



REPUBLIC OF KENYA



KENYA LAW
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In re John Mutuku Kanama & Daniel Wachira Wamuyu (Deceased) (Inquest E002 of 2023) [2023] KEMC 283 (KLR) (31 August 2023) (Directions)

Neutral citation: [2023] KEMC 283 (KLR)

**REPUBLIC OF KENYA
IN THE KWALE LAW COURTS
INQUEST E002 OF 2023
ZK KAGENYO, RM
AUGUST 31, 2023**

**IN THE MATTER OF THE INQUIRY INTO THE DEATHS OF JOHN
MUTUKU KANAMA AND DANIEL WACHIRA WAMUYU (DECEASED)**

DIRECTIONS

1. Syndicate thefts at the mobile money shops and agents such as M-pesa Agents is not a new complaint within the Republic of Kenya. Fraudsters posing as customers awaiting service by the unsuspecting but eager to serve agents have caused pain, suffering and actual economic losses to these mobile money operators and severed thriving employer-employee relationships occasioning duo tragedy of a loss of a job on the part of the employee and a loss of business on the part of the employer.
2. What started as conmanship and white-collar crime within the major cities and towns appears to have devolved into other towns and shopping centers and on the 31st day of August 2022, a date like today, at noon, Tiwi shopping centre was to be the victim.
3. While seated at his shop, christened Christal Ventures Shop, which operates an M-Pesa agent and sale of eggs, Swaleh Abdalla Mwasaria served one male adult who posed as a customer and required a deposit of Ksh. 1, 100/= into his phone which Swaleh did and after the service, the customer left. Later in the day, at about 1530 hours, the same person appeared but this time, not in need of a deposit but a withdrawal of Ksh. 1, 500/= which Salim allowed and handed over the withdrawn amount. Before he left, the customer required to purchase half a crate of eggs, and as Swaleh was packing the 15 delicate products into the pink bag, it dawned on him that the customer was busy exchanging the phone that operates the M-pesa transaction with another of its likeness. Alas! His adrenalin shot up and the human instincts urged him that he was being swindled necessitating him to confront the person who posed to him as a genuine customer but unbeknown to him, he had opened fire and the customer was ready to fire back.
4. The customer vehemently denied any ill doing and contemporaneously, another person rode by, parked the motorcycle he was riding and while posing as a customer entered the shop and started to defend the suspected customer. Swaleh resorted to informing a neighbour one Mr. Samuel Kiptator Kiptalam and when the two customers realized that other people had been involved and they would



be overpowered, they dashed out, boarded the standby motorcycle that the 2nd alleged customer had come by and sped off. Chants of “*mwizi mwizi*” filled the air and to counter the stones that were being hurled towards the speeding motorcycle by an irate mob, the pillion passenger who was one of the suspected customers hurled back the only weapon he had, the half crate of eggs he had bought.

5. In a split of a second, a loud bang was heard. The motorcycle ridden by the two suspected customers had collided with the motor vehicle registration number KBT 514N being driven by Seif Mohamed Seif.
6. As a result of the collision, the 2 suspected customers died on the spot. Their bodies were later to be identified as for John Mutuku Kanama and Daniel Wachira Kamuyu. From the personal belongings of the two, a list of the recovered items was taken and a total of 19 mobile phones of different makes was listed to have been recovered and a driving license for Kamuyu Daniel Wachira. Having read the circumstances within the file, I dare say that one late popular reggae artist would have resounded his lyrics that

“...crime does not pay...”

7. After the investigations, the investigating agency recommended that the file be closed by way of a public inquest.
8. The position of inquests is to be found under sections 385 through section 388 of the [*Criminal Procedure Code*](#).
9. Section 386 of the [*Criminal Procedure Code*](#) provides thus;
 1. The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving information that a person—
 - a. has committed suicide;
 - b. has been killed by another or by an accident;
 - c. has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or
 - d. is missing and believed to be dead;
 2. shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the Minister, shall proceed to the place where the body of the deceased person is, and shall there make an investigation and draw up a report on the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), the marks appear to have been inflicted; and the report shall in the case of paragraph (a), (b) or (c); be forwarded forthwith to the nearest magistrate empowered to hold inquests; and in the case of paragraph (d) shall immediately send to the Director of Public Prosecutions through the Inspector-General of the National Police Service as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.
 3. When, except in the case of a missing person believed to be dead there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule made by the Minister, forward the body, with a view to its



being examined, to the nearest medical officer or other person appointed by the Minister in that behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render the examination useless.

4. When the body of a person is found or a person has committed suicide or has been killed by another or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, a person finding the body or becoming aware of the death shall immediately give information thereof to the nearest administrative officer or police officer.
10. It would appear that the circumstances in this case falls within that provided under section 386 (1) (b), of the [CPC](#), above. The National Police Service (NPS) was mandated to inform the court of the death of the two deceased persons but save as for an unsigned letter dated 5th September 2022, I have not seen any documented evidence demonstrating information to the court in accordance with section 386 (2) of the [Criminal Procedure Code](#). Similarly, I do not know how the court was moved to open this file as there is no correspondence to that effect. The only document indicated to have been received by the court at the registry is a letter dated 11th July 2023 directed to the Prosecution Counsel, Kwale Law Courts, asking for a date for the inquest proceedings. In my view, there are apparent procedural flaws but nonetheless, I hope the police inquiry file, which has been indicated as “duplicate file” comprise the intended report on the investigations as desired by section 386 (2) of the [Criminal Procedure Code](#) and the court shall proceed as such.
11. What should the magistrate do upon receiving the investigating report aspired under section 386 (2) of the [Criminal Procedure Code](#)? Section 387 of the [Criminal Procedure Code](#) gives the magistrate the trajectory to take by providing thus;
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* (Cap. 80) should be reduced and if so what lesser period should, in the circumstances of the death, be substituted for the period of seven years.
12. A reading of section 387 (1) of the *Criminal Procedure Code* will be seen to elicit three distinct scenarios, two mandatory and one other optional. These are;
 - a. For the cases covered under the part, it is mandatory for the magistrate to hold an inquest whenever a person dies while in the custody of the police, or of a prison officer, or in a prison;
 - b. For the cases covered under the part, it is mandatory for the magistrate to hold an inquest as to the cause of death for a missing person believed to be dead; and
 - c. In the case of a person suspected to have committed suicide, has been killed by another or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, depending on the circumstances, the magistrate has an option on whether to hold or not to hold an inquiry as to the cause of death.
13. In my most humble view, the cause of the duo deaths is not a mystique to be demystified through an inquiry by this court. The journey to their deaths has been documented with the NPS blaming them as the authors of their own gruesome deaths, the rider to take the larger blame for causing his own death and that of his partner.
14. As such, I do not find the case as one to exercise the option of undertaking a court driven inquiry into the cause of the deaths of the two as is already known and as such, this file is to be marked as closed with directions that it is not to be subjected to further inquiry by the court, as to the causes of deaths of the late John Mutuku Kanama and Daniel Wachira Wamuyu.

DIRECTIONS DATED, SIGNED AND DELIVERED IN OPEN COURT AT KWALE ON THIS 31ST DAY OF AUGUST 2023.

KIONGO KAGENYO

RESIDENT MAGISTRATE

In the presence of:-

Mr. Archibald Kimbada - Court Assistant

Ms. Mwaura, Principal Prosecution Counsel, for the State

