

In the KwaZulu-Natal High Court, Durban  
Republic of South Africa

Case No : 5739/13

In the matter between :

South Coast Recovery Centre and Halfway House CC

First Applicant

Stephen Edward Stewart

Second Applicant

and

National Director : National Prosecuting Authority

First Respondent

Additional Magistrate Bryan Munilall N.O.

Second Respondent

Minister of Safety and Security

Third Respondent

Glenn Barry Trouchet

Fourth Respondent

Kerry Trouchet

Fifth Respondent

Netcare (Pty) Ltd

Sixth Respondent

Bikash Ramchurran

Seventh Respondent

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## Judgment

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Lopes J

[1] This matter came before me by way of an urgent application on the afternoon of the 30<sup>th</sup> May 2013. The applicants seek an order staying certain inquest

proceedings to be held in the Magistrate's Court of Port Shepstone starting on the 3rd June 2013 and proceeding for five days. The applicants seek that those proceedings are to be suspended pending a full and proper investigation by the South African Police into the death of Blaire Lynne Trouchet ('Blaire'), who died on the 23<sup>rd</sup> February 2011. The applicants also urge me to order an investigation into the investigation of the inquest and the circumstances under which the inquest docket was prepared and statements filed therein. They also seek that I order the submission, by the South African Police Services, of a proper report as required by the Inquests Act, 1959 ('the Act'). In the alternative I am requested to review and set aside the decision of the magistrate of Port Shepstone to hold the inquest on the basis of the inquest docket submitted to him.

[2] The respondents have undertaken either to abide my decision or oppose the relief sought by the applicants. As a result of the fact that the inquest is scheduled to begin the second court day after I heard argument, I am required to make a decision urgently. I shall therefore attempt to deal with the matter as best as I can in the time allowed to me.

[3] The history of the matter may be outlined as follows :

(a) Blaire was 26 years old. She suffered from a drug addiction. She was admitted to the first applicant, a recovery centre and halfway house facility, on Sunday 20<sup>th</sup> February 2011 to commence drug abuse rehabilitation;

- (b) at the time that she was admitted and up until her death, one Conrad Lawrence Cooper ('Cooper'), was the manager of the centre and the second applicant, Dr Stephen Edward Stewart, prescribed medication for Blaire and attended to her;
- (c) on Tuesday the 22<sup>nd</sup> January 2011 inmates and staff at the centre were unable to rouse Blaire, and after attempts at CPR had failed to revive her she was rushed to the casualty section at the Margate Netcare Hospital managed by the sixth respondent ('the hospital');
- (d) further attempts to resuscitate Blaire were made by the medical staff at the hospital, but were unsuccessful;
- (e) various post mortem examinations were conducted in order to establish the cause of Blaire's death;
- (f) eventually an inquest docket containing a number of affidavits and statements was placed before the public prosecutor in Port Shepstone who, together with a number of other State officials, including members of the National Prosecuting Authority, eventually submitted an inquest docket to the second respondent, Additional Magistrate Bryan Munilal;
- (g) the full contents of the inquest docket were conveyed to all parties by the 21<sup>st</sup> January 2013, and on the 31 January 2013 the legal representatives of the parties agreed that the official inquest hearing would be conducted from the 3<sup>rd</sup> June 2013 for five days.

[4] The applicants bring this urgent application to stay those proceedings on the following bases :

- (a) that ss 3 and 4 of the Act require an investigation to be carried out by any police official who has reason to believe that a person has died from other than natural causes. The police official is enjoined to investigate or cause to be investigated the circumstances of the death and submit a report thereon together with all the relevant statements, documents and information to the public prosecutor, who may call for additional information. The public prosecutor in turn must submit the information submitted to him to the magistrate of the district concerned, and if it appears to the magistrate that the death was not due to natural causes he shall take such steps as may be necessary to ensure that an inquest is held to determine the circumstances and cause of the death;
- (b) the circumstances of this case are such that most of the investigations were carried out by a private investigator, a Mr de Beer, who was hired at the instance of the fourth and fifth respondents who were Blaire's parents;
- (c) allegations regarding the alleged improper compilation of the inquest docket relate to :
- (i) an 'affidavit' allegedly deposed to by a Dr Klatzow which curiously appears to have been commissioned by the investigating officer in the matter, one Warrant Officer Mbhele, but which has not been signed by Dr Klatzow himself. Dr Klatzow denies having deposed to the affidavit;
  - (ii) A report by Dr Ganas Perumal, a specialist forensic pathologist is contained in the docket and has not been signed by Dr Perumal;

- (iii) A report by Dr Kennedy Nyamande, a pulmonologist which is neither signed, witnessed nor commissioned;
- (iv) A report by Professor S R Naidoo, a forensic pathologist, appointed at the request of the Senior Public Prosecutor in Port Shepstone. The complaint here is that Dr Naidoo had previously been involved in an examination of the histological section referred to by Dr Perumal on the 22<sup>nd</sup> March 2011 when the post-mortem examination was conducted;
- (v) An affidavit by Professor Virendra Rambiritch an expert on detoxification medication. He was apparently employed by the Trouchet family;
- (vi) A Medibank Resuscitation Chart prepared at the hospital. There are two copies of this report put up, and it is alleged that there are suspicious differences between the documents which are highlighted in the papers before me.

(d) Reference is also made to certain threats allegedly made by the fourth respondent to both Cooper and the second applicant.

[5] Mr *Maraïs* SC, who appeared for the applicants together with Mr *Boulle* submitted that the entire investigation may be tainted by irregularity, dishonesty or bias to the extent that the process was not conducted in accordance with the provisions of the Act. Accordingly, it cannot achieve the primary objective of the Act which is an open, fair and transparent process in terms of which a magistrate, favoured with accurate and relevant information may make a finding as required by the Act.

[6] Answering affidavits were put up on behalf of the Troughets and the hospital, and a replying affidavit was put up by the applicants.

[7] With regard to the complaints made by the applicants regarding the so-called affidavit of Dr Klatzow contained in the inquest docket, it is clear that affidavit purports to be one in terms s 212 of the Criminal Procedure Act, 1977 (which Dr Klatzow is not authorised to depose to) and has not been signed by Dr Klatzow. It certainly appears as if Warrant Officer Mbhele acted as a commissioner of oaths, but as the stamp containing his signature is so poorly reproduced, I am unable to be certain whether or not he was certifying the originality of the document as it stood or whether he was purporting to record an oath. Certainly above the stamp are the usual statements regarding the taking of an oath. It is clear however from the answering affidavits that reports were prepared by Dr Klatzow on the 7<sup>th</sup> April 2011 and the 22<sup>nd</sup> April 2011 dealing with the matter. On the basis of those reports a statement was sent to Dr Klatzow by Mr de Beer. He was unable to cast any light on the commissioning of the document. The defective 'affidavit' of Dr Klatzow was commissioned on the 16<sup>th</sup> May 2011. As long ago as the 25<sup>th</sup> October 2011 the senior public prosecutor in Port Shepstone was aware of :

- (a) the possibility of bias due to the fact that the fourth respondent instructed both Dr Ganas Perumal and Dr Klatzow;
- (b) the need to instruct Warrant Officer Mbhele to refer the matter to Dr Stephen Naidoo from the Department of Health to study the contents of the documents and the statements allegedly made by the doctors.

[8] What this letter demonstrates is that the investigation of the death of Blaire was ongoing and involved not only the police, but the Senior Public Prosecutor of Port Shepstone, who was unhappy with the investigation at that stage and required further input.

[9] With regard to the 'affidavit' of Dr Perumal, it appears from the answering affidavits that the initial affidavit was drafted by Mr de Beer and sent to Dr Perumal, who confirmed the contents. Mr de Beer accompanied Dr Perumal to the Westville Police Station where the document was signed under oath. Mr de Beer presumes that the additional pages annexed to the report and complained of by the applicants was presumably attached to the affidavit at the request of the Senior Public Prosecutor in Port Shepstone.

[10] While the input of Dr Kennedy Nyamande, the pulmonologist, may have been at the request of the family, that was done via the senior public prosecutor. According to the answering affidavits, Dr Nyamande will be attending the inquest as a witness and will give evidence.

[11] Similarly the appointment of Professor S R Naidoo, a forensic pathologist, was at the request of the Senior Public Prosecutor in Port Shepstone. The fact that he may previously have been involved in the post-mortem report, does not, prima facie, disqualify him from expressing a professional opinion.

[12] With regard to the affidavit by Professor Vivendra Rambiritch, the detoxification expert, it is hardly surprising that the family would have wanted an expert of this nature to provide his input.

[13] Finally the Medibank Resuscitation Charts are Annexes E1 and E2 to the founding affidavit. They appear in all respects to be identical save that Annexure E1 has a number of items highlighted with a yellow highlighting marker. To the untrained eye there appears to be no difference whatsoever in the manuscript writing on the documents. There is no clarity as to who was responsible for the highlighting, and I cannot see how that would cast such doubt on the document that the original cannot be introduced into evidence and these aspects explored at the inquest.

[14] Having considered the foregoing, I do not believe that the applicants have established a prima facie case that there was anything unfair or improper in the compilation of the inquest docket presented to the Additional Magistrate in Port Shepstone. His decision to hold a formal inquest so as to establish the circumstances and cause of the death of Blaire was arrived at by him after perusal of the inquest docket. In terms of s 5(2) of the Act he is enjoined to do so when it appears to him that a death had occurred, and that the death was not due to natural causes. Upon a perusal of the scant expert information contained in the application papers, it is hardly surprising that he did so. In any event he does so in the exercise of his discretion. His conduct in that regard does not appear to satisfy any test which the applicants would be required to show in order to persuade me to review that decision.

[15] With regard to the statements allegedly made by Blaire's father to Cooper, the second applicant and others, given the times when they were made, they can hardly be surprising. He was no doubt extremely frustrated by his perceived lack of co-operation from the staff of the first applicant, and the statements which he made are unsurprising in the context of the grief which both he and the fifth respondent must continue to suffer. That is not to excuse his conduct if it was as alleged by the applicants, but merely to understand it. To suggest that it is a cause for concluding that the inquest docket was somehow improperly compiled, is untenable.

[16] The fact that the family may have sought to enlist the help of expert medical personnel to assist the State in arriving at a proper conclusion is both unsurprising and, in my view, perfectly proper. Any expert who testifies before a court does so on the basis that he or she is assisting the court and not taking sides with any particular party. The fact that their views may cast doubt upon the behaviour of one or other person is neither here nor there. Their function is to provide an honest objective opinion to the court.

[17] With regard to the possible prejudice suffered by the applicants if I refuse to grant the relief they seek, I believe there is none. The applicants will be represented by senior and junior counsel at the inquest. Should they desire to call any witnesses in addition to those which the State calls, they are fully entitled to make application to the presiding magistrate to do so. They will have the right to cross-examine

witnesses and to raise any questions which they may have regarding the documentation in the inquest docket with the learned magistrate.

[18] Making a decision that the proceedings will be somehow irregular because of the compilation of the inquest docket, is in my view, to anticipate the function of the learned magistrate. There is absolutely no reason for me to do that, nor to suppose that he would not deal with any objections or requests made by the applicants' representatives in a fair and judicial manner. In the unlikely event that there is any complaint which the applicants have at the end of the inquest findings, that is something which they can deal with through further legal proceedings.

[19] Finally it is necessary to mention the question of urgency. This matter was brought before me at 2:15pm on Thursday 30<sup>th</sup> May 2013. There is no reason why the application could not have been brought before me either at 9:30am on that day or at 9:30am the next morning. The practice of this Division is that the applicant in any application which is brought outside the normal starting time for Motion Court must demonstrate that the matter is so urgent that it cannot wait for the next day, or could not have been brought at 9:30am on that day. In this case the applicants received a full copy of the inquest docket on the 21<sup>st</sup> January 2013. On the 31<sup>st</sup> January 2013 the date for the inquest hearing was arranged by consent between the parties' representatives. Mr *Marais* has impressed upon me that some of the matters contained in the affidavits were only revealed to the applicants during the last week or two. The correspondence which is attached to the fourth and fifth respondents' answering affidavits demonstrates that the applicants' representatives

had made various demands of the prosecutor and magistrate regarding their proposed conduct of the inquest, and various threats were made that they would ask for the matter to be adjourned. It is recorded in an email by the applicant's legal representative on the 9<sup>th</sup> May 2013 that they had already consulted with, and intended to call, medical experts from Johannesburg, Cape Town, Bloemfontein and Durban to address the court on the medico-legal intricacies of the matter. The letter also records that the State would be calling various experts. On the 8<sup>th</sup> or 9<sup>th</sup> May 2013 another of the applicants' legal representatives recorded the following in a letter :

'Our counsels (sic) are preparing for the inquest hearing with much energy but we although (sic) we have experienced some difficulty in obtaining clarity on a number of items from the state prosecutor, inquest officer and/or magistrate.'

[20] That letter also went on to deal with various procedural problems, as the applicants' representatives saw them.

[21] In my view the urgency is of the applicants' own making. The lack of urgency is not one of the reasons I make the decision I have arrived at regarding the relief sought. It does, however, impact on the question of costs.

[22] Mr *Bekker* SC who appeared for the fourth and fifth respondents submitted that the application was an abuse of the process of our courts and accordingly the applicants should be penalised by a punitive order or costs. I believe that the order

which I make will sufficiently deal with this aspect, and it is unnecessary to go to the lengths suggested by Mr *Bekker*.

[23] In the circumstances I make the following order :

The application is dismissed. The applicants, jointly and severally, the one paying the other to be absolved are to pay the respondents' costs, such costs to include those consequent upon the employment of senior counsel.

Date of hearing : 30<sup>th</sup> April 2013

Date of judgment : 31<sup>st</sup> May 2013

Counsel for the Applicant : J Marais SC with AJ Boule (instructed by

Counsel for the First Respondent : G Nel (instructed by the Director of Public Prosecutions)

Counsel for the Second and Third Respondents : M Maharaj (instructed by The State Attorney)

Counsel for the Fourth and Fifth Respondent : SJ Bekker SC (instructed by J Salant)

Counsel for the Sixth Respondent AV Voormolen (instructed by Norton Rose)

Counsel for the Seventh Respondent : A van Rensburg (instructed by Macroberts)