



**In re Inquiry Into the Death of Omar Shee Njia (Deceased) (Inquest  
E002 of 2021) [2022] KEMC 26 (KLR) (18 October 2022) (Legal Opinion)**

Neutral citation: [2022] KEMC 26 (KLR)

**REPUBLIC OF KENYA  
IN THE KWALE LAW COURTS  
INQUEST E002 OF 2021  
ZK KAGENYO, RM  
OCTOBER 18, 2022**

**LEGAL OPINION**

1. On the 2<sup>nd</sup> day of June 2020, IW 3, James Muthama Kioko, was at the cabin of motor vehicle KCM 179Y, a Canter truck, together with one Hassan Mwita and the driver, Omar Shee, the deceased. The team, which worked for Eden Hardware, based at Likoni, was headed back to Likoni, aboard the empty lorry having ferried stock from the hardware to a customer at Kwale.
2. As the deceased was driving downhill at Matuga, while on his lane, it was said that a motorcycle dangerously overtook him and rejoined the left lane just ahead of the lorry driven by the deceased. Apprehensive that he would knock down the dangerously driven motorcycle ahead of him, the deceased swerved to the right to avert the imminent accident but unbeknown to him, this turn proved to be beyond his assessment and the lorry veered off the road to the right, never to get back on track, lost control and came to a halt upon hitting a tree 8 metres off the road.
3. According to the investigations conducted by NPS Service No. Sgt Charles Wanjala, the lorry KCM 179Y did not have any pre-accident defects. When he visited the scene of the accident, he established that the road, firstly it was under construction in that there were excavations at the road shoulders with an aim of widening the road. Secondly, the investigating officer said that even though there were no loose chippings on the road, the surface of the ground adjacent to the tarmac was of red soil which was wet and hence slippery.
4. From his investigations, the investigating officer discerned that the driver of the lorry was overtaking an unnamed motorcycle and he steered the lorry towards his right but unfortunately the rear right wheels landed on the wet red soil, skidded and lost the control. Having listened to the investigating officer and IW 3, I have no reason to disbelieve the analogy by the investigating officer.
5. The Post Mortem Report dated 3<sup>rd</sup> June 2022 and produced as Inq. Exh 1 showed that the deceased fractured both of his legs and 3<sup>rd</sup> to 9<sup>th</sup> right ribs and due to hemorrhage the deceased's life was cut short. The injuries sustained on the body of the deceased were in consonance with the oral evidence by IW 3 and IW 4 that the deceased was trapped at the cabin after the accident having sustained



serious injuries. The only inference I can reasonably make is that those injuries were sustained when the accident occurred.

6. In the end, I find that in this case, nobody would be blamed for the accident, not the constructor, the owner of the lorry or the unknown motorcyclist as in any case is unknown and could not give his version of the events.
7. The totality of the foregoing is that, pursuant to section 387 (5) of the Criminal Procedure Code, I make an opinion that the death of Omar Shee Njia (deceased) arose from a self-involving road traffic accident, and I find no reasons to blame anyone for the death of the deceased.

**OPINION DATED, SIGNED AND DELIVERED IN OPEN COURT AT KWALE ON THIS 18<sup>TH</sup> DAY OF OCTOBER 2022.**

**KIONGO KAGENYO**

**RESIDENT MAGISTRATE**

In the presence of;-

Mr. Felix- Court Assistant

Ms. Faith – for Director of Public Prosecutions

