

7.

CRIMINAL LITIGATION

INQUESTS: PRE-TRIAL ASPECTS & COURT PROCEEDINGS

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INTRODUCTION

• DEFINITION

- An inquest is a judicial proceeding inquiring into the circumstances surrounding sudden or unnatural death of a person.
- The inquiry may involve inconclusive facts as to the cause of death of the deceased.
- The inquiry is also held where a person is missing and is believed to be dead, and there is need to establish the circumstances surrounding the death of the deceased.

• PRELIMINARIES

- The Police Officers with jurisdiction over a certain area will receive a report or complaint of missing and or dead person
- The report is recorded in the Occurrence Book (OB)
- The Officers will visit the scene and launch investigations;

INVESTIGATIONS

- Visit and preserve crime scene
- Scenes of Crime Police Unit to take photographs
- The deceased's body taken for examination
- Search for evidence, both in premises and on persons
- Collect, label, store, physical exhibits
- Require samples, fingerprints, blood and saliva samples
- Interrogate suspect(s)
- Interview witnesses and victims
- Interview members of the public
- Obtain and maintain confidential information
- Coordinate investigations
- Record statements and compile police inquiry report

INVESTIGATIONS

Section 386 of Criminal Procedure Code states;

- [Upon receipt of report] investigations shall be conducted and
- a report drawn on the apparent cause of death, describing body marks and injuries and
- stating in what manner or by what instrument (if any) the marks appear to have been inflicted and
- the report shall be forwarded to the nearest magistrate to conduct an inquest.

PRELIMINARY FINDINGS

- The report is placed before the In-charge of the local magistrate Court
- The report is read and evaluated
- if there compiled evidence on the circumstances surrounding the death of the deceased that disclose a criminal offence was committed in the process, the magistrate makes a finding that an inquest should be conducted
- The inquest proceedings are conducted in a different court from the one that made the preliminary order

MISSING PERSONS

- Section 386 (d) Criminal procedure Code prescribes;
- Where there is a report made of a missing person believed to be dead
- The Police Officer in charge of the station shall cause a report to be sent to the Commissioner of Police and Attorney General
- The report will contain supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which death of the deceased could have taken place

INQUESTS.....CONTD

Examples of circumstances in which inquests are held are;

- Where the deceased body is found at the scene (unresolved murder cases)
- Where the body of deceased is found on the road and there has been an accident (hit and run cases)
- Where the deceased has died in circumstances, raising reasonable suspicion that it was murder and somebody committed an offence (Yogesh Madan Mohan Case)
- Where a person is found dead in police custody, remand or prison (Kingongo Case)

INQUESTS..... CONTD

PROCEDURE

Section 385-388 of the Criminal Procedure Code

- The inquest is conducted as a proceeding but it is not a criminal trial *per se*, as there is no accused person, there is no defense or prosecution in **adversarial** setup but more of an **inquisitorial** process
- (Adducing all evidence in court; fact finding process)
- What really goes on is an enquiry into a situation or set of circumstances to conclusively determine the cause of death of the deceased person, and if
- The cause of death amounts to a criminal offence who is (are)the suspect(s)

INQUESTS..... CONTD

Section 386 CPC provides:

- where a person [is alleged] to have committed suicide, or
- killed by another or by accident or
- in circumstances raising reasonable suspicion that someone committed an offence, the police station may lodge report to the nearest court for an inquest to be conducted.
- If it is a situation where a person is believed to be missing and believed to be dead, the Police station in charge will forward the report to the Commissioner of Police for onward transmission to the Attorney General.

INQUESTS..... CONTD

Section 387 CPC provides:

The magistrate may hold an inquest where a person has died mysteriously while in custody of police or prison.

- The magistrate may order the exhumation of the deceased body for examination if expedient to do so.
- If before or at the termination of proceedings, the court is of the opinion that suspect (s) committed the offence;
- The court will make the finding in a ruling of the court and issue summons or warrant of arrest for the suspects to stand trial. (Normally and preferably in another court)
- If the court finds that no offence was committed and /or that there is insufficient evidence to conclusively confirm cause of death, the court will make the finding in the ruling and recommend the proceedings and inquiry file be closed.

INQUESTS..... CONTD

- The parties to the inquest are interested parties, any interested party may engage the services of an advocate who conducts proceedings as watching brief Counsel.
- With the leave of court, the family of the deceased or the person who fears he/she is incriminated by the evidence in the report, may appear in court in person or with an advocate and participate fully in the proceedings by calling witnesses, cross-examining witnesses and making submissions.

INQUESTS.....CONTD

- **Section 388 CPC provides;**
- The Attorney general may direct the court to conduct an inquiry as to the cause of death.
- Where the inquiry is terminated and the AG is of the view that further investigations are required, the A.G. may direct the court to reopen the inquiry, except where the offence of murder or manslaughter is preferred.
- When the court makes its decision as to the outcome of the inquest, where one is missing or presumed dead, the AG may upon the expiry of the requisite period empower the Registrar General to facilitate law of succession proceedings and issuance of death certificate.
- The High Court has power to quash an inquest verdict and compel the Attorney General to reopen an inquest.
- The High Court may quash the inquest verdict or revise it.

INQUEST CASES

- **INQUEST No 19 of 2005**
- **Facts; 20th August, 2005; relatives & friends held a party was for one of the siblings leaving for studies abroad**
- **A brawl ensued between the couple and the deceased bled profusely and collapsed**
- **The deceased was admitted in hospital and succumbed to death on 8th September, 2005**
- **The Inquest was conducted, 22 witnesses testified**

INQUEST CASES....CONTD

- The deceased's son, the only eye witness testified that on the fateful night, he saw his father holding his mother. He saw him smack her. She rolled and suddenly grabbed a knife, the next thing he knew hid Dad was holding his right side. He got on the bed and dropped the knife and then fell down.
- The Doctor's testimony & Post mortem report confirmed the deceased had a wound 10 cm long.
- It was on the right lobe of the liver, below the ribcage and had gone through the diaphragm.
- There was lots of blood in the abdomen.
- It was a wound that would have been caused by a long Knife

INQUEST CASES....CONTD

FINDINGS

- Direct evidence from the deceased's and suspect's son –witnessed the deceased being stabbed with a knife by the suspect- his mother.
- The suspect did not take deceased to hospital ; called the driver to do so;
- The suspect washed blood from the knife in the bathroom;
- The suspect instructed the 2 employees to clean the room, wipe the blood

INQUEST CASES..... CONTD

RULING

- Deceased died as a result of injuries inflicted using a kitchen knife
- The injuries were inflicted at his residence at Lower Kabete on the night of 20th August, 2005
- All the evidence adduced ascribes full responsibility to his wife as the principal suspect for the offence.

RECOMMENDATION

The witness No 1 be apprehended and arraigned before the High Court for the murder of her deceased husband.

INQUEST CASES.....

KINGONGO CASE

- On 4th September, 2000, 6 suspects in the King'ongo prison in Nyeri were killed
- Residents were shattered by screams & howls from the maximum security that lasted for one and a half hours
- Following morning, Central Provincial Police Commander announced that 6 death row convict inmates were shot dead when they tried to escape the previous night
- The Provincial Prisons Boss said that inmates fell off a high perimeter wall as they tried to escape lawful custody
- The first post -mortem was scheduled on 27th September, 2000, the police pathologist did not turn up.
- The other pathologist performed the post mortem and revealed the following

INQUEST CASES.....CONTD

The inmates had ;

- Broken skulls
- Broken teeth
- Gouged out eyes
- Broken limbs
- pulled out nails
- He could reconcile the injuries with falling off a wall
- He found no evidence of bullets

Conclusion; they were bludgeoned to death.

Pathologist fired and reinstated in 2003. Promoted to Head of Diagnostics & Forensic Services in the Ministry of Medical Services

INQUEST CASES.....CONTD

- Nairobi Principal Magistrate, conducted the inquest and affirmed the pathologist's findings and dismissed the evidence that the inmates were shot as they tried to escape.
- 9 prison warders were arraigned in the High Court on charges of murder
- The High Court found them guilty of Murder and were convicted and sentenced to death

INQUEST CASES

FINDINGS

- A siren was blown
- All warders proceeded to the sentry and collected batons, guns & any weapon they could find
- The bodies did not have bullet wounds
- The bodies were recovered several metres away from the high perimeter wall
- No stones on the could cause such fractures where the inmates were claimed to have landed

SPECIAL PROCEDURES

Inquests;

An inquest is a judicial proceeding inquiring the circumstances surrounding sudden or unnatural death of a person. Also the inquiry may involve inconclusive facts as to the cause of death of the deceased. The inquest is held where a person is missing and is believed to be dead, and there is need to establish the circumstances surrounding disappearance and the death of the deceased.

Examples of circumstances where inquests are held are;

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Procedure

Section 385-388 of the Criminal Procedure Code

The inquest is conducted as a proceeding but it is not a criminal trial *per se*, as there is no accused person, there is no defense or prosecution. What really goes on is an enquiry into a situation or set of circumstances to conclusively determine the cause of death of the deceased person.

The proceedings are instituted by the officer in charge of the police station within the jurisdiction where death has occurred in mysterious and unresolved circumstances. The officer in charge compiles a comprehensive report on the investigations conducted, attachment of reports describing circumstances of death, description of the deceased's body, any weapons , gadgets found at the scene and written statements of witnesses, experts and possible suspect (s).

Section 386 CPC provides;

- Where a person [is alleged] to have committed suicide, or
- Killed by another or by accident or
- In circumstances raising reasonable suspicion that someone committed an offence, the police station may lodge report to the nearest court for an inquest to be conducted.
- If it is a situation where a person is believed to be missing and believed to be dead, the Police station in charge will forward the report to the Commissioner of Police for onward transmission to the Attorney General.

Section 385 CPC provides; the inquest proceedings are conducted by a magistrate of first and second class or one specially empowered to hold inquests within the jurisdiction where the death occurred.

Section 387 CPC provides; the magistrate may hold an inquest where a person has died while in custody of police or prison.

The magistrate may order the examination of the deceased body if expedient to do so.

If before or at the termination of proceedings, the court is of the opinion that suspect (s) committed the offence. The court will make the finding in a ruling of the court and issue summons or warrant of arrest for the suspects to stand trial. (Normally the trial is conducted in another court from the one that made the finding).

If the court finds that no offence was committed and /or that there is insufficient evidence to conclusively confirm cause of death, the court will make the finding in the ruling and recommend the proceedings and inquiry file be closed.

The parties to the inquest are interested parties, any interested party may engage the services of an advocate who conducts proceedings as watching brief Counsel. With the leave of court, the family of the deceased or the person who fears he/she is incriminated may appear in court in person or with an advocate and participate fully in the proceedings by calling witnesses, cross-examining them and making submissions.

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Reference: INQUEST NUMBER 19 OF 2005

Deceased: YOGESH MADAN MOHAN SAPRA