procedure Code and the case of Andrew Kibet Cheruiyot & Another vs Medical Practitioners and Dentists Board & 2 Others Petition No. 260 of 2013 and submits that the instant court is clothed with the requisite jurisdiction to exercise supervisory jurisdiction over subordinate courts.
11. The applicants submit that an inquest is not a criminal trial but an inquiry into the cause of death in the circumstances listed under Sections 368(1) and 387(1) of the Criminal Procedure Code. The applicants further submit that a magistrate exercising inquest jurisdiction must be careful not to make inferences of guilt or conclusive findings on the commission of an offence that would prejudice a criminal trial should the suspect be eventually charged. The mandate of a magistrate holding an inquest is to determine whether in his or her opinion an offence has been disclosed by a known person and if so to issue summons or warrants of arrest. The object of the power is to ensure that the person suspected of having committed the offence is secured to attend and answer the charge. To support their contentions, the applicants refer to the case of Kemei vs Director of Public Prosecutions & Another (Criminal Appeal 52 of 2020) [2022] KEHC 12153 (KLR) (27 July 2022).
12. The applicants submit that at the conclusion of the inquest, the inquest court is required to make specific orders. In the instant inquest, the court found that the driver of motor vehicle registration number KDK 049S was not to blame for the accident because pedestrians are not allowed to cross the road where the deceased crossed and was hit. There was no recommendation, but the court proceeded to state that no one will be found liable for the death of the deceased.
13. The applicants argue that the law requires a magistrate to hold an inquiry into the cause of death which essentially means to investigate facts and circumstances causing the death. Thus the learned magistrate ought not to have apportioned liability in the instant case. Furthermore, the learned magistrate only relied on the police file, the police statements and sketch plans and concluded that the deceased was the author of his own misfortune having crossed the road in lieu of using the footbridge.
14. The applicants further argue that the language used by the magistrate was not even investigatory. Relying on the cases of Waweru vs Republic (Criminal Revision E187 of 2023) [2024] KEHC 2410 (KLR) (6 March 2024) (Ruling) and R (On application of Maughan vs Her Majesty's Senior Coroner for Oxfordshire) 2020 UKSC 46, the applicants argue that the inquest or investigation puts together material that advises or informs the prosecution when conducting the subsequent criminal case. The learned magistrate did not invite the opportunity to weight the evidence of both the prosecution and the suspect and his witnesses as only the police file was relied upon departing from the holding in Kemei vs Director of Public Prosecutions & Another (Criminal Appeal 52 of 2020) [2022] KEHC 12153 (KLR) (27 July 2022).



The Interested Parties' Submissions

15. The interested parties submit that an inquiry is a fact finding exercise, the fact being the cause of death is by way of a road traffic accident. The other aspect of an inquest is the investigation of the possibility of a criminal offence and for the court to make the necessary recommendations to the DPP. The interested parties submit that the opinion of a magistrate during an inquest particularly as to the cause and circumstances of death is neither exculpatory nor inculpatory evidence in the context of any future or ongoing criminal trial. Rather it serves a preliminary and investigative purpose without determining culpability.
16. The interested parties argue that the applicants seek to have them estopped from using the inquest proceedings in the civil case where the deceased under the tort of negligence is seeking for compensation under the *Fatal Accidents Act* and in their own concession admit the same shall prejudice their case. The interested parties argue that the same is self-defeating and contrary to the object of revision and constitutes an abuse of the court process and judicial time. The applicants are approbating and reprobating with the aim of manipulating the parallel civil suit as opposed to achieving justice.
17. The interested parties submit that the standard of proof in civil and criminal proceedings differs significantly and neither a criminal conviction nor the findings of an inquest foreclose or negate the civil court's duty to independently evaluate evidence and make its own determination. To support their contentions, the interested parties rely on the case of Charles Munyeki Kimiti vs Joel Mwenda & 3 Others [2010] eKLR. The interested parties further submit that it is the DPP who has the mandate to prosecute even without a recommendation of the trial magistrate.

The Law

18. This court is empowered by Article 165(6) of *the Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

19. Section 362 of the Criminal Procedure Code provides:-

The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

20. Section 364(1) of the Criminal Procedure Code provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may"-

- a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;
- b. In the case of any other order other than an order of acquittal alter or reverse the order.



- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.
21. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-
- “In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases, whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”
22. Similarly Nyakundi J in Prosecutor vs Stephen Lesinko [2018] eKLR outlined the principles which will guide a court when examining the issues pertaining to Section 362 of the Criminal Procedure Code as follows:-
- a. Where the decision is grossly erroneous;
 - b. Where there is no compliance with the provisions of the law;
 - c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
 - d. Where the material evidence on the parties is not considered; and
 - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
23. The above provisions convey jurisdiction to this court to exercise revisionary powers in respect of orders of the subordinate courts. This court is therefore possessed of the requisite jurisdiction to hear and determine this application.
24. Section 362 of the Criminal Procedure Code addresses cases for revision where the magistrate has made a mistake, irregularity or illegality. The High Court has power to correct such misdoings by giving the appropriate orders in an application for revision.
25. I am guided by the provisions of Section 362 and 364 of the Criminal Procedure Code in dealing with this application whereas the applicants are obligated to demonstrate that the magistrate conducting the inquest committed any of the outlined in Section 362.
26. The magistrate in the inquest perused the witness statement of the 1st interested party, police statement and sketch plans. The duty of the magistrate was to evaluate the evidence and determine whether there is sufficient evidence to charge any suspects who may have been involved in the death of the deceased. Further, the surrounding circumstances and the cause of death must be taken into account.
27. I have perused the ruling of the magistrate and found that he noted that the deceased was the author of his own misfortune as he crossed the road at the busy highway instead of using the foot bridge. The



learned magistrate further held that the driver of motor vehicle registration number KDK 049S was not to blame for the accident as pedestrians are not allowed to cross the road where the deceased crossed the road and was hit. The learned magistrate concluded that even if witnesses were availed with the evidence on record, nobody will be found liable for the death of the deceased.

28. The applicants herein pray for orders of review, varying or setting aside the ruling of the inquest delivered on 24th January 2024 as the learned magistrate did not call any witnesses; the inquest was carried out without informing any member of the family and that the ruling is detrimental to their civil suit.
29. The learned magistrate recommended that nobody could be found liable as the circumstances of the case showed that the deceased was the author of his own misfortune. The matter is now in the hands of the investigators and with the office of the Director of Public Prosecutions under investigations. The investigations are not restricted to the applicants but the department of the Director of Criminal Investigations which must cover all the relevant areas and come up with recommendations to the respondent.
30. The holding of the inquest is meant to give recommendation for further investigations and thus it is important to allow those investigations to take place. In any event, the burden of proof in civil cases is on the balance of probabilities. In criminal cases the burden of proof is beyond any reasonable doubt. In my view, the ruling of the inquest will be prejudicial to the applicants provided they discharge their legal burden of proof in their civil case. The magistrate ought to rely on the evidence given by the applicants in their civil case. Thus it is my considered view that setting aside of the ruling of the inquest will not serve any useful purpose in the hearing and determination of the civil case.
31. Section 362 of the Criminal Procedure Code requires that the applicants demonstrate that the magistrate who conducted the inquest committed a mistake, illegality, irregularity or impropriety in issuing any order or in making any finding. The applicants herein do not blame the magistrate for any impropriety, mistake or irregularity.
32. It is my considered view that applicants have failed to pass the test set out under Section 362 of the Criminal Procedure Code in that no mistake, irregularity, impropriety or illegality on part of the magistrate has been demonstrated.
33. Consequently, the application dated 25th March 2025 is not successful and it is hereby dismissed with no order as to costs.
34. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH SEPTEMBER 2025.

F. MUCHEMI

JUDGE

