



REPUBLIC OF KENYA



**In re inquest of the death of Abdirizak Ismail Mohamed (Deceased) (Criminal Revision E003 of 2022) [2023] KEHC 22694 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22694 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL REVISION E003 OF 2022  
JN ONYIEGO, J  
SEPTEMBER 25, 2023**

**IN THE MATTER OF INQUEST INTO THE DEATH  
OF ABDIRIZAK ISMAIL MOHAMED (DECEASED)**

*(From the original Ruling and Order in Wajir Principal Magistrate's Court Inquest No. 3 of 2018 delivered by Hon. Mugendi Nyaga SRM on 29th January 2021)*

**RULING**

1. This revision application arises from the ruling of the learned trial magistrate, Hon Mugendi Nyaga, (SRM) in Wajir Law Court Inquest No 3 of 2018, delivered on January 29, 2021 whereby the learned trial magistrate concluded and found that the cause of death in this case was suicide and therefore ordered for the inquest to be closed. The applicant brought this application vide a notice of motion dated February 15, 2021 originally filed at Nairobi High court seeking orders that: -
  - a. The honourable court be pleased to call for the records of the Principal Magistrates Court at Wajir in Inquest No 3 of 2018 for the purpose of satisfying itself as to the legality, correctness or propriety of the ruling and order delivered therein.
  - b. The honourable court be pleased to examine and revise the ruling delivered at the conclusion of the inquest by the Honourable Mugendi Nyaga, SRM on January 29, 2021 finding that the deceased committed suicide and ordering the inquest to be closed, and substitute therewith a finding that there is a possibility, from the evidence on record, that the deceased was shot dead.
  - c. Having made a finding of possible murder, the honourable court be pleased to order that the inquest commence de novo or in the alternative direct officers from the Criminal Investigation Department to take up investigation of the incident with a view to preferring relevant criminal charges against the appropriate individuals.
  - d. The honourable court be pleased to make any other necessary order it deems appropriate and necessary in the interest of justice.



2. The applicant herein was the father to the deceased, Abdirizak Ismail Mohamed a police officer who died on November 14, 2015 at about 11:00 am in his house within Wajir county. Due to unclear evidence linking the deceased's death to possible act of murder, the ODDP recommended an inquest to be conducted before a magistrate.
3. Consequently, the matter was heard and disposed of via a public inquest after the state call a total of 20 witnesses to testify. After the close of the inquest, the learned magistrate concluded that the cause of death was suicide and therefore ordered that the inquest be closed.
4. Aggrieved by the said decision, the applicant filed the instant application in the High Court criminal division at Nairobi where Hon Justice Nzioka ordered that the matter be transferred and heard at Garissa High Court. The application is hinged on the grounds set out on the face of it and averments contained in the affidavit of the applicant in support of the application.
5. Basically, the applicant's claim is that his son the deceased herein did not commit suicide and instead held the view that he was murdered. He faulted the learned magistrate for not considering the testimony of pw14 and pw15 who maintained the view that from the circumstantial evidence available, there was a possibility that the deceased was murdered.
6. When the matter came for hearing, the applicant reiterated the content of the affidavit in support thus maintaining that his late son was murdered.
7. The respondent via submissions dated July 5, 2021 opposed the application. Mr Magero for the state submitted that any form of investigations must originate from the Director of Public Prosecutions and not any other entity and as such the court cannot direct the office of the Criminal Investigation Department to undertake investigations.
8. The respondent further submitted that even if the High Court were to examine and revise the ruling delivered by Hon Nyaga, it can cannot substitute the said order to a possible finding of murder hence the applicant's prayer falls under the purview of appeal proceedings. To support that position, reliance was placed in the case of Criminal Appeal No 102 of 2014 *Ronald Aloo Augo v Republic* (2014) eKLR where Majanja J held that an appeal does not lie from a ruling arising from an inquest.
9. Finally, the respondent submitted that the applicant herein is not a convict within the meaning of section 347 of the *Criminal Procedure Code* and therefore advancing an appeal through the backdoor based on the nature of the order sought is not legally recognized.
10. Having considered the application herein and parties' submissions, issues that arise for determination are;
  - a. Whether the High Court can revise the ruling by the lower court.
  - b. Whether the applicant should have appealed
  - c. Whether there can be a finding of murder.
11. The high court is bestowed with wide discretionary powers when it comes to exercise of revision of decisions arising from subordinate courts. Article 165 of the as follows;
  - “(6) 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”.

12. Section 362 of the *Criminal Procedure Code* further 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.”

13. Section 364(1) of the *Criminal Procedure Code* also 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.

14. In the persuasive decision in the case of *Joseph Nduvi Mbuvi v Republic* [2019] eKLR Odunga J as he then was had this to say regarding the powers of the high court in exercise of its revisionary powers;

“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.”

15. I have looked at and reviewed the impugned ruling by the magistrate in the lower court and his finding. I do not find anything wanting on the legality, correctness or procedural propriety to warrant revision of the said ruling under section 362 of the CPC. There is no error to justify overturning the decision to a finding of murder. To do that would be tantamount to policing the lower court in its findings on merit. Subordinate courts indeed have a right to make findings as per their discretionary powers without being micromanaged unnecessarily.



16. Regarding the second issue as to whether the applicant can appeal, one would have to look at section 386 & 387 of the CPC which provides the process of conducting an inquest by a magistrate in case of death arising out of accident, commission of suicide, a person having been killed by another or met his death under suspicious circumstances.
17. However, there is no express provision governing the next course of action to a party dissatisfied with the finding of a court in an inquest. There is no right of appeal for inquest conclusions. See *Ronald Aloo Aluga* (supra). In my view, the lower court's finding was procedurally legal and as such the only way the applicant could seek redress and challenge its decision was via judicial review application. See *Republic v Chief Magistrate Naivasha* (2011) eKLR where the High Court issued certiorari orders quashing the decision of the chief magistrate made during an inquest inquiry thereby directing the arrest of some suspects.
18. On the third issue of whether there can be a finding of murder, this court finds that the only powers the High Court possesses in revision is to find illegalities and inconsistencies in the lower court's decision. The High Court cannot overturn and give a finding of murder as it did not hear the case. The aggrieved applicant can therefore seek redress using the correct procedure.
19. In view of the above finding, it is my holding that the application dated February 16, 2021 is devoid of merit hence dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2023**

**J.N. ONYIEGO**

**JUDGE**

