



**THE SUPREME COURT OF KENYA**

**GODDRICK SIMIYU WANGA VS. DIRECTOR OF PUBLIC PROSECUTIONS**

**SC PETITION NO. E030 OF 2023**

**DATE OF JUDGMENT: 2<sup>nd</sup> August, 2024**

**MEDIA SUMMARY**

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*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 the appeal.***

**Background**

The appellant was successfully prosecuted before the Senior Principal Magistrate Court at Kilifi for the offence of robbery with violence and accordingly sentenced to death. His conviction was upheld by the High Court but the death sentence was set aside and substituted with a custodial sentence of 30 years imprisonment. On a second appeal to the Court of Appeal, the appellant's conviction was upheld and the substituted sentence was affirmed.

In the third appeal before the Supreme Court, the appellant alleged violations of his right to a fair trial as guaranteed by Articles 49 and 50 of the Constitution. The respondent in its replying affidavit contended that the appellant's alleged constitutional violations were not issues before both superior courts below and therefore could not be presented before the Court for determination for the first time. Consequently, the Court lacks jurisdiction to entertain the appeal.

Upon consideration, the Supreme Court has dismissed the appeal for the following reasons:

1. The appeal is incompetent for the reason that the appellant failed to properly invoke the jurisdiction of the Court either under Article 163(4)(a) or 163(4)(b) of the Constitution.
  2. The allegations of constitutional controversy were being canvassed for the first time and the Court has no jurisdiction to entertain the appeal.
  3. The appeal presents neither exceptional circumstances nor an opportunity for the Court to provide interpretive guidance on the Constitution.
  4. There shall be no orders as to costs.
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