



REPUBLIC OF KENYA



**In re Inquiring into the Demise of Ada Marmion that Occurred on 31st May 2024
(Inquest E001 of 2025) [2025] KEMC 267 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEMC 267 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
INQUEST E001 OF 2025
FM MULAMA, RM
NOVEMBER 6, 2025**

RULING

A. Background

1. An inquest is a public judicial inquiry to find the answers to a limited but important set of questions:
 - a. Who the deceased was
 - b. When and where they died
 - c. The medical cause of their death
 - d. How they came by their death
2. It is usually the 'how' question that is the main focus of the inquest. It is a fact-finding process. It does not deal with issues of blame or responsibility for the death, or with issues of criminal or civil liability.
3. It is very much in the public interest to have an effective inquest system. It safeguards the legal rights of the deceased's family and other interested persons, highlights lessons to be learned and advances medical knowledge. Many families also find it helps to have the chance to ask questions and, at the end of the process, know that they have the full and accurate facts about their loved one's death.
4. This inquest has been initiated under Section 388, for it has been commenced vide the letter from the Direction of Public Prosecutions dated 19th August 2025 and which was received in court on the same date and the file was placed before me for directions on the same date. It required an inquiry into the cause of death of one Ada Marmion.
5. On the 28/8/2025 when the matter came up for directions the court invited the DPP and counsel for the deceased's family Mr. Nyanje appearing virtually to submit on the propriety of conducting the inquest when the circumstances leading to the death of the deceased were fairly straight forward and further than the main suspect atleast from the evidence on record is also deceased.



6. The fact that informed the question by the court was the covering report and the findings of the investigations officer. For clarity I quote the said covering report in part, the findings and recommendations verbatim thus;

“ ... the husband felt guilty and decided to end his life a few days after the death of his wife

Findings

1. The incident happened on 31st day of May 2024 between 1530hours -1700hours at Shella beach in Lamu County when the couple had gone for swimming
2. Lennox Kazungu Mbitha the manager of Garden house where the spouse were living confirms that on the material date the couple left the house together but after 2 hours the husband returned home alone.
3. At 1700hours 2 women namely Judith Kache Mlewa and Lucy Were were walking along Shella beach when they saw a body of a white lady being pushed up and down by the ocean water.
4. The ladies acted swiftly as good Samaritans and removed the body from the water and tried to conduct first aid but in vain.
5. The ladies went further and sought for assistance from members of the public who responded to the scene.
6. The tourist police and coast guard were informed and carried away the body to King Fahad hospital and later airlifted the body to Coptic hospital for autopsy
7. On the 1st day of July 2024 postmortem of the body was conducted by Dr. Simon Omuok at Coptic hospital in Nairobi which was attended by the husband and family members of the deceased in presence of police officers. The doctor formed the opinion that the cause of death was due to drowning.
8. The family of the deceased were not satisfied with the postmortem report and requested for the second postmortem which was done on the 7th day of June 2024 at Lee Funeral service by Dr. Johansen Oduor and formed the opinion that the deceased died as a result of
 - i. Multiple injury into the neck
 - ii. Drowning.;
9. The husband felt guilty and decided to end his life a few days after the death of his wife

Reccomendation

Having gone through the witnesses' statement and the evidence at hand, it is true that the couples had challenges in marriage and had unstable relationship. The wife was very disturbed and initiated for a divorce which the husband was not happy with. The husband developed suicidal thoughts and since then he tried severally to end his life and that of his wife as evidenced in the witness statements.



To my opinion the husband drowned his wife in the ocean and later escaped home leaving his wife desperately without help in the waters before the body was discovered by good Samaritans. I therefore recommend that the inquest be closed since both the husband and the wife are now deceased; however, please advise accordingly.

Amos Tali

Investigating Officer”

7. The foregoing got me thinking on whether there is any propriety in hearing the inquest since to me it is rather straight forward, a matter that should have ended with the recommendations of the investigations officer. It is thus my considered view that upon perusal of the statements and the exhibits that this inquest proceedings shall rely on and not any new evidentiary material, I do not see this court arriving at a different finding other than what the investigations officer has recommended.
8. This is rather a unique inquest because the person of interest atleast from the statements I have read and given the history of the matter also committed suicide due to some guilt according to the investigations officer and he is now deceased and I dare say the Investigations Officer formed the opinion that according to him his guilt made him take away his life.
9. Section 387 provides for conduct of inquiries by an empowered magistrate on causes of death. That jurisdiction covers the deaths the subject of section 386, and also those that occur when a person is in the custody of a police or prison officer. Under section 387(1), the magistrate has all the powers exercisable by a court conducting an ordinary criminal case. Under section 387(2), where the body has already been buried, there is power to order exhumation.
10. Section 387(3) deals with situations where, during the inquest or at the end of it, the magistrate forms an opinion that an offence has been disclosed by a known person. He is empowered to issue summons or a warrant of arrest of the person, or otherwise arrange to secure his attendance, to answer the charge, and upon the attendance, the magistrate should commence the inquiry de novo, and should proceed, thereafter, as if he had taken cognizance of an offence. If, at the termination of the inquest proceedings, an offence is disclosed, committed by unknown persons, then the magistrate compiles a report, and forwards it to the director of public prosecutions.
11. Section 388 provides for conduct of inquests or inquires at the instance of the DPP. Section 388 is subject to section 387, and it empowers the DPP to direct an empowered magistrate to conduct an inquiry to a particular death. Under section 388(2), where an inquest has terminated, the DPP may direct the empowered magistrate to reopen the inquiry, and make further investigations, whereupon the magistrate would proceed as if the proceedings had not been terminated.
12. The purpose of conduct of inquest proceedings is to primarily determine the cause of death, particularly where it is suspected that the same was by the hand of another. Where the persons responsible for the death are known, there would be no need to conduct an inquiry, the suspects ought to be arrested and arraigned to answer to a charge of either murder or manslaughter, or any other related offence.
13. The inquest would be conducted where there is doubt or where the causation is clouded in some mystery, for the court to unravel the mystery. Where there is no mystery, or the circumstances are fairly clear, then the DPP need not ask the court to conduct an inquest. The file should be closed. This is the case obtaining herein. All evidences point towards one Paul Lovis-now deceased as the person who was last seen with the deceased who is the subject of these proceedings.



14. I pause and ask the following questions. If further investigations were required, beyond what was in the covering report, findings and recommendations by the Investigating officer and/or the entire file as was placed before the DPP for perusal and advise and the DPP felt that there were gaps that he hopes this inquest would fill why did he not act under Article 157 and order DCI or the Inspector General of Police to conduct those investigations and seal those gaps instead of directing this court to do that which the DCI or the Inspector General of Police could do, and which was, indeed, within their constitutional and statutory mandate to conduct?. If the DCI had decided to close the matter, why did the DPP not just close it by agreeing with the findings of the IO?
15. Did the DPP need the court to conduct proceedings for the mere formality of having the investigations closed? I am not aware of any law that requires that courts be asked to conduct proceedings, as a mere formality, to facilitate closure of investigations being conducted by the DCI. It is up to the DPP to decide whether or not to prosecute, and they should not push that role to the courts.
16. What the magistrate and indeed this court is required to do, under sections 387 and 388 of the Criminal Procedure Code, has already been done by the DCI, when he determined that the file be closed for the aforestated findings aforementioned and none of the persons around were liable for it. The inquest is allowed to proceed as urged by the DPP and Mr.Nyanje for the family would be in my view a duplication. It is in my view an abuse of court process and duplication of roles to ask the court to do what the DCI had already done and there is actually nothing for me as a court to do.
17. Justice William Musyoka in the case of Manyibe & 4 others v Office of Director of Public Prosecutions & 2 others [2023] KEHC 2757 (KLR) while making a suggestion of the need to do away with inquest proceedings observed as follows;

“ Either way, the inquest law, as it stands, belongs to a bygone era, and it is not in tune with current legal and constitutional dispensation, and it ought to be revised, to align it to current law and practice. The said law dates back to the colonial era, when the role of magistrates was vastly different from what obtains today. The provisions were introduced in 1959, and need an overhaul. Magistrates played administrative and police roles then; and courts were largely a department in the office of the Attorney-General, and did the bidding of the Executive, which is not the case today. It will be noticed, for example, that section 388(1) talks of the Director of Public Prosecutions, who was also the Attorney-General then, directing the magistrate, which ought not to be the case, as magistrates do not serve under the Director of Public Prosecutions, and should not be directed by him in any manner. Magistrates courts should have no role at all in criminal investigations, for the roles spelt out in sections 386, 387 and 388 point to that. Criminal investigations, under *the Constitution*, 2010, is the exclusive role of the 1st and 2nd respondents, and the Criminal Procedure Code ought to be amended to align it to *the Constitution*, 2010, to take away involvement of magistrates in criminal investigations.

Inquests are akin to the preliminary inquiries and committal proceedings that magistrates used to conduct in yesteryears, for the purpose of assessing whether there was evidence to support referring a murder or treason case to the High Court for trial. Those procedures were found to be duplicitous, for the accused would be subjected to 2 trials, one before the committing magistrate, and the other at the High Court, should he be committed there. Secondly, it also caused lengthy delays to completion of criminal proceedings for the offences in question. Inquests have the same effect, duplicity and lengthy criminal proceedings. The 1st and 2nd respondents can do what the magistrate conducting the inquest does. The 2nd respondent carries out investigations, and where he forms an opinion that there is evidence



to sustain a trial and conviction, forwards the file to the 1st respondent for approval, and, where approval is given, prosecution. That is what a magistrate does in an inquest, carry out an inquiry or investigation, at the end of which he gives an opinion as to whether the evidence would sustain a conviction, and forward his opinion to the 1st respondent. The 1st respondent does the same, evaluate the report from the 1st respondent, or the magistrate where an inquest has been conducted, to assess whether or not to prosecute. That the 2 respondents can competently do, and certain classes of inquests or inquiries by magistrates should be done away with, in much the same way preliminary inquiries and committal proceedings were.”

18. I entirely agree with the findings and observations of the learned judge and I hope that this is a discussion whose time has come and there is need to review the law around Sections 387 and 388 of the Criminal Procedure Code to align with Article 157 of *the Constitution*.

B. Conclusion And Disposition.

19. It is unfortunate that Paul Lovis and Ada Marmion died the manner in which they died, they are the ones who could tell us and indeed the investigating officer as to what exactly happened but dead people tell no tales. May they rest in peace
20. Flowing from the discussion above, I hold and find that there is no propriety in conducting these inquest proceedings and accordingly I proceed to close the inquest file.
21. It is so ordered.

DATED AND SIGNED AT LAMU LAW COURTS THIS 6TH DAY OF NOVEMBER 2025.

F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Peter Birir for DPP.

Court Assistant:- Fathiya Loo.

