



REPUBLIC OF KENYA



KENYA LAW
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**Mwirigi & 2 others v Republic (Criminal Revision E111 of 2022)
[2023] KEHC 3807 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E111 OF 2022**

JK SERGON, J

APRIL 20, 2023

BETWEEN

JANE KENDI MWIRIGI 1ST APPLICANT

PURITY MWENDWA MWIRIGI 2ND APPLICANT

DAVID MUTUMA 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated June 8, 2022 taken out by Jane Kendi Mwirigi, Purity Mwendwa Mwirigi and David Mutuma, the 1st, 2nd and 3rd Applicants respectively. In the aforesaid motion, the Applicants sought for the following orders.
 - a. That this application be certified as urgent and service of this Application be dispensed with in the first instance in view of its urgency.
 - b. That this honourable court be pleased to call for and examine the record of the proceedings in Lodwar SPMC Inquest No 5 of 2021 for the purpose of satisfying itself as to the correctness, legality and propriety of the findings and orders of the Inquest Magistrate.
 - c. That the Ruling delivered in the Lower Court in Lodward SPMC Inquest No 5 of 2021 and all consequential orders therein be stayed pending the hearing and determination of this Revision.
 - d. That this Honourable Court be pleased to set aside the ruling in the Lower Court in Lodward SPMC Inquest No 5 of 2021 in its entirety and all the consequential orders therein.



- e. That in the interest of Justice, this Honourable Court be pleased to order for a re-opening of the inquiry in Lodwar SPMC Inquest No 5 of 2021 to be heard by a Magistrate other than Hon Magistrate D Orimba.
 - f. That in the alternative of Prayer 5, this Honourable Court be pleased to interrogate and examine the testimonies of the witnesses and exhibits produced and terminate the Inquiry in pursuance to section 387(5) of the *Criminal Procedure Code* on the basis that no offence was committed.
2. The Applicants filed the Affidavit sworn by Kendi Mwirigi in support of the Motion. The Republic did not deem it to file a response.
 3. I have considered the grounds stated on the motion and the facts deponed in the supporting affidavit plus the written submissions. The main order sought from this Court by the applicants is for this Court to exercise its revisionary power and proceed to set aside the findings of Hon Orimba in Lodwar SPMC in Inquest No 5 of 2021 pursuant to the provision of sections 362 and 364 of the Criminal Procedure Code and under article 165 (6) of the *Constitution of Kenya 2010*.
 4. It is the submission of the applicants that the Inquest Proceedings were manifestly unprocedural and erroneous. It is argued that the Inquest Court relied on extraneous factors and misled itself that the place of the deceased's demise was the place where the Applicants were at the time yet there were evidence from Safaricom Call Logs that the applicants were in Narewa in Kanam Kemer.
 5. It is also argued that the Trial Magistrate failed to analyze the intrinsic worth of evidence of the 30 witnesses but instead narrowed himself to testimonies of the three Applicants.
 6. The Applicants further pointed out that the inquest Magistrate failed to appreciate the evidence of Fidelis Nzioka which was uncontroverted, that it is him who offered and took the applicants to the scene of the accident.
 7. The applicants also argued that the Inquest Court ignored their evidence that the deceased had told them that he was going to Kalobeyei. It was also pointed out that the Inquest Magistrate usurped the powers of the Director of Public Prosecutions by ordering of a further investigation of the Applicants with a view of charging them
 8. The Inquest magistrate was also accused of putting too much weight to the evidence of Nancy kwamboka which evidence was solely based on hearsay and mere speculation.
 9. According to the Applicants, there was no nexus between the evidence adduced at the hearing of the Inquest and the findings of the Inquest Magistrate.
 10. It is not in dispute that Hon D Orimba, Learned Senior Principal Magistrate pursuant to the provisions of section 385 of the *Criminal Procedure Code* conducted an inquest into the circumstances surrounding the death of one David Ombongi Mugikoyo which occurred on the night of 6th/June 7, 2019.
 11. The Learned Senior Principal Magistrate took into account the evidence of 30 witnesses after which he recommended in his report/ruling that the three Applicants should be investigated further with a view of preferring a charge against them
 12. Pursuant to the provisions of section 387 (4) of the *Criminal Procedure Code*, the Learned Senior Principal Magistrate, directed his finding on the criminal culpability to be forwarded to the Director of Public Prosecutions for further action.



13. The Applicants are now before this Court complaining inter alia that the Inquest Magistrate acted unprocedurally. They also accused the Learned Magistrate of ignoring their evidence and for failing to properly analyze the evidence. They also accused the Inquest Magistrate of usurping the powers of the Director of Public Prosecutions.
14. After carefully going through the Inquest Report, I have come to the conclusion that the Learned Senior Principal Magistrate properly exercised the powers given to him under sections 385, 386 and 387 of the *Criminal Procedure Code*.
15. The Inquest Magistrate acted within the law. He took into account the evidence tendered, analyzed them and came to the correct conclusions.
16. The Learned Senior Principal Magistrate acted legally and with propriety. I decline to interfere with his findings in exercise of this court's revisionary powers under sections 362, 363 and 364 of the *Criminal Procedure Code*.
17. In the end, applicants' motion dated June 8, 2022 is found to be bereft of merit. It is dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF APRIL, 2023.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Chepkoech

