



**Musau & 3 others v Mombasa County Criminal Investigating Officer (CCIO)  
& another; G4S Kenya Limited (Interested Party) (Miscellaneous Criminal  
Application 19 of 2020) [2023] KEHC 19498 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION 19 OF 2020**

**A. ONG'INJO, J  
JUNE 30, 2023**

**BETWEEN**

**JACOB MUTUKU MUSAU ..... 1<sup>ST</sup> APPLICANT  
SYLVESTER MBULI MBUVI ..... 2<sup>ND</sup> APPLICANT  
AMOS MUTUKU MUSYOKA ..... 3<sup>RD</sup> APPLICANT  
PATRICK KARANJA NJAU ..... 4<sup>TH</sup> APPLICANT**

**AND**

**MOMBASA COUNTY CRIMINAL INVESTIGATING OFFICER  
(CCIO) ..... 1<sup>ST</sup> RESPONDENT  
THE DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**G4S KENYA LIMITED ..... INTERESTED PARTY**

**RULING**

1. By a Notice of Motion application dated March 31, 2023, the applicant sought that the court sets aside orders made on March 22, 2023 dismissing the applicant's application so that it is heard on merit for reasons that the advocate in conduct of the matter was undisposed and was not in a position to attend court and proceed with the hearing. Ms Jeruto attached her treatment summary from Bigson Health Services dated March 22, 2023 to confirm that she was undisposed on the material day.
2. This application was opposed by the Interested Party vide grounds of opposition dated May 15, 2023 on the ground that there was inordinate delay in bringing the application to reinstate the proceedings. That there was no evidence of technical hitches experienced by counsel on record.



3. This court has considered that the order dismissing the application was made on March 22, 2023 and the application to set aside those orders was filed on March 31, 2023. A period of 9 days is by all standards not inordinate delay. The applicants took reasonable steps to apply for reinstatement of their application upon realizing the same had been terminated.
4. The court is therefore inclined to allow the orders prayed for on conditions that applicants will have just one opportunity to prosecute the application and have the matter determined expeditiously. This matter will therefore be heard on October 5, 2023. The applicants, respondents and the interested party should prepare to be heard on that particular day. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,**

**THIS 30<sup>TH</sup> DAY OF JUNE 2023**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Ogwel- Court Assistant

Ms. Jeruto Advocate for Applicants

Mr. Ngiri for 2<sup>nd</sup> Respondent

Mr. Mugambi Advocate for Interested Party

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Mr. Mugambi**

I wish to reserve my clients Right of Appeal incase they decide to pursue that option.

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Order**

Any decision made by any court is subject of Right of Appeal unless express provision is made for leave.

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**30/06/2023**

