



**REPUBLIC OF KENYA**

**THE SUPREME COURT OF KENYA**

**HON. HARRISON GARAMA KOMBE v. KENGA STANLEY KARISA & 3 OTHERS**

*(Coram: Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)*

**SC PETITION NO. E020 OF 2023**

**DATE OF JUDGMENT: 31<sup>ST</sup> MAY 2024**

**MEDIA SUMMARY**

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

**Orders: *The Court dismisses this Petition.***

### **Background**

The appellant, the 1<sup>st</sup> and 4<sup>th</sup> respondents, were amongst other candidates who contested for the seat of Member of National Assembly, Magarini Constituency, Kilifi County in the general elections held on 9<sup>th</sup> August 2022, in which by a narrow margin of only 21 votes, the appellant was declared the duly elected Member of the National Assembly for Magarini Constituency with 11,946 votes ahead of his closest contender, the 1<sup>st</sup> respondent who had 11,925 votes. As would naturally be expected in such circumstances, the 1<sup>st</sup> respondent petitioned the High Court challenging the outcome and declaration contending that there were grave errors, flaws, fraud, illegalities, and irregularities committed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents; that the overall effect of these errors was that the exercise failed to secure a free, fair, and credible election; and that the announced results subdued the will of the people of Magarini Constituency.

The High Court nullified the appellant's election on grounds that there were glaring irregularities on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents which affected the results. Thereafter, the Court of Appeal affirmed this decision.

Aggrieved by the outcome of the Court of Appeal, the appellant lodged an appeal before the Supreme Court on 8 grounds which were delineated as follows for determination:

- i. *Whether this Court has jurisdiction to entertain the appeal;*

- ii. *Whether the Court of Appeal misapplied and misinterpreted Section 83 of the Elections Act.*
- iii. *Whether the Court of Appeal misconstrued the standard and burden of proof applicable in an election petition.*
- iv. *Who should bear the costs?*

Upon considering the appeal, the Supreme Court unanimously dismisses the petition holding that:

**Issue 1:** This Court has jurisdiction to entertain the appeal under the provisions of Article 163(4)(a) of the Constitution.

**Issue 2:** The test to be applied in Section 83 is a disjunctive one and not a conjunctive one as urged by the appellant. The Court of Appeal committed no fault in its decision that the 1<sup>st</sup> respondent needed to prove either of the two limbs.

**Issue 3:** The Court finds no error in the determination by the Court of Appeal that the 1<sup>st</sup> respondent met the standard of proof thereby discharging the burden of proof and establishing that indeed there was non-compliance with the Constitution and the law or that the noted irregularities and illegalities did affect the final result, based separately on both limbs of Section 83 of the Elections Act.

**Issue 4:** Costs capped at Kshs. 2,000,000 are awarded to the 1<sup>st</sup> respondent to be paid by the appellant.

