

In the matter of THE INQUESTS ORDINANCE and in the
matter of NATIVE FEMALE MALINDE.

HIGH COURT CRIMINAL CASE No. 8 OF 1940.

Inquest—application to quash proceedings—necessity for body before inquest can be held.

Before an inquest can be held there must be a dead body except when the death is quite certain and the body has been destroyed or is irrecoverable.

Robinson, J.: The Attorney-General is applying to the High Court to quash this inquest under the provisions given by section 29 (1) of Ordinance 52 of 1938.¹

The facts very briefly are that a young woman, aged about 25 years, left her hut in the afternoon of the 10th January, 1940, saying to her mother that she was going to look for mushrooms. She gave her baby to her mother to look after and went out alone. She has not been seen since and no trace of her has been found in spite of diligent searching over a wide area.

On the 12th March, 1940, the Coroner held an inquest on the "loss" of the woman and found "that the said Malinde is lost and possibly dead; no trace of the body has been found".

I think the Coroner has not quite understood his functions under Ordinance 52/1938.¹ No inquest can be held without a body. There must be a dead person and until he is told about it (section 4) he cannot hold an inquest. The only exception to that rule is section 10, which means that if he is quite satisfied that there has been a death, he may hold an inquest touching the death even though the body has been destroyed by fire, or otherwise, or is irrecoverable. "Or otherwise" means *ejusdem generis* as fire. I think there is no doubt that if a person was bathing in a crocodile-infested river and a friend on the bank saw the person taken by a crocodile, blood upon the water, and then complete disappearance of the person whose body could not be found after careful search, then I think an inquest could be properly held by virtue of section 10. If there is no body, there must be absolutely clear evidence that a person is dead and how he died before it can even be considered whether an inquest can be held and whether the circumstances come within the scope of section 10.

In the inquest under review the Coroner, properly on the evidence, has not been able to come to the conclusion definitely that the woman is even dead.

The proceedings must be quashed—if indeed they are not already a nullity.

¹ Now Cap. 21 of the Laws.—*Editor.*