

Judgment 5/2003

**Kirk & Kirk v Law Officers of the Crown
Royal Court
15th November, 2002**

Inquest verdict – application to Royal Court for judicial review – flawed evidence before the Magistrate – verdict quashed and fresh inquest ordered.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 15th day of November 2002 before Sir de Vic Carey, Bailiff sitting alone.

In the action of TREVOR MICHAEL KIRK and JANET KIRK (“the Plaintiffs”) against THE LAW OFFICERS OF THE CROWN (“the Defendant”) in the terms attached hereto;

WHEREAS THE COURT on the 23rd day of October 2002, having heard Advocates N.J. Barnes and Her Majesty’s Procureur, Counsel for the Plaintiffs and Defendant, respectively, reserved judgment.

THE COURT this day issued judgment in the terms attached hereto; and

1. Quashed the verdict of the Inquest held on the 7th day of December 2001 into the cause of death of Andrew Michael Kirk
2. Directed that the Law Officers of the Crown organise a new inquest
3. Reserved the question of costs

S. M. D. ROSS
Her Majesty’s Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

ORDINARY DIVISION

BETWEEN

**(1) TREVOR MICHAEL KIRK
(2) JANET KIRK**

Plaintiffs

and

THE LAW OFFICERS OF THE CROWN

Defendants

The Plaintiffs

APPLY TO THE COURT

For

- 1) An order setting aside the verdict in the inquest held into the death of Andrew Michael Kirk on 7th December, 2001.
- 2) For a new inquest to be held
- 3) For such other order as may be just including the costs hereof.

The 16th October, 2002

Counsel for the Plaintiffs

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY
ORDINARY DIVISION**

Between:

**TREVOR MICHAEL KIRK
and
JANET KIRK**

Plaintiffs

and

THE LAW OFFICERS OF THE CROWN

Defendants

**JUDGMENT OF SIR DE VIC CAREY, BAILIFF ON THE PLAINTIFF'S APPLICATION FOR
AN ORDER SETTING ASIDE THE VERDICT IN THE INQUEST HELD INTO THE DEATH OF
ANDREW MICHAEL KIRK ON THE 7TH DECEMBER, 2001.**

Date of Hearing: 23rd October, 2002

Date judgment handed down: 15th November, 2002

Advocate N. J. Barnes for the Plaintiffs
H.M. Procureur for the Respondent

1. Introduction

The Plaintiffs are the parents of Andrew Michael Kirk who was found dead at his home L'Hirondelle, New Road, St. Sampson's on the 1st December, 2001.

An inquest into Andrew's death was held on the 7th December at which the Magistrate returned a verdict of suicide. During the course of the inquest it appears that certain information was divulged to the Magistrate which offered a suggestion as to why Andrew had been minded to kill himself on the 1st December. That evidence was offered on a totally false premise and there is no dispute between the parties that there was no evidence to justify the suggestion of a possible motive for this young lad sadly taking his life. There is accordingly no dispute between the parties as to the fact that the finding of the Magistrate and the verdict that he recorded was fatally flawed and therefore both parties are anxious that I should set aside the verdict of the Magistrate and order a new inquest.

2. My jurisdiction

I was very troubled as to whether I had jurisdiction to entertain this application. The history of the coroner's jurisdiction in Guernsey is that the right to inquire into deaths whilst vested in the Royal Court sitting as an Ordinary Court until 1925 when the office of Magistrate was created and jurisdiction in respect of inquests, petty crime and petty debts was vested in a Magistrate's Court. The jurisdiction in the Magistrate's Court was re-enacted in the Magistrate's Court (Guernsey) Law, 1954 and section 9 of that Law merely provides that the Court has jurisdiction to inquire into deaths. There are recognised procedures for dealing with appeals both in respect of criminal matters (see the Magistrate's Court Criminal Appeals (Guernsey) Law, 1988) and petty debts. There is no power to review decisions relating to inquests.

Both Mr. Barnes and Her Majesty's Procureur have encouraged me to assume jurisdiction to review the decision of the Magistrate sitting as coroner in this case and there is authority from the Court of Appeal to the effect that the Royal Court has now vested in it a jurisdiction to review judicially the decisions of inferior bodies and included in that definition must in my view be the Magistrate's Court. It is always difficult for a judge not to be led into error when both parties are appearing before him are encouraging him to assume a new jurisdiction. The only authority that assists me is that of Bassington v. H.M. Procureur 1998 26.GLJ.86. I cannot do better than adopt the criticism levied at the then Deputy Bailiff by the Court on pages 16 and 17 of the Report and whilst there is no suggestion here that the learned Magistrate has abused his power it is clear from this judgment that this Court is being invited to exercise a general jurisdiction akin to the jurisdiction claimed by courts in England to review the decisions of inferior bodies. I therefore assume such power.

3. The flawed decision

As I have recorded the Magistrate unfortunately had certain evidence which might have supported the view that this young lad took his life, which evidence is now shown to have been unsupported by the facts as far as they are now apparent. There was other evidence before the Magistrate which might have led him to the conclusion of suicide, but with the flawed evidence clearly before him it is impossible to say that without that evidence he would necessarily have reached the conclusion that this was indeed a case of

suicide. Mr. Barnes has produced a case from England where the Court of Appeal has held that coroners verdicts in that jurisdiction were open to review not on the basis that there was no evidence which showed that the verdict was wrong but rather that there was evidence that might have led to the coroner reaching another conclusion (in re Rapier deceased 1986 3 WLR 830).

I am very conscious in this case of the distress and anguish caused to the family of the deceased by the unfortunate presentation of evidence to suggest a motive for the deceased killing himself which was without foundation. In those circumstances I feel fully justified in ordering a fresh inquest. The verdict of the 7th December, 2001, is therefore quashed. The Law Officers are directed to organise a fresh inquest at which all the evidence other than that which has been shown to be flawed is presented to Court and I direct that the matter should not proceed before Magistrate Finch as I feel that it would be inappropriate for him to try to reach a fresh verdict having regard to the fact that he was clearly conversant with the allegations which have subsequently proved to be unfounded. In this regard I note with some concern that he appears to have been furnished with papers prior to the hearing relating to these matters which were not read to the Court. In my judgment it would be far better if the Magistrate is to be provided with material prior to the inquest that it be restricted to statements which are actually going to be led before the inquest rather than extraneous background material.

Mr. Barnes has raised the issue of costs. The learned Procureur does not appear to resist the payment of reasonable costs and rather than get involved in making an Order I will reserve costs in the hope that Mr. Barnes and H.M. Procureur can sort the matter out between them.

Before leaving this issue I think it fair to say that I have not had any real contest in this matter relating to the extent of the powers of this Court to set aside inquest verdicts and whilst I am quite satisfied that the course I am taking here is proper in the highly unusual circumstances of this case I would like to reserve definition of the precise extent of the powers of this Court to review decisions of the coroner's court or indeed other matters relating to inferior bodies to another day. We are still in the very early days of defining the extent of the powers of this Court to order a judicial review.