



THE SUPREME COURT OF KENYA

WADE COX & 2 OTHERS Vs GEORGE ODHIAMBO OKELLO

SC PETITION NO. E001 OF 2025

DATE OF JUDGMENT: 29th August, 2025

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 the appeal.

Background

At all material times, the 1st appellant was the Global Coordinator General of the Christian Churches of God (CCG), an organization incorporated in Australia and affiliated with Christian Churches of God-Kenya, a society registered in Kenya under the Societies Act. The 2nd appellant was the Chairman of the Kenyan affiliate. Between 2009 and 2011, the respondent served as Chairman of the Christian Churches of God-Kenya. During this period, the respondent allegedly misappropriated funds totaling Kshs. 10,000,000/= for his personal use. Sometime in 2011, the alleged financial impropriety was discovered and reported to the police. However, between 2011 and 2017, the police did not initiate any proceedings against the respondent. Dissatisfied with the inaction, the 1st and 2nd appellants sought leave to initiate private prosecution proceedings against the respondent. Permission was granted on 26th July 2018, and the 3rd appellant was appointed as a private prosecutor.

The 1st and 2nd appellants filed **Private Prosecution Case No. 1 of 2019 (hereinafter PP.1/2019)** before the Chief Magistrate's Court at Milimani, charging the respondent with six counts of stealing by agent, contrary to Section 283 (c) of the Penal Code, Cap 63 of the Laws of Kenya. On the date scheduled for plea-taking, the respondent failed to attend court despite proper service, and the court issued warrants of arrest against him. These warrants were not executed, but the 3rd appellant traced the respondent in Kisumu and, with the assistance of the police, the respondent was arrested and transferred to Nairobi. Meanwhile, in PP.1/2019, the matter was mentioned several times. On 24th October 2019, the trial court dismissed PP.1/2019 under Section 202 of the Criminal Procedure Code (CPC) for want of prosecution. An application for reinstatement was dismissed on the grounds that the court lacked jurisdiction.

The appellants moved to the High Court seeking revision of the dismissal order. The High Court found that the trial court issued acquittal orders under Section 202 of the CPC. As such, the court lacked jurisdiction to reverse an order of acquittal in an application for revision predicated under Section 362 and 364(1) (a) and (b) of the CPC. On appeal, the Court of Appeal upheld the finding that the High Court had no jurisdiction to reverse the respondent's acquittal. The appellants, aggrieved by that decision, appealed to the Supreme Court.

The Supreme Court delineated the following four issues for determination:

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- i. Whether this Court has jurisdiction to hear and determine the appeal, and if so;*
- ii. Whether the High Court has jurisdiction to set aside an acquittal in criminal proceedings; and*
- iii. Whether the appellants' constitutional rights were infringed.*

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

Issue 1: The Court finds that it has jurisdiction under Article 163(4)(a) to determine the appeal. The complaints by the appellants revolve around supervisory powers of the High Court under Article 165 (6) & (7) of the Constitution and Section 362 of the Criminal Procedure Act, which was in contest in the superior courts below. Therefore, the issues raised fall within the ambit of Article 163(4)(a) of the Constitution.

Issue 2: The Court finds that the supervisory power of the High Court is broad in perspective and is exercised by way of appeal or revision. However, the exercise of the supervisory jurisdiction must be grounded in the procedures prescribed by statute. The Criminal Procedure Code sets out, with clarity, the framework within which the High Court may exercise its revisionary jurisdiction. Given this statutory clarity, the provisions of Section 364(1) of the Criminal Procedure Code are couched in mandatory terms, and the trial court could not confer upon itself jurisdiction beyond that which is expressly provided by law.

Issue 3: The Court finds that it was incumbent upon the private prosecutor to ensure there was demonstrable progress in executing the warrants after their issue and particularly during subsequent mentions. This was not done. In light of the foregoing, the appellants' rights under Article 50 of the Constitution were not infringed.

The Judgment of the Court of Appeal is therefore affirmed, and each party will bear its costs.

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