



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case No: DR37/2026

Pinetown Magistrate's Court Inquest No: 218/2024

In re: Review in terms of section 18 of the Inquests Act 58 of 1959

ORDER

The following order shall issue:

1. The proceedings before magistrate N Ndlovu on 10 December 2025 in this case are in accordance with justice.
2. The finding of the magistrate in terms of s 16(1) of the Inquests Act 58 of 1959 (the Act) is confirmed.
3. The findings of the magistrate in terms of s 16(2) of the Act are corrected as follows:
 - (a) Identity of the deceased person: L[...] N[...], a female child, born on 9 November 2019.

- (b) Date of death: 11 April 2022.
 - (c) Cause or likely cause of death: Drowning (hypoxia).
 - (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: No.
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JUDGMENT: REVIEW

Barnard AJ (Harrison J concurring)

Introduction

[1] In April 2022, KwaZulu-Natal was devastated by a catastrophic natural disaster. Unprecedented rainfall caused severe flooding across the province, leading to a formal declaration of a National State of Disaster under s 27(1) of the Disaster Management Act 57 of 2002.¹ Many people lost their lives, and others remain missing. This matter concerns one such missing person. It is a review in terms of s 18 of the Inquests Act 58 of 1959 (the Act) to determine whether the learned magistrate's findings in terms of s 16(1) and s 16(2) of the Act are in accordance with justice.

Factual background

[2] During the night of 11 April 2022, severe flooding swept L[...] N[...], a two-year-old child, away from her home, along with her mother and older sister. While her mother, T[...] P[...] N[...] (Ms N[...]) and her older sibling survived, L[...] has never been found and remains missing.

¹ Published in GG 46247, 18 April 2022.

[3] On 10 December 2025, the learned magistrate, Ms N Ndlovu, conducted an inquest into L[...]’s presumed death, as her body had not been recovered. Ms N[...] attended the proceedings but did not testify orally. Instead, her affidavits and several others were admitted into evidence. In her affidavit,² she confirmed that L[...] had been swept away during the flood. In a later affidavit,³ Ms N[...] requested a finding that L[...] be presumed dead. The other affidavits show that Ms N[...] reported L[...] missing shortly after the incident and that search and rescue efforts were undertaken by members of the South African Police Service and the eThekweni Municipality. The evidence also confirms the occurrence of the floods and the subsequent declaration of a state of disaster.

[4] In accordance with s 16(1) of the Act, the magistrate found that the evidence proved beyond a reasonable doubt that a death has occurred. She proceeded to record her findings in terms of s 16(2) of the Act on the prescribed form called a J56. Her findings were as follows:

‘Findings in terms of section 16 of the Act, as amended:

- (a) Identity of the deceased person *L[...] N[...], male child, Age: 2 years old*
- (b) Date of death *11 April 2022*
- (c) Cause or likely cause of death *Drowning (hypoxia) (sic)*
- (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: *No*’ (My emphasis.)

[5] The magistrate, in accordance with s 18(1) of the Act, submitted the matter for review. The matter was initially placed before Moodley AJ, who noted that the J56 referred to a male child while the remaining documents referred to a female child. She requested an explanation from the magistrate, as well as a birth certificate or, alternatively, the child’s date of birth. The matter was remitted to the learned magistrate, who responded in due course. The

² Exhibit A.

³ Exhibit L.

magistrate explained that the reference in the J56 to a male child was incorrect. She confirmed that L[...] was a female child, born on 9 November 2019. The magistrate's response is accompanied by a further affidavit from Ms N[...] dated 21 July 2026, in which Ms N[...] confirmed that L[...] was a female child born on 9 November 2019. She also stated that she did not have L[...]’s birth certificate because it had been swept away during the floods.

The law

[6] Section 16 of the Act provides as follows:

‘(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.’

[7] Section 18 of the Act provides as follows:

‘(1) Whenever a regional magistrate or 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, such regional magistrate or 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.

(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.’

[8] Few reported cases address s 16(1) read with s 18 of the Act. Most cases concern inquests that were incorrectly referred for review under s 18 of the Act.⁴ In *Todd v Magistrate, Clanwilliam and Others*,⁵ the Supreme Court Appeal (the SCA) confirms that reviews in terms of s 18(1) of the Act are limited to circumstances provided for in s 16(1) of the Act where the body of a person concerned is alleged to have been destroyed, or where no body has been found or recovered and the evidence prove beyond reasonable doubt that a death has occurred.

Analysis

[9] As noted above, no oral evidence was led. Oral evidence at a public inquest promotes transparency and public confidence by showing that unnatural deaths are properly investigated. In *Marais NO v Tiley*,⁶ the Appellate Division explains it as follows:

‘To my mind it is axiomatic that public confidence and satisfaction would normally best be promoted by a full and fair investigation, publicly and openly held, giving interested parties an opportunity to assist the magistrate holding the inquest in determining not only the circumstances surrounding the death under consideration, but also whether any person was responsible for such death. A full and fair investigation presupposes adherence to basic principles of procedure, and would in the normal course require the hearing of *viva voce* evidence. That justice must be seen to be done is no less a truism in the holding of inquests than it is in the hearing of trials.

[10] In *Todd*,⁷ the SCA states:

‘In terms of s 13(1) of the Act, a judicial officer may forego the hearing of oral evidence and determine the inquest on the affidavits filed of record. This is a discretion conferred upon the

⁴ *In re Geregte Doodsonderzoek van 'n Onbekende Bantoeman* 1978 (1) SA 379 (T); *In re Inquest Number 42/2025 held at East London, in the East London District* [2026] ZAECMKHC 27.

⁵ *Todd v Magistrate, Clanwilliam and Others* [2025] ZASCA 185; 2026 (2) SACR 1 (SCA) (*Todd*) para 16.

⁶ *Marais NO v Tiley* 1990 (2) SA 899 (A) (*Marais*) at 902A-B.

⁷ *Todd* para 23.

magistrate, which must be exercised not only judicially, but in conformity with the purpose of the Act as encompassed in s 10. This can only be done by paying due regard to the general rule that there must be a public inquest with oral evidence. This rule may only be departed from where exceptional circumstances exist which entitle the judicial officer to accept all the affidavits submitted as proof of the facts stated therein. There are no hard and fast rules, and the circumstances of each case would depend on whether such course of action should be followed. In *Marais*, it was further stated that:

“Broadly speaking a departure from the general rule would only be justified where the affidavits before the inquest magistrate do not raise relevant dispute of fact and, furthermore, are conclusive in respect of all relevant matters; or they strongly point to the debt under consideration not having been caused by an act or omission constituting an offence on the part of some person, eg where it is a clear case of suicide or accidental death...” (*sic*) (Footnote omitted.)

[11] The general rule in *Marais* and *Todd* should be followed unless the circumstances justify a departure. In my view, this case does. No request was made for oral evidence, and the affidavits reveal no factual dispute. Ms N[...] attended the proceedings and did not object to the prosecutor’s request that the witness statements be read into the record. The matter is not contentious: L[...]’s presumed death arose from a natural disaster, and there is no indication of wrongdoing by any person. Oral evidence would not have assisted the inquiry and would likely have caused Ms N[...] further emotional distress and secondary trauma after the loss she has already suffered.

[12] L[...] has been missing since 11 April 2022. Her body was never recovered. The magistrate’s finding that the evidence proves beyond reasonable doubt that a death has occurred stands to be confirmed. Accordingly, I am satisfied that the magistrate’s finding in terms of s 16(1) of the Act is in accordance with justice.

[13] As indicated earlier, Moodley AJ pointed out to the learned magistrate that there is a discrepancy in the record regarding L[...]’s gender. The magistrate explained that she made a mistake when she indicated on the J56 that L[...] was a male child. Ms N[...] deposed to an additional affidavit confirming that L[...] was a female child and provided her date of birth. It is apparent from the record that the learned magistrate made a *bona fide* mistake when she referred to the incorrect gender on the J56. Section 18(2) of the Act explicitly provides that the recorded findings of a magistrate may be confirmed on review, or it may be corrected, and if so corrected, it 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. The present matter calls for such correction in respect of the gender of the deceased.

Order

[14] In the result, I make the following order in terms of s 18(2) of the Act:

1. The proceedings before magistrate N Ndlovu on 10 December 2025 in this case are in accordance with justice.
2. The finding of the magistrate in terms of s 16(1) of the Inquests Act 58 of 1959 (the Act) is confirmed.
3. The findings of the magistrate in terms of s 16(2) of the Act are corrected as follows:
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 - (b) Date of death: 11 April 2022.
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BARNARD AJ

I agree.

HARRISON J