

A473/2013

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

02/07/2013.

Date: 26 June 2013

High Court Ref No.: 475
Magistrate's Serial No.: 2/2013
Case No.: SR/4/2013

THE FEE WHICHEVER IS NOT APPLICABLE	
(1) PORTABLE: <i>W</i> NO.	
(2) OF INTEREST TO OTHER JUDGES: <i>W</i> NO.	
(3) ADVISED.	
26/6/13	<i>[Signature]</i>
DATE	SIGNATURE

Inquest: Nathaniel Lechalaba

INQUEST: REVIEW JUDGMENT

A A LOUW J:

- [1] The above inquest into the circumstances attending the death of Nathaniel Lechalaba was held in the magistrate's court, Soshanguve on 30 January 2013 in terms of section 6(a) of the Inquest Act 58 of 1959.
- [2] This matter was referred to the review court as by the acting chief magistrate, Pretoria North, as he is of the view that serious mistakes/irregularities occurred. He had requested the Reviewing Judge to set aside the decision of the magistrate as there were gross irregularities on the J56, particularly with regard to the identity of the deceased and the failure to notify the next of kin of the deceased.

[3] The matter was referred to the DPP for comment on the issue raised by the acting senior magistrate. A helpful memorandum was received.

[4] Section 7 of the Inquests Act 58 of 1959 provides as follows:

“Except in cases where the spouse or a near adult relative of the alleged deceased person is being subpoenaed as witness, the judicial officer who is to hold an inquest shall cause reasonable notice thereof to be given to such spouse or relative, provided the spouse or relative is available and the giving of such notice will not, in the option of the judicial officer, unduly delay the holding of the inquest.”

Section 16(2) of the Inquest Act 58 of 1959 also provides as follows:

“The judicial officer holding an inquest shall record a finding upon the inquest-

- (a) As to the identity of the deceased person;*
- (b) ...*
- (c) As to the date of death.”*

[5] The above sections impose a duty on the judicial officer to give notice to the spouse or a relative of the deceased and to record on his findings the identity of the deceased and the date of death. Failure to perform the above acts is a gross irregularity.

[6] It appears from the J56 pro forma that the identity of the deceased, the date of death and cause or likely cause of death were not recorded by the judicial officer who held the inquest. The identity of the deceased and the date of death relate to the person referred to in the abridged death certificate (A7). This is not the deceased in this matter but S.A. Metsileng. The identity of the deceased in this matter is Nathaniel Lechalaba as identified by his brother (A2). The correct date of death is 5 August 2002.

- [7] The learned magistrate committed a gross irregularity by failing to record the correct identity of the deceased, the correct date of death and informing the spouse or relative of the deceased about the holding of the inquest.

In terms of section 24(1) of the Supreme Court Act, as amended by Act 12 of 2004 and in terms of section 173 of the Constitution of the Republic of South Africa Act 106 of 1996, the High Court has inherent powers to review proceedings where a gross irregularity had occurred.

- [8] Therefore the findings of the judicial officer have to be set aside.

Order:

1. The matter is remitted to the magistrate for reopening of the inquest.
2. That the spouse or next of kin of the deceased be notified.
3. That the correct date of death and the identity of the deceased be determined and entered on the J56


A A LOUW
JUDGE OF THE HIGH COURT

I agree


R G TOLMAY
JUDGE OF THE HIGH COURT