



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VOI**

**MISCELLANEOUS APPLICATION NO. E005 OF 2021**

**ABDI SALAT MAALIM.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. This ruling relates to the application dated 25<sup>th</sup> January 2021 in which the applicant seeks orders to revise, review and set aside the ruling and findings of the Voi Principal Magistrate's Court inquest file No. 6 of 2019 of the inquest conducted on 03/10/2019. The Honourable Magistrate recommended the charging of the applicant's driver of motor vehicle Reg. No. KBQ 002J/ ZD 1006 for the offence of causing his death and the death of his turn man, while causing damages to motor vehicles KCM 693 /ZD 1652 and KCH 647W.
2. The applicant who is the owner of motor vehicle Reg. No. KBQ 002J/ ZD 1006 also seeks an order of re-trial of the inquest
3. The Application was based on grounds that the recommendation of the trial court arising from the inquest conducted by the trial magistrate was arrived at based on false, doctored and/or bungled up investigations and evidence.
4. The applicant further contends that the base commander Voi traffic base and the investigating officer deprived the applicant, the deceased persons and the Honourable court the chance and opportunity to reach a just and fair conclusion in the inquest by engaging unscrupulous behavior of concealing and/or destroying credible evidence. They conspired to defeat justice and denied key witnesses the opportunity to be heard by failing to take down their statements and failing to avail them in court to give a detailed account of their testimony.
5. The Applicant contends that the base commander and the investigating officer contaminated the scene of crime and falsified the accident report.
6. The Applicant also swore a Supporting Affidavit dated 25<sup>th</sup> January 2021 in which he repeated and expounded on the grounds set out in the Notice of Motion and added that the investigating officers issued two contradicting police abstract forms in favour of the owner of Motor Vehicle No. KCM 693V/ZD 1652. One of the police abstract issued by the investigation officer sergeant Mohammed Abdullai dated 14/04/2019 was to the effect that criminal charges was to be preferred against the driver and/or owner of motor vehicle No. KCM 693V/ZD 1652 make Mercedes Axor but conspicuously, the said abstract was cancelled and an adverse one issued in favour of the owner of the aforementioned motor vehicle.
7. The applicant further added that the discovery of such new, important and material facts and/or evidence were not within the knowledge of the trial court, the director of public prosecution, and himself, before and during the proceedings of the inquest. Therefore the court reached its conclusion based on fabricated evidence, putting the competency and reputation of the court at ridicule for aiding, abetting and/or perpetuating an illegality and causing a miscarriage of justice.
8. The Respondent replied to the application through a Replying Affidavit dated 11<sup>th</sup> March, 2021 sworn by JOEL KIBET CHIRCHIR, a Prosecution Counsel. He agreed with the averments of the Applicant and added that the new evidence discovered are the statements of F-2 Felix Kioko, F-3 George Mugo, F-4 Siyad Hassan Dabaso and F-6 Walter Churchill Ouma which were omitted.
9. The learned counsel added that the Director of Public Prosecutin wrote to the court pursuant to section 388(2) CPC for the inquest to be re-opened. He admitted that it was an oversight on their part not to have included the new evidence discovered when requesting for the re-opening of the inquest which caused the Honorable Magistrate to dismiss the request.
10. The learned counsel stated that he re-applied for the re-opening of the same and attached the new evidence and was still waiting for the ruling. He stated he had no objection if the application is allowed in the interest of Justice.

**Determination**

11. I have carefully considered the Applicant's application and the Respondent's replying Affidavit. Both parties have agreed that there is need for retrial of the inquest.

12. I have had the opportunity to go through the evidence of the parties regarding the issues raised by the Applicant and have found the same to be credible. The Respondent has also agreed with the issues; in fact there is a letter attached to the applicant's supporting Affidavit from the Director of Public Prosecutions, addressed to the Inspector General of Police raising and confirming the issues raised by the Applicant that the Investigating Officer recorded two conflicting abstracts, falsified the sketch plan and failed to record crucial statements of crucial witnesses. The letter also required the Inspector General to charge the Investigating officer for conspiracy to defeat justice contrary to section 117 of the Penal Code

13. Considering that there is no objection from the Respondent, this court has a duty to allow the applicant's application dated 25<sup>th</sup> January, 2021. The Application is therefore allowed as prayed.

**ORDERS ACCORDINGLY. DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF MAY, 2021.**

**E. K. OGOLA**

**JUDGE**

Ruling delivered via MS Teams in the presence of:

Mr. Motuka for Applicant

Ms. Mukangu for DPP

Ms. Peris Court Assistant