



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO. CA&R 15/2026

**IN INQUEST NUMBER 42/2025 HELD AT EAST LONDON, IN THE
EAST LONDON DISTRICT.**

REVIEW JUDGMENT

Rugunanan J

[1] On 27 June 2025, the above inquest into the circumstances attending the death of a minor was before the additional magistrate, Ms R Sam, in East London. She attended to the matter due to the unavailability of the initial presiding magistrate, Mr Screetch. Before submitting the inquest record to the Director of Public Prosecutions (DPP) she substituted in manuscript certain

unsigned findings appearing in typescript that were included in the form J56 (the form) which had initially been prepared by Mr Screetch.¹

[2] The form is the official document completed by judicial officers in inquests to record *inter alia* their findings in accordance with s 16² of the Inquests Act 58 of 1959 (the Act).

[3] The detail required in the form accords substantially with the wording and format of s 16(2) and relates to findings by a magistrate as to:

- ‘(a) the identity of the deceased person (requiring that the full name, identity number or age and gender be stated);
- (b) the date of death;
- (c) the cause or likely cause of death;
- (d) whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person.’

[4] Upon submission of the record to the DPP, gross inadequacies or errors were noted on the form. These were accentuated by the DPP in a letter dated 1 September 2025, which directed that the record be submitted to this court for review in accordance with s 18 of the Act.

[5] In her letter dated 1 September 2025 the DPP wrote:

- ‘2.1 The deceased’s name is spelt incorrectly;

¹ The inquest record is submitted to the DPP in accordance with s 17 of the Inquests Act 58 of 1959.

² Quoted in full, the section reads:

‘16 Finding-

- (1) If in the case of an inquest where the body of the person concerned is alleged to have been destroyed or where no body has been found or recovered, the evidence proves beyond a reasonable doubt that a death has occurred, the judicial officer holding such inquest shall record a finding accordingly, and thereupon the provisions of subsection (2) shall apply.
- (2) The judicial officer holding an inquest shall record a finding upon the inquest –
 - (a) as to the identity of the deceased person;
 - (b) as to the cause or likely cause of death;
 - (c) as to the date of death;
 - (d) as to whether the death was brought about by any act or omission prima facie involving or amounting to an offence on the part of any person.’

- 2.2 The identity number of the deceased is known and should be reflected ... alternatively the abbreviation "ID NO." must be removed;
- 2.3 The typed findings in respect of paragraph (c) and (d) is simply scratched out and replaced by written findings;
- 2.4 The inquest is alleged to have proceeded before Magistrate Screetch, although there is a signature above the typed portion and signed what appears to read "Sam obo Screetch". This is obviously unacceptable.' (sic)
3. [The DPP quoted the provisions of s 18 of the Act.]
4. Due to the errors recorded on the J56, the inquest must be sent on review so that the errors can be corrected. It will be essential in the review to indicate which magistrate heard the matter and why the document was completed in this haphazard manner.
5. As for the actual investigation of the matter, the second boy (Liviks) must be traced and an affidavit obtained from him.
6. An affidavit should be obtained from the forensic pathologist as to possible causes of the head injury and the probability of it having an effect on the cause of death.
7. The record of the inquest proceedings has been returned herewith but must be returned to me with the investigation completed by no later than 15 October 2025, provided the review has been concluded.'

[6] On receipt of the abovementioned letter the additional magistrate submitted the inquest record to this court for review on 16 September 2025. Having entertained doubt about whether s 18 does apply, the matter was referred to the DPP for comment. An opinion was received and a note of appreciation is extended to the DPP for her co-operation. Quoted in relevant part, the opinion reads:

'I have considered the matter raised by the honourable reviewing judge and opine as follows:

1. The inquest record was submitted to my office for decision.
2. *Ex facie* the J56, the judicial officer recorded the findings in terms of section 16 of the Inquests Act 58 of 1959, as amended.
3. After considering the documents, it became patently obvious that all the errors in the document constituted a gross irregularity as detailed in my correspondence to the magistrate.
4. The J56 was completed in such a way that even the identity of the magistrate who conducted the proceedings was in question.
5. In light of the above, it was concluded that the errors on the J56 had to be rectified on review.
6. We recommended a referral for review in terms of section 18 of the Inquests Act, being the only section that dealt with a review of the findings made in terms of section 16.
7. ...
8. After the honourable judge's request, it was made clear that the review referred to in section 18 should only be utilised in certain limited instances that do not find application *in casu*.
9. The gross irregularities in the completion of the J56 can only be rectified on review.
10. The matter should have been referred in terms of section 21(1) (b) read with section 22 (1) (c) of the Superior Courts Act 10 of 2013, as amended, read with section 173 of the Constitution of the Republic of South Africa, Act 106 of 1996. See the review judgment in respect of *Lechalaba* [2013] ZAGPPHC 179 (1 July 2013).
11. In conclusion it is requested that the review [be] dealt with in terms of section 21 (1) (b) read with section 22 (1) (c) of the Superior Courts Act 10 of 2013 ...'

[7] It is beyond question that the additional magistrate did not properly apply her mind to the provisions of the Act. In this regard reference is made to paragraphs 2.1 and 2.2 of the DPP's letter. More importantly, the inquest record indicates that the additional magistrate made a finding, that it is undeterminable whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person, as contemplated in s 16(2)(d), when the investigation was, according to the DPP, incomplete. It is pointed out that the DPP called for further investigation as indicated in paragraphs 5 and 6 of the above letter. The additional magistrate's finding purportedly in accordance with s 16(2)(d) of the Act was accordingly prematurely made and should, in addition to the matters raised in paragraphs 2.1 and 2.2 of the letter, be set aside.

[8] The additional magistrate has submitted the record of the inquest to this court for review, on the recommendation of the DPP, who was initially of the view that s 18 was the vehicle to correct the errors made by the additional magistrate. In this regard reference is made to paragraphs 3 and 4 of the DPP's letter of 1 September 2025. The DPP subsequently expressed the opinion that s 18 does not find application in this case but that the referral for review by this court should be in terms of s 21(1)(b) read with s 22(1)(c) of the Superior Courts Act. In this regard reference is made to paragraphs 8 and 10 of the DPP's opinion.

[9] A review by a provincial or local division of a high court, as contemplated in s 18³ occurs in regard to the matters mentioned in s 16(2)(a)

³ The section reads: '18. Certain findings on review equivalent to orders that death should be presumed-
(1) Whenever a magistrate has in the case of an inquest referred to in subsection (1) of section 16 recorded a finding in regard to the matters mentioned in that subsection and in paragraphs (a) and (c) of subsection (2) of that section, the magistrate shall submit the record of such inquest, together with any comment which he may wish to make, to any provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held, for review by the court or a judge thereof.'

and (c). In terms of s 18(1) read with s 16(1) and (2), a magistrate shall submit the record of an inquest to the relevant provincial or local division of the high court in circumstances where the body of the person concerned is alleged to have been destroyed or where no body has been found or recovered, but the evidence proves beyond a reasonable doubt that a death has occurred. That is not the position in this case as a body has been recovered. Clearly, s 18 of the Act does not apply to the facts of this case.

[10] As pointed out above, the additional magistrate failed to comply with s 16(2)(a) and (d). Her conduct in this regard is an infraction of the principle of legality rooted in the Constitution.

[11] Even though it is evident that s 18 of the Act does not apply, the present review cannot be approached along the precepts of the Superior Courts Act⁴. In *Todd v Magistrate: Clanwilliam and Others*⁵ (*Todd*), the issue of the legal foundation and the source of the high court's powers of review in respect of inquest proceedings was elucidated by the Supreme Court of Appeal.

[12] It stated⁶:

‘The [Inquests] Act is a remnant of pre-constitutional era legislation, in terms of which applications to review inquest proceedings were regularly dealt with by our courts. In this regard it was accepted that the high court enjoyed inherent powers to review inquest proceedings. This power of review has its origins in what Innes CJ, more than a century ago, stated in *Johannesburg Consolidated Investment Co v Johannesburg Town Council* [1903 TS 111 at 115].

(2) Such finding, if confirmed on such review, or, if corrected on review, as so corrected, shall have the same effect as if it were an order granted by such court or such judge that the death of the deceased person concerned should be presumed in accordance with such finding.’

(3) Nothing in this Act contained shall affect the right of any person to apply to any competent court for an order that the death of any person should be presumed, or the right of any competent court or any judge thereof to grant any such order.

⁴ Act 10 of 2013.

⁵ *Todd v Magistrate: Clanwilliam and Others* (432/2024) [2025] ZASCA 185 (04 December 2025).

⁶ *Todd supra* para 10.

“... Whenever a public body has a duty imposed on it by statute, and disregards important provisions of the statute, or is guilty of gross irregularity or clear illegality in the performance of the duty, this Court may be asked to review the proceedings complained of and set aside or correct them. This is no special machinery created by the Legislature; it is a right inherent in the Court, ...”⁷

[13] Further in its judgment the Supreme Court of Appeal determined that inquest proceedings are not proceedings of a court of law. The court reasoned that the powers exercised by a judicial officer under the Act are not administrative in nature nor are they purely judicial powers. Though both investigative and adjudicative in nature, they bear no relation to criminal proceedings or proceedings for adjudicating civil disputes.⁷ On this analyses the court pronounced that ‘the findings in inquest proceedings cannot be reviewed in terms of s 22 of the Superior Courts Act 10 of 2013, which gives the high court the power to review the proceedings of a magistrates’ court based on the review grounds mentioned in the section.’⁸

[14] Whereas the position prior to s 22 of the Superior Courts Act and its predecessor, the Supreme Court Act 59 of 1959, was that a review of inquests could only be undertaken in terms of the common law⁹, the position now is that the high court’s power to review inquest proceedings on common law principles is subsumed by the Constitution. In so far as those principles might continue to be relevant to judicial review, they gain their force from the Constitution.¹⁰ The Constitution lays a different foundation for judicial review. The source and legal foundation upon which an inquest may be reviewed by a high court is

⁷ *Todd supra* para 13.

⁸ *Todd supra* para 14.

⁹ *Todd supra* para 14.

¹⁰ See *Pharmaceutical Manufacturers of SA: In Re Ex Parte President of the Republic of South Africa* 2000 (2) SA 674 (CC) at 692E-G cited with approval in *Todd supra* para 17.

sanctioned by the principle of legality encapsulated in s 1(c) of the Constitution.¹¹

[15] The views expressed by the Supreme Court of Appeal bring clarity to question of the high court's powers of review in respect of inquest proceedings. They are binding on this court and are respectfully deferred to. Comment on the DPP's observation that s 173 of the Constitution applies in context – which section deals with the inherent power of the high courts to regulate their own process and to develop the common law – is considered unnecessary.

[16] The errors identified by the DPP in paragraphs 2.1, 2.2, 2.3, and 2.4 of the letter of 1 September 2025 certainly do require rectification but this court cannot substitute them by filling out or overlaying the proposed rectifications on the face of the form.

[17] In paragraph 22 of *Todd* the Supreme Court of Appeal stated that the default position regarding the holding of an inquest has always been a 'full and fair investigation' for determining the circumstances surrounding the death of a person and whether any person was responsible for such death.

[18] Public confidence and satisfaction would best be promoted by the order below, ensuring that proper attention and investigation, as directed by the DPP, is accorded to the matter.

[19] In the circumstances the following order issues:

1. The inquest proceedings before the additional magistrate, East London are set aside.

¹¹ *Todd supra* para 17.

2. The matter is remitted back to the Magistrates' Court, East London for the appointment, within 30 days of this order, of another judicial officer to hold an inquest, such inquest to be held as soon as circumstances reasonably permit to enable the appointed judicial officer to make findings in accordance with s 16(2) of the Inquests Act 58 of 1959.
3. The next of kin of the deceased must be notified of the content of paragraph 2 above.
4. The investigative directives given by the Director of Public Prosecutions in her letter of 1 September 2025 must be complied with.

M S RUGUNANAN
JUDGE OF THE HIGH COURT

I agree.

G H BLOEM
JUDGE OF THE HIGH COURT

Date delivered: 17 February 2026.