

EXECUTIVE SUMMARY

On the 13th of May 2021, the dead body of one Thabani Nkomonye; a 25 year old LiSwati who was a final year law student at the University of Eswatini (UNESWA) was discovered by a search party that included his family members and members of the Royal Eswatini police service and His Majesty's Correctional Service at Nhlambeni. Mr. Nkomonye was last seen on the 8th of May 2021 and a missing person report was filed by his family on the 11th of May 2021 at the Manzini Police Station. The body was found at the scene wherein the motor vehicle he was last seen driving was found, having been involved in a road accident on the 8th of May 2021; and the vehicle had been towed to the Matsapha police station where it was kept at the instance of the Matsapha traffic police who attended the scene of accident. The discovery of Mr. Nkomonye's body sparked national-wide uproar which culminated into protests which called for #JusticeForThabani.

On the 17th of May 2021, the then Acting Prime Minister of the Kingdom of Eswatini appointed the coroner herein in terms of Section 2 of the Appointment of Coroner Notice no. 154 of 2021 subject to the provisions of Section 26 of the Inquest Act of 1954, to conduct an Inquest into the circumstances surrounding the death of Mr. Thabani Nkomonye.

Having considered the circumstances surrounding the discovery of the body of the said Thabani Nkomonye at Nhlambeni on the 13th May, 2021 and not being satisfied that such death was due to natural causes, an order for a post mortem examination was issued by the Coroner acting in her official capacity as Senior Magistrate at the Manzini Magistrate's Court; as provided for by Section 7 (e) of the Inquest Act of 1954. The post mortem examination was conducted on the 14th of May, 2021 by Dr. Komma Reddy, a pathologist of the Royal Eswatini Police Service. The Pathologist confirmed to have advised the family of their rights to instruct an independent Pathologist; and the family reserved their rights to engage an independent Pathologist. Dr. Reddy submitted a report of his findings of Mr. Nkomonye's autopsy examination and this report was admitted as exhibit D and the photographs he took during the post-mortem were admitted as exhibit E. However, during the course of the inquest, the Nkomonye family engaged an independent pathologist, Dr. Robert Ngude to assist in the analysis of Dr. Reddy's report and submitted his own opinion. Dr. Ngude's report was admitted as exhibit N.

In addition to the post mortem examination, the Coroner also ordered that ballistic examination of the motor vehicle be conducted, in order to establish the cause of the hole on the rear right bumper of the motor vehicle, since there were allegations that Mr. Nkomonye's motor vehicle was shot at by the police during a high speed chase. The ballistic examinations also included, the examination of the firearms which were being used by the Matsapha and Manzini traffic police on the day of the accident. The Ballistics experts also submitted reports of their findings and such reports were admitted as exhibits H1-3 and K1-2 respectively.

In order to ascertain the circumstances surrounding the death of Thabani Nkomonye, it was imperative to establish the events of the day he was reported to have gone missing and also the events surrounding the road traffic accident which occurred at Nhlambeni, which involved the motor vehicle that was driven by Mr. Nkomonye.

Methodology

The Coroner used a multipronged methodology to make inquiries and findings on this matter; including written affidavits, verbal testimonies at public hearings, conducting inspections in loco and examining phone records of those alleged to be involved in the death of Mr. Nkomonye.

The Coroner during the course of the investigation perused the registers, the Occurrence books and inquiry files from the police stations that were implicated in the death of Mr. Thabani Nkomonye; which were the Matsapha police station that handled the road traffic accident and the Manzini police station where the missing person report was filed.

Furthermore, notices were published in the national print media houses informing the public about the inquest and also inviting members of the public who may have had information regarding the issue to register with the Coroner. However, these notices did not yield any positive response from the public.

In this regard, a total of forty-three (43) witnesses were heard during the public inquest hearings. These witnesses included the police officers from both Manzini and Matsapha police stations, members of the public who had information regarding the issue, experts and also members of the Nkomonye family who had information regarding this matter.

The inquest hearings commenced on the 1st June 2021 and were concluded on the 15th March 2022. There were several postponements during the course of the hearings which were compelled by ongoing investigations that were relevant to the inquest; as well as the civil unrest that occurred in the country in 2021 from June to October.

Findings

The burden of proof applied by the Coroner in formulating her findings was on a balance of probabilities and not the standard of proof that is required in criminal proceedings since this was a fact-finding inquiry.

The Coroner considered in totality the evidence of all the witnesses and made the following findings:

1. Mr. Thabani Nkomonye was the driver of the motor vehicle registered VSD 584 AS and that the motor vehicle was involved in a road traffic accident at or around Nhlambeni on the 8th May 2021 at around 2230hrs.
2. The cause of the road traffic accident Mr. Nkomonye was involved in was due to human error and not due to mechanical fault in the car. There are reasonable grounds to suspect that his state of sobriety and speed may have contributed to the accident.
3. It has been proved on a balance of probabilities that the hole in the rear bumper of the motor vehicle was not a bullet hole but was created by a bolt which is located on the inside of the rear bumper. The hole was created due to high impact between the bumper and the bolt during the accident.
4. Whether the high speed chase between the police and Mr. Nkomonye did occur could not be ascertained due to lack of evidence and failure to procure the video footages from Ngwane Park and Nhlambeni road respectively.

5. There are reasonable grounds to suspect that Mr. Thabani Nkomonye may have been ejected out of the motor vehicle through the front driver's side window as a result of the high impact of the accident. This was supported by the visible outward damage on the panels of the driver's side door.
6. Mr. Nkomonye died due to multiple injuries caused by blunt force trauma and there are reasonable grounds to suspect that the injuries he sustained were as a result of the impact from the accident.
7. Mr. Nkomonye's exact time of death could not be established but there was expert evidence that estimated it to be within 3-5 days before his body was discovered on the 13th May 2021. There is a high probability that Mr. Nkomonye succumbed to his injuries within the period that Dr. Ngude estimated.
8. There was no thorough search conducted for the occupants of the motor vehicle at the scene of accident by the police; and this resulted in a delay in the timely discovery of Mr. Nkomonye.
9. There was gross negligence and dereliction of duty on the part of the police in the manner in which they handled the scene of accident and further their failure to investigate the road traffic accident and missing person report.
10. No reasonable grounds exist to suspect that officer Mdluli, officer Nkenjane and Mr. Mathokoza Makhanya had any involvement in the death of Mr. Thabani Nkomonye.

Recommendations

The Coroner has made several recommendations based on the findings of the inquest and they are as follows:

1. Administrative disciplinary action should be taken against all the officers who were involved in this matter, to answer for their failure to follow procedure and their negligence.
2. The Royal Eswatini Police Service should conduct an assessment and review of the conduct of police officers and their dealings with members of the public. This will assist in repairing the public's trust and confidence in the police.
3. Pathologists should do away with the practice of filing only the standard post-mortem examination reports, but should also file detailed and comprehensive reports which would contain an in-depth analysis of their findings. The pro forma reports allow room for the pathologists to do a shoddy job.
4. The office of the pathologist should be independent and separate from the police service. This will assist in ensuring public confidence in the autopsy findings; especially in cases where there are suspicions of police involvement in the death of an individual.

Conclusion

The Coroner is satisfied that no reasonable grounds exist for suspecting that the death of Mr. Thabani Nkomonye was brought about by an act or omission which involves or amounts to the commission of a criminal offence on the part of the police or any other person

The police failed to conduct a thorough search for the occupant(s) of the motor vehicle, which was involved in an accident. The failure to conduct a thorough search at the scene resulted in the late discovery of Mr. Thabani Nkomonye.

