

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

MISC. CRIMINAL APPLICATION NO. E017 OF 2025

ABDI SALAT MAALIM.....

APPLICANT

=VERSUS=

REPUBLIC.....

RESPONDENT

RULING

1. There are two applications coming for consideration in this Ruling.
2. The first is dated 9th June 2025 brought under Section 362 of the Criminal Procedure Code, Article 25, 50(1), 159(1) and 165(6) of the Constitution of Kenya 2010 and all other enabling provisions seeking the following orders:-

(i) THAT the application be certified as urgent and be heard on priority basis.

(ii) THAT this Honourable court do call for and examine the record in Voi Principal Magistrate's Court inquest file No. 6 of 2019 and review the correctness, legality or propriety of the findings on culpability on whom might be to blame for the accident.

(iii) THAT this honourable court be pleased to issue any other orders it deems fit.

3. The application dated 9th June 2025 is based on the following grounds:-

(i) On 12.4.2019 a grisly road accident occurred at Manyani area, TAita Taveta County at around 2130hours between motor vehicles KBQ 002J/ZD 1006 make Mercedes Benz trailer, KCM 693V/ZD 1652 make Mercedes Axor and KCH 647W make Toyota Raum claiming the lives of the deceased herein.

(ii) An inquest ensued thereafter being INQUEST NO. 6 OF 2019 - REPUBLIC =VS= MUNYAO MUTHAMA & ANOTHER where the same was hurriedly concluded and a ruling delivered on 3.10.2019 without the involvement of the applicant and the key eye witnesses being PW1 and PW2 herein.

(iii) Furthermore, the initial ruling delivered on 3.10.2019 was based on false, doctored and/or bungled up investigations and evidence thereby resulting the same to be set aside and a fresh hearing ordered by dint of a ruling delivered by Justice E. K. Ogola on 13.5.2021.

- (iv) A fresh inquest was conducted and on 22.11.2024, Hon. A. M. Obura sitting in the Chief Magistrate's Court at Voi in INQUEST NO. 6 OF 2019 - REPUBLIC =VS= MUNYAO MUTHAMA & ANOTHER delivered its ruling concluding that the deceased died as a result of a road traffic accident and the deceased driver may have been at fault.**
- (v) In expressing its opinion on culpability, the trial court overlooked the testimonies of PW1 and PW2 being key eye witnesses to the accident, on account that the witnesses had not recorded a statement with the police hence could not rely on such testimonies.**
- (vi) On the contrary, PW1 and PW2 had recorded their respective statements with the police, internal affairs unit, to wit they relied on during retrial.**
- (vii) Such an inadvertent oversight on the part of the trial court is tantamount to an infringement on the applicant's right to fair trial as envisaged in Articles 25(c), 50(1) and 159 of the Constitution.**
- (viii) That as a matter of right, a court of competent jurisdiction should ensure that the rule of law**

prevails by ensuring that justice is not only done but it is manifestly seen to be done.

(ix) In the interest of justice that the orders sought in the application be granted.

4. The application dated 9th June 2025 is supported by the affidavit of the Applicant **ABDI SALAT MAALIM** on 9th June 2025 in which he deposed as follows:-

(i) THAT I am the Applicant herein duly conversant with the issues in controversy thus fit and competent to swear this affidavit.

(ii) THAT I am the legal, beneficial and/or bona fide legal owner of motor vehicle registration number KBQ 002J/ZD 1006 make Mercedes Benz trailer.

(iii) THAT on 12.4.2019 a grisly road accident occurred at Manyani area, Taita Taveta County at around 2130 hours involving motor vehicles KBQ 002J/ZD 1006 make Mercedes Benz trailer, KCM 693V/ZD 1652 make Mercedes Axor and KCH 647W make Toyota Raum claiming the lives of the deceased herein.

(iv) THAT an inquest ensued thereafter being INQUEST NO. 6 OF 2019 - REPUBLIC =VS= MUNYAO MUTHAMA & ANOTHER where the same was concluded and a ruling delivered on 3.10.2019 without the

involvement of either the key eye witnesses being PW1 and PW2 herein or myself.

- (v) THAT furthermore, the initial ruling delivered on 3.10.2019 was based on false, doctors and/or bungled up investigations and evidence thereby resulting the same to be set aside and a fresh hearing ordered by dint of a ruling delivered by Justice E. K. Ogola on 13.5.2021**
- (vi) THAT a fresh inquest was conducted and on 22.11.2024, Hon. A. M. Obura sitting in the Chief Magistrate's Court at Voi in INQUEST NO. 6 OF 2019 - REPUBLIC =VS= MUNYAO MUTHAMA & ANOTHER delivered its ruling concluding that the deceased died as a result of a road traffic accident for which the deceased driver may have been at fault.**
- (vii) THAT in expressing its opinion on culpability, the trial court over looked the testimonies of PW1 and PW2, being key eye witnesses to the accident, on account that the witnesses had not recorded a statement with the police hence could not rely on such testimonies.**
- (viii) THAT on the contrary PW1 and PW2 had recorded their respective statements with the police, internal**

affairs unit, to wit they relied on the same during the retrial of the inquest.

(ix) THAT I am informed by my Advocate on record Mr. Brian Motuka which information I verily believe to be true that an inquest is a judicial inquiry conducted to determine the circumstances and cause of a person's death.

(x) THAT I am informed that the process entails examining witnesses on oath who testify on any relevant matter or information in respect to the circumstances leading to a deceased's death.

(xi) THAT I am informed that the process entails examining witnesses on oath who testify on any relevant matter or information in respect to the circumstances leading to a deceased's death.

(xii) THAT I am informed that it is trite law that in administration of justice and in weighty investigative process as the one herein, justice must not only be done but must be manifestly seen to be done.

(xiii) THAT the inadvertent oversight of the trial court to disregard the crucial testimonies of PW1 and PW2 despite recording statements which they used and referred to during trial is tantamount to an

infringement on my right to fair trial as envisaged in Articles 25(c), 50(1) and 159 of the Constitution.

(xiv) THAT I am informed that an inquest which essentially is a fact finding process to establish the death of the deceased, locking out such crucial testimonies shall be prejudicial to me and if allowed to stand, shall occasion a gross miscarriage of justice.

(xv) THAT I am informed that this Honorable Court is empowered with the supervisory jurisdiction over the subordinate courts and that it can exercise its discretion to review the correctness, legality or propriety of the findings on culpability on whom might be to blame for the accident.

(xvi) THAT as a matter of right, an aggrieved party can appeal and/or seek review orders if their fundamental rights and freedoms have been aggrieved as is the case herein.

(xvii) THAT it is in the interest of justice that the orders sought in the application be granted.

5. The Applicant also filed another application dated 1st August 2025 seeking to adduce additional evidence. It seeks the following orders:-

- (i) **THAT this Honourable court does order and/or allow the prosecution to call key and crucial witnesses from the Internal Affairs Unit to give and adduce crucial evidence in respect to the findings made from the independent investigations conducted in respect to the inquest herein.**
- (ii) **THAT this Honourable court be pleased to issue summons to Mr. Juma Mashua, Mr. Julius Rotich and Corporal Caroline Chepngenoo from the internal affairs unit, national police service.**
- (iii) **THAT this honourable court be pleased to issue any other orders it deems fit.**

6. The application dated 1st August 2025 is supported by the affidavit of the Applicant **ABDI SALAT MAALIM** on 1st August 2025 in which he deposed as follows:-

- a) **During the hearing and determination of INQUEST NO. 6 OF 2019 — REPUBLIC =VS= MUNYAO MUTHAMA & ANOTHER, the then investigating officer one Sergeant Mohammed Abdullahi, Pw8, while giving evidence, produced a ruling as *Exhibit 9* claiming that he was acquitted of the charges against him.**

- b) The trial court, rendering its ruling on the inquest on 22.11.2024, at paragraphs 38 & 39, relied on the exhibit to claim that the allegations of foul play during the investigations were unfounded as the orderly proceedings were concluded.**
- c) However, recently, the internal affairs unit through a letter dated 12.5.2025, state that the orderly proceedings are yet to be concluded.**
- d) Such evidence was neither within the reach and/or knowledge of the applicant.**
- e) Such evidence is material, substantial and cogent as it goes to the root of the inquest herein.**
- f) Despite numerous requests to furnish the nature, details and findings of their investigations, the internal affairs unit has been adamant that the same can only be revealed through a court order.**
- g) It is prudent and in the interest of justice that the said key police officer who conducted an independent investigation into the accident be called for the purposes of producing such documents and/or evidence.**

- h) Since an inquest is primarily a fact-finding process, justice must not only be done but manifestly seen to be done.**
- i) In the interest of justice that the orders sought in the application be granted.**

7. The parties filed written submissions in the applications as follows; The Applicant submitted that he seeks review of the findings from Voi Principal Magistrates Court Inquest No. 6 of 2019, primarily arguing that the ruling has exposed him to significant civil liability and is fundamentally flawed.
8. He contends that the Learned Chief Magistrate, Hon. A.M. Obura, made a grave error by incorrectly finding that two key eye witnesses (PW1 and PW2) had never reported the accident to the police or recorded statements.
9. The Applicant emphasizes that these statements were, in fact, available and annexed to his application, and that the magistrate's subsequent dismissal of their evidence as not cogent was prejudicial and potentially indicative of bias, especially since she did not personally hear their testimony.
10. Furthermore, the Applicant challenges the ruling's legal soundness, noting its reliance on non-conclusive language.
11. He submits that the use of the word "may" in stating the driver of his vehicle may have been at fault and a traffic offence

may have been committed renders the findings dangerously open-ended and lacking the certainty required of a judicial decision.

12. Considering that the inquest concerns two fatalities and forms the likely basis for determining civil liability in pending multi-million shilling suits, this ambiguity unfairly prejudices the Applicant, leaving him vulnerable to extensive financial claims.

13. The Applicant's core request is for this Honourable Court to call for and examine the lower court record, review the correctness and legality of its findings, and ultimately order a fresh hearing of the inquest

14. He seeks a proceeding where the evidence of PW1 and PW2 is properly evaluated, leading to a definitive conclusion, and asks that the matter be heard by a different magistrate to ensure impartiality.

15. His overarching goal is to obtain a clear and just determination to prevent irreparable loss and secure justice after years of pursuit.

16. The first application, dated 9th June 2025, seeks the supervisory intervention of this Court under Section 362 of the Criminal Procedure Code and Article 165(6) of the Constitution to review the correctness, legality, and propriety of the ruling

delivered on 22nd November 2024 in Voi Chief Magistrate's Court
Inquest No. 6 of 2019.

17. The second application, dated 1st August 2025, seeks an order to adduce additional evidence from officers of the Internal Affairs Unit.
18. The central grievance of the Applicant, who is the registered owner of motor vehicle KBQ 002J, is that the learned Chief Magistrate, in her ruling, erroneously disregarded the testimonies of two key eye witnesses, PW1 and PW2, on the premise that they had not recorded statements with the police.
19. The Applicant has demonstrated, through annexed documents, that these witnesses did in fact record statements with the Internal Affairs Unit, which they relied upon during the retrial.
20. This Court finds that the learned magistrate's apparent oversight on this material point constitutes an error on the face of the record.
21. An inquest is a fact-finding judicial inquiry whose primary purpose is to ascertain the cause and circumstances of a death.
22. The duty of a court in such an inquiry is to evaluate all available evidence impartially and thoroughly.

23. The inadvertent exclusion or mischaracterization of crucial eyewitness evidence undermines the integrity of this process and risks a miscarriage of justice.
24. Furthermore, this Court notes the Applicant's legitimate concern regarding the unspecified language used in the impugned ruling, which concluded that the deceased driver "may have been at fault" and that a traffic offence "may have been committed."
25. While an inquest does not culminate in a finding of criminal guilt or liability, its findings carry significant weight in subsequent civil proceedings.
26. The use of such speculative terminology, without a firmer foundation based on a complete consideration of the evidence, renders the findings inconclusive and potentially prejudicial.
27. Justice must not only be done but must manifestly be seen to be done, A ruling that leaves vital questions unresolved after a full inquest may fail to meet this standard.
28. Regarding the application to adduce additional evidence dated 1st August 2025, the Applicant seeks to call officers from the Internal Affairs Unit to produce evidence concerning the status of orderly room proceedings against the initial investigating officer.
29. The Applicant contends this evidence is crucial as it contradicts evidence (Exhibit 9) that was relied upon by the trial court to find that allegations of investigative foul play were unfounded.

30. The principles governing the admission of additional evidence are well settled.
31. This power is exercised sparingly and where the evidence could not have been obtained with reasonable diligence for use at the trial, is presumably credible, and is so material that it would likely have influenced the outcome.
32. While the letter from the Internal Affairs Unit dated 12th May 2025 appears to be new information, its direct relevance to the central task of the inquest determining the cause of death is, in this Court's view, not clear.
33. The primary focus of an inquest remains the circumstances of the accident itself, not the disciplinary proceedings against police officers involved in the investigation. In the circumstances, this limb of the application is not granted.
34. However, the fundamental flaw identified in the consideration of the eyewitness evidence is sufficient to warrant the intervention of this Court in its supervisory jurisdiction.
35. The error goes to the heart of the fact-finding exercise. Consequently, the interests of justice demand that the inquest be heard afresh to ensure a fair and conclusive determination based on a complete and proper evaluation of all relevant evidence, including the testimonies of PW1 and PW2.
36. In the result, the following orders are hereby issued:

- (i) THAT the application dated 9th June 2025 is allowed in terms of Prayer No. (ii).**
- (ii) THAT the ruling delivered on 22nd November 2024 in Voi Chief Magistrate's Court Inquest No. 6 of 2019 is hereby set aside.**
- (iii) THAT Inquest No. 6 of 2019 is ordered to be heard denovo.**

37. However, the application dated 1st August 2025 is hereby dismissed.

38. There shall be no order as to costs.

39. ORDERS TO ISSUE ACCORDINGLY.

Dated, signed and delivered this 3rd day of December 2025 in open court at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Mabishi/Millicent

State Counsel: Mr. Ngigi

The Applicant present