



REPUBLIC OF KENYA



**In re Raymond Ikonya Kimani (Deceased) (Inquest 6 of 2017)
[2024] KEMC 75 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KEMC 75 (KLR)

**REPUBLIC OF KENYA
IN THE KIAMBU LAW COURTS
INQUEST 6 OF 2017
WR OUTA, PM
MARCH 28, 2024**

RULING

1. On/or about the 31st day of December, 2014 the life of a 1st year University student (Raymond Ikonya Kimani) was snuffed out of his body under circumstances that the deceased's family considered mysterious. It is from that belief that this inquest was lodged and is at the present instant up for a ruling.
2. If I were to put it into context, it is the long road for the family to establish what transpired on the fateful day when celebrations led to tragic ending for a young man with a bubbly future ahead of him and as the adage states a 'leader of tomorrow'.
3. PW1, Elizabeth Ngina Kariuki, is the mother to the deceased. She testified that on the material day as she left for home from work, she found the deceased on their shop within the premises in which they resided. It was her testimony that later the deceased closed the said shop but did not go into their house during the New Year's Eve. PW1 avers that she and the deceased's brother left for church for a mass which came to its conclusion at around 10:30PM during which the deceased's mother called him. The deceased told PW1 that he had gone to his grandmother's place at Kangoya from Kirigiti.
4. It was her testimony that past midnight, the deceased called her wishing her a happy new year and confessed his love for his mother. Later, PW1 says that Kelvin called her through Raymond's number while crying saying that they were at Kiambu stores.
5. When PW1 went to the place, she found the deceased on the floor with his face full of blood. She testified that he was cut in the mouth and his left leg was torn. Upon taking him to hospital, he was pronounced dead.
6. According to PW1, the deceased (with others) went to a club dubbed 'Bells Club' owned by one Mr. Wise and is roughly 10 minutes from Kangoya. PW1 avers that while at the club some individuals run after the deceased and beat him to death.
7. PW2, Paul Kimani, the father to the deceased, avers that upon being informed of the incident, he went to Kiambu Police Station where he was informed that the incident was booked for having jumped from a plot and committed suicide. PW2 testifies that his nephew who is a reporter said that the owner of the



- said club one Wise had come allegedly beaten the deceased to death. PW2 proceeded to aver that the police file had disappeared and that the present is the third file. To him the injuries from the deceased were inconsistent with the alleged jumping from a building but akin to those of an assaulted person.
8. PW3, Edwin Kariuko Nyaga who described himself as a media person testified that he was called by Kelvin from the deceased's phone asking him to come to Kiambu for them to look for the deceased as the said Kelvin informed him that the deceased had left from where Kelvin was for like 20 minutes. His testimony is that they found his lifeless body with its face facing down and had a broken leg and bruised eyes. According to PW3, the incident was not a suicide. He avers that the deceased had no problem with his eyes but at the time were bruised.
 9. PW4, Muthoni Mwangi Ngige testified that they were a bouncer at "club Image" but on the fateful day they were working at "Club Bells" in Kiambu Town. That while doing his work, at around 12:30AM a young man came and asked for Choma Sausage and paid Kshs. 100/=. That around that time, two other people arrived with a boda boda and the deceased beat up the person waiting for change 2 blows on the chest and he told them to stop fighting and the person waiting for the change retaliated with a blow to the chest.
 10. The owner of the club (Mr. Wise) and his brother "Pato" are said to have been at the club and attended to the incident. Mr. wise is said to have asked the deceased to leave the premises during which he left running towards a petrol station with Pato pursuing him. The deceased is said to have returned with two pieces of wound clenched in his hands and hit a person with it on his shoulder then threw the timber down.
 11. At this point, PW4 testified that he was chased after by Pato, Ngige and Mr. Wise but they later came to the club tent and said that they didn't catch him. That later, a watchman known to PW4 informed him that the person being chased after had died and that he had jumped off from a building.
 12. PW5, Alice Wanyungo Nyokabi testified that on 31st December 2024, she was in Club Bells to usher in the New Year and was seated outside the tent which had been put as the club was full. After midnight, a group of young men came outside the club fighting and the 2 young men were slapped by Patrick who is a brother to Wise. It was testimony that one short man who was fighting ran towards Bata Shop asnd came back with 2 timbers on his hand and he hit Steve with 1 timber and attempted to knock Wise with the timbers and he held it. The young man ran very fast and Pato, Wise and Steve later on came back saying that he was too fast for them. It was her testimony that from the tent, they could see where the young man was running as well those in his pursuit. Ultimately, she testified that the trio reached a place known as "Kwa Thuku" and were talking to watch man there and later came back. Later on, they heard from a watchman that the young man who was being chased was later found dead and later on came to find out the name is Raymond.
 13. PW6, Daniel Njoroge Wandie alias Wise, a businessman and a bar and restaurateur testified that in the hours after midnight a person interrupted him with a piece of wound while at the club tent and hit a person in the tent he was seated. It was his testimony that they chased after him but could not reach him and came back with a timber which is said to have been dropped and at around 4AM he was informed that the person had fallen from a balcony. Later on he went to the home of the deceased and then summoned to the DCI to write statements. On cross examination, he stated that he did chase the deceased and did not know where he entered. It was his testimony that the Police took the cctv from the club and he did not visit the scene of the death.
 14. PW7, Patrick Karuga Wandie testified that he is a tour operator and on the 31st December 2014 he was at club Bells seated outside a tent when a young man came drunk on a motor cycle and tried to force his way through and later on recorded his statement with the DCI. On cross examination by Mr Gatitu,



- he stated that the young man was chased away but he cannot remember with who and he was later informed that the young man had passed on.
15. PW8, Robert Njuguna, testified that they are taxi driver in Kiambu town and that on the fateful day he saw a young man demolish a wooden structure “Soko” from where he got two pieces of wood and went through KCB bank. Additionally, he testified that the said person held the breast of a woman and called her a prostitute then headed towards KCB saying “kina mbwa wataniona.” The young man passed him being chased at a distance and ran into a plot with a gate. PW8 testified that the people chasing him said “ameingia kwao achaneni nayeye” PW8 testified that he recognized Mr. Wise chasing him. On cross examination by Mr. Gatitu, he testified that he did not know what went on in that plot and at no point did he see the young man being beaten up.
 16. PW 9, Fredrick Maina Muya (the brother to the deceased’s father) who is a contractor living in Ruiru testified that on 31/12/2014 at 11:00 PM he went to celebrate the New Year at Windsor Golf Club. At around 3:00AM, a lady called her who is the wife of his friend Gilla telling her that the son is dying and trying to call the husband. He went to Kiambu District Hospital and found the wife of the friend was wailing and he put her in the car. They found the son was at the outpatient on the stretcher and the thigh bone broken and it was clear that he was dead. On cross examination, he stated that he had a swollen face.
 17. PW 10, Martin Wekesa Sindani testified that he was a casual labourer and on 31/12/2014 he was working as a night guard at around 2:00AM and saw a boy being chased by like 5 men and met a soldier at that building who closed the gate so that the 5 people could not get in. They left the place with one saying ‘he was very lucky we did not catch him’. The other soldier come to him and said there a problem in his place in that the person who come running he found him lying down there. I went there & saw the young Man lying on stomach on the ground and there was blood, with one shoe there. he saw a black marvin down He left the place & went back to the place of work to watch tv. Later on, he heard a mother crying accompanied with 2 young men. He went & got a stretcher to take him to Mercy light hospital & met a doctor who said they take him to Kiambu level 4 hospital. The next the day the soldier told him the young man passed on and he later on wrote a statement on how it happened. There were injuries on the young man’s jeans and bleeding. On cross examination by Mr Gatitu, he stated that he cannot remember the whereabouts of the watch man at Kwa Thuku. The men were like 5 chasing a young man and the soldier closed back the door to prevent the men from entering and one of them was saying, “ he is lucky we could have taught him a lesson’. It was his further testimony that he did not continue to be at kwa thuku as that is not his place of work and he was present when they were following the young man and he is saying what he saw.
 18. PW 11, Stephen Furugu Gitau testified that he is a taxi driver by profession and on 31st December 2024 he was on duty waiting for clients while eating sausage outside KCB Bank and saw a young man arriving on a motor cycle trying to force his way into the club and was chased by a bouncer. He saw the young man seeming intoxicated take 2 wooden rods which he was dispossessed and ran towards ‘Kwa Thuku’. On cross examination he stated that the young man had beaten up the brother of Wise with timber and ran away. It was his testimony that he was less than 100 metres away.
 19. PW 12, John Kimani Chege testified that on 31st December 2014, he was working at Kwa Thuku as a shoe shiner and the following day was informed that an accident had happened.
 20. PW 13, Kevin Muchiri Nyambura testified that he is a student at Dedan Kimathi University and on 31/12/14 at around 11:00 pm he went to visit Raymond and agreed he was to give him a shoe ‘timberland” and at around 8:30 pm, they agreed to go to Kangoya where the grandmother lives. They took a motorbike to Club Bells where the deceased punched the person who was next to the bouncer



and he restrained him together with the bouncer. It was his testimony that the owner of the club called Wise came and he went to the balcony and saw Wise chasing Raymond and came back with two timbers. Thereafter a friend called Eddie came and they went to Anita's who lived around. They went to check and saw it was Raymond, his mouth was like torn and looked like he had been beaten up, and saw he had the timberland shoes he had been given in the morning. He called the mother by phone who came and took him to mercy light hospital then Kiambu level 5 hospital. On cross examination, he stated that the deceased had punched a person when Ray emerged.

21. PW 14, CIP Anthony Mwireri Ndung'u testified that he was a tenant at the flats opposite the court and on 31st December 2014 as he went to buy airtime, he stumbled across a male youth groaning seemingly like the head had land first and he attributed the same to the celebrations of the new year. He relayed the information to the duty officer at Kiambu Police Station who was then assisted by the crime stand by. it was his testimony that the watchman said he did not know the deceased. on cross examination, he stated that the condition of the body did not allow him to move the body and he found it odd that no one was assisting.
22. PW 15, CIP Anthony Kingaru Wachira testified that he has been a police officer for 21 years and on 2,1,2015 he was instructed to take up this case as the I.O. where Raymond Ikonya Kimani was found dead as he was celebrating the turning over of the new year. On 1/1/2015, they proceeded to a pub called Bells and were blocked by the bouncer. From the statements, the deceased appeared drunk while Kevin was sober. it was his testimony that the owner of the club tried to intervene to stop some commotion whereupon Kevin managed to get into the Club while the deceased ran away towards Kiambu – Nairobi Road. It is there that Kevin saw the deceased being chased by Daniel owner of the pub, Patrick and Antony Mwangi and were armed with wood based on the accounts of the witnesses.
23. It was his testimony that the deceased ran to Kwa Thuku and he managed to enter and the watchman locked the gate with himself out and thereafter heard a loud bang. He opened the gate to see the deceased lying downwards from his building and he rushed to the police to report. Kelvin and a friend thought of looking for him at the girlfriend's house in Kwa Thuku and they met the deceased lying at the entrance. as he was still bleeding, they took him to the Kiambu District hospital where he was pronounced dead.
24. It was his testimony that he noted the theories advanced including the TV aerial which he did not find next to the body, there was the theory that he was either pushed or jumped and tried to hold onto the TV aerial. The scenes of crime processed the scene and post mortem was done. He interviewed the three (3) persons who were said to have chased the young man and he summed up by stating that what could have happened to the deceased person is to be determined by the court.
25. PW 16, Ann Njeri Nyakairo testified that on 31/12/2014 she was at Club Bells and then joined by the owner called Wise, they took a round of drinks at the time. it was her testimony that she was drunk at the time and did not see Wise chasing anyone.
26. PW 17, Stephen Ngige Mwaura testified that on 31/12/2014 and went to Club Bells which was full and outside met Wise at the parking. it was his testimony that there were some small boys fighting and were unruly. he departed for Zimmerman and the next day he had that someone had lost his life.
27. PW 18, Dr. Charles K. Muturi, a pathologist since 2009 and a Doctor since 1999 currently based at Mama Lucy Kibaki Hospital produced a Post Mortem Report of the deceased herein. He opined that the cause of death was severe head injury due to blunt force trauma and the injuries are consistent with a fall from a height. On asked the possibility of the deceased having been beaten to death, it was his response that one would expect to see various injuries mainly on the limbs and other parts of the body. It was his assertion that it cannot have been a fall from a low height.



28. PW 19, CPL Protus Wamalwa produced 3 sets of photographs which are 29 in total having been taken by Retired Scenes of Crime officer.
29. The prosecution having called a total of 19 witnesses, I have considered the testimonies of the various witnesses, the exhibits produced herein and the various provisions of the Law.

Analysis And Determination

30. Upon the determination of the hearing into this inquest, this honorable court is required under Section 387 (3), (4) & (5) of the Criminal Procedure code to make a determination on several issues. To wit: -
 - a. Who the deceased was;
 - b. The cause of death of the deceased; and
 - c. Whether the commission by some known or unknown persons has been disclosed; and
31. I have considered the evidence tendered in this inquest. At this juncture I will proceed to make brief sequential pronouncements on the statutory determinations that this court is obligated to make under Section 387 of the [Criminal Procedure Code](#) which provides as follows:-
 - (1) When a person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in section 386 (1) a magistrate so empowered may, but shall in the case of a missing person believed to be dead, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
 - (2) Whenever the magistrate considers it expedient to make an examination of the dead body of a person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.
 - (3) If before or at the termination of the inquiry the magistrate is of the opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, or take such other steps as may be necessary to secure his or their attendance to answer the charge; and on the attendance of the person or persons the magistrate shall commence the inquiry de novo and shall proceed as if he had taken cognizance of an offence.
 - (4) If at the termination of the inquiry the magistrate is of the opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Director of Public Prosecutions.
 - (5) If at the termination of the inquiry the magistrate is of the opinion that no offence has been committed, he shall record his opinion accordingly.
 - (6) In the case of an inquiry relating to a missing person believed to be dead the magistrate shall at the termination of the inquiry report the case together with his findings to the Director of Public Prosecutions and shall make recommendations as to whether or not the period regarding the presumption of death provided for by section 118A of the [Evidence Act](#) should be reduced and if so what lesser period should, in the circumstances of the death, be substituted for the period of seven years.



32. Further guidance can be found from the case of *Nisha Sapra v Republic* Nairobi High Court Misc. Criminal Application No. 39 of 2008 (Unreported) J B Ojwang’ J., (as he then was) in a ruling dated 27th February 2008 held that the order of arrest issued by the learned magistrate under section 387(3) of the *Criminal Procedure Code* was inconsistent with the prosecutorial powers of the Attorney General conferred by section 26 of the former Constitution. He stated as follows;

Since the prosecutorial function by section 26 of *the Constitution*, belongs in substance to the Attorney General, the inquest Magistrate’s mandate was limited to stating his finding of fact, without preferring a particular course of prosecution action to be taken by the Attorney General. I will not, however, hold this shortcoming in the inquest ruling to have compromised the prosecutorial decision later taken by the Attorney General as there is no evidence that the Attorney General has made reliance on not just the inquest findings, but also on the records of evidence in the Police files. These foundations of prosecution have the effect of rendering the inquest proceedings, as such, essentially a historical record, and I hold that it will not by any means prejudice the applicant. The Attorney General may proceed with prosecution in accordance with the law.

33. It is trite law that Article 157(6)(a) of *the Constitution* which vests in the Director of Public Prosecutions the State power to, “institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed,” does not permit the magistrate’s court to initiate criminal proceedings in the manner prescribed by section 387(3) of the *Criminal Procedure Code*.

Who was the deceased?

34. From the evidence on record, it is uncontested that the deceased was Raymond Ikonya Kimani, a university student at KCA University and a son to one Elizabeth Ngina Kariuki and Paul Kimani. At the material time, it was during the New Year’s Eve and the deceased with his friend went to a club within Kiambu where they were involved in an altercation with a person who is allegedly said to have been waiting for his balance after paying for a service. The owner of the club, in the company of some other men came and tried to quell the row during which the deceased was slapped.
35. As per the evidence flowing from the various testimonies given in this honorable court, it transpires that the deceased left the club and obtained two pieces of wound from a wooden structure. As per the testimony of PW8, Robert Njuguna, the deceased after demolishing the wooden structure “soko” left towards KCB saying “kuna mbwa wataniona” and on his way assaulted a lady by touching her breasts and called her a prostitute.
36. PW 8 further testified that the deceased returned while being chased by a group of men but run through a gate into “Kwa Thuku”. Those in his pursuit were restrained from entering through the gate by the watchman. PW8 concluded by testifying that the pursuers left saying “ameingia kwao achaneni na yeye”. These points to the fact that the pursuit was cut short by the watchman and there is no way the pursuiter could be said to have killed him yet they did not enter the premises after him. At least, that is what is coming up in evidence.
37. Therefore, although there was a scuffle at the club which culminated into his hot pursuit, the evidence on record negates any inference of the pursuers having beaten the deceased to death. To fortify this position, I refer to the testimony of Martin Wekesa Sindani who testified that with the help of the light at the veranda he saw the deceased being chased by a number of men and that the former dashed into “Kwa Thuku” and the pursuers were restrained by the watchman at the gate.



38. Again, the testimony of Alice Wanyungo perfectly adds to the well aligned trail by Martin Wekesa Sindani and Robert Njuguna. Although from a different location, Alice testified that they could see Mr. Wise and Pato as they chased after the deceased up to “Kwa Thuku.” Of particular relevance is her testimony that she saw as the pursuited were restrained from entering the premises by the watchman.
39. What then is the effect of the consistency among the witnesses? Consistency among witnesses such as in the present instant significantly influences the determination of the court...when witnesses provide consistent accounts of events, the same bolsters the credibility of their testimonies and enhances the overall reliability of the evidence presented.
40. The consistency herein corroborates the narrative being constructed, painting a clearer picture of what transpired on that fateful New Year’s Eve and who may be responsible. To my mind, the consistency in this case goes a long way to minimize doubts and uncertainties surrounding this inquest.
41. With all due respect, there is nothing on record capable of directing this honorable court to a finding that the pursuited beat the deceased at any one time. That was the theory that appeared to be advanced by the family of the deceased but, all there is evidence of flukes on the part of the deceased making it possible for him to outdo his pursuited.
42. The family of the deceased’s constructed the argument that the nature of the injuries was inconsistent from those of falling from a building and were akin to those of thorough beating. I want to shed light on this issue by placing reliance of the position of the body when the deceased was found and the response by the pathologist herein who testified as PW 18 and stated that one would expect to see injuries mainly on the limbs and other parts of the body.
43. From the testimony of Kevin Nyambura Muchiri, the deceased’s body was found with his face facing down. In all honesty, this explains the bruises in his eyes and mouth which are attributable to the contact between his face and the ground. With regard, to the broken thigh, I take the position that an impact from a high-level ground is sufficient to cause a broken limb as was also informed by the pathologist herein who did the post mortem.
44. In light of the foregoing analysis, this honorable court is inclined to make a determination on the 2nd and 3rd element under Section 387 of the [Criminal Procedure Code](#) to the effect that the deceased died from the fall from the building and that there is otherwise no evidence of foul play.
45. Once more, what I can say is that the court can only empathize with the family of the deceased for the loss of a young budding member and for the society at large; it’s a high time to address the effects of alcohol when it comes to the impairment of the judgement. I am convinced that had it not been the alcohol consumed by the deceased, then he would have been able to know that he was on a building at a high position hence the risk of falling.
46. In the upshot, this inquest is closed and it is my hope that this will give closure to the family, friends and colleagues.
47. Orders Accordingly.
48. I take this opportunity to apologize to the parties for the delay in the delivery of this ruling and thank them for their patience. This file was inadvertently left behind in my former residence and had to be sent to my off post station. The delay is inadvertent and highly regretted.
49. This ruling is delivered remotely through e-mail pursuant to the Honourable Chief Justice’s “Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, other Court Users and the



General Public from the Risks Associated with the Global Corona Virus Pandemic” (Gazette Notice No. 3137 published in the Kenya Gazette Vol. CXXII—No. 67 of 17th April, 2020).

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIVASHA THIS 28DAY OF MARCH 2024

WILSON RADING FKCDISRES

PRINCIPAL MAGISTRATE

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