



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**  
**CRIMINAL REVISION 8 OF 2005**

**(Arising from Original Bungoma S.P.M. Cr. case no.361 of 2003**  
**and Busia SRM CR. Case No. 1615 of 2003)**

**MANUEL OTIANGALA & ANOTHER.....APPLICANT**

**VS**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

The firm of Wetangula & Advocates appearing for Manuel Otiangala and Geoffrey Opondo Onyango invited this court to exercise its discretion on revision with a view of revising and subsequently setting aside the orders issued by the Senior Resident Magistrate on 11th May 2005 in Bungoma S.P.M'S CR. Case No. 361 of 2004. It was contended that to continue mentioning the aforesaid criminal case, the subordinate court would be contravening the orders of this court issued on 17th February 2005 in which proceedings were stayed.

Upon receipt of the aforesaid letter I called for Bungoma S.P.M. Cr. Case No. 361 of 2004 to be placed before me for my perusal and examination pursuant to the provisions of section 362 of the criminal procedure code.

My perusal of the file revealed that on 11th May 2005, Mr. Barasa advocate for the accused persons namely Manuel Otiangala and Geoffrey Opondi Onyango appeared before Mr. Atuti, the Senior Resident Magistrate and presented an order issued by this court on 17th February 2005 through Bungoma H.C. Miscellaneous Civil Application No. 46 of 2005. Mr. Barasa informed the trial Magistrate that proceedings had been stayed in the criminal case. The learned senior Resident Magistrate proceeded to issue an order staying proceedings in the criminal case in compliance with the High Court order. The learned magistrate then fixed the case for mention on 25th June 2005. The last order provoked the firm of Wetangula & Co. Advocates to seek for the order to be revised because he was of the view that all proceedings had been halted and any further mention would contravene the order of stay.

The order issued by this court on 17th February 2005 granted the 2 accused persons leave to commence Judicial proceedings in the nature of prohibition, certiorari and Mandamus within 21 days from the date of the order. This court further directed the order for leave to operate as a stay of further proceedings in Bungoma S.P.M. Cr. Case No. 361 of 2004.

The line of arguments postulated by the accused person will require one to know the meaning of the word proceedings. What is a proceeding? I will refer to the definition given in BLACKS LAW DICTIONARY

*“ ‘proceeding’ is a word much used to express the business done in courts. A proceeding in a court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word ‘action’ but it may include in its general sense all the steps taken or measures adopted in the prosecution or defence of an action, including the pleadings and judgment. As applied to actions, the term ‘proceeding’ may include:*

*(i) the institution of the action*

*(ii) the appearance of the defendant*

*(iii) all ancillary or provisional steps, such as arrest,  
attachment of property, garnishment, injunction*

*(iv) the pleadings ony before trial*

*(vi) all motions made in the action*

*(vii) the trial*

*(viii) the judgment*

*(ix) proceedings supplementary to execution*

*(x) the taking of the appeal*

*(xi) sending back of the record to the lower court  
from the appellate court or reviewing court*

*(xii) the execution*

*(xiii) the enforcement of the judgment or a new trial as may be directed by the court of the last resort.”*

It is clear from the above definition that the order to mention a criminal case is one of the preliminary steps taken in criminal cases. However one must not apply the narrow interpretation but should always apply the broad interpretation. In general a court will list a criminal case for a mention in a particular date for a specific purpose such as to fix a hearing date or to establish whether an accused person has healed or to give further directions etc. In the case before the senior Resident Magistrate, the matter was only listed for mention without specifying the purpose. I do not want to speculate the reasons the trial magistrate had in his mind when fixing the matter for mention.

In this regard it is imperative for judicial officers presiding courts to always state the reasons for mentioning cases. I am unable at this stage to exercise my discretion on revision in favour of the accused persons because the order for mention is vague and ambiguous in that the purpose is not disclosed. In the circumstances I do not think the learned senior Resident Magistrate can be said to have breached the order for stay of proceedings. I can only direct that future mentions should be made in the matters backed with reasons.

When this court directed for leave to operate as a stay on 17th February 2005, the accused persons were given leave to file the substantive application within 21 days from the date of the order. The letter of Wetangula & Co. Advocates addressed to this court does not disclose whether or not the accused persons have filed the substantive application within the requisite time. In the absence of such evidence this court

cannot exercise its discretion on revision in favour of the accused persons. The stay order is predicated on the filing of the main application.

For the above two reasons I decline to accede to the application to revise the orders of the learned senior Resident Magistrate.

**DATED AND DELIVERED THIS 10th DAY OF June 2005**

**J.K. SERGON**

**JUDGE**