

**SUPREME COURT OF NIGERIA**  
15TH DECEMBER, 2006 SC. 282/2005  
**CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE, A. M.**  
**MUKHTAR, M. MOHAMMED, I. F. OGBUAGU, JJSC**

ABIODUM ODEDIRAN ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CONSTITUTIONAL LAW - Appeals - Murder - Right of appeal to the Supreme Court - Is automatically guaranteed (H1)

CONSTITUTIONAL LAW - Appeals - Murder - Giving effect to the constitutional provision - Guaranteeing automatic right of appeal to Supreme Court - Is for court to appoint fresh counsel for appellant (H2)

**FACTS**

The appellant was convicted of murder before the trial court. He appealed to the Court of Appeal. The lower court observed that counsel for appellant was not prosecuting the appeal diligently. It then dismissed it for want of diligent prosecution. Appellant has further appealed to the Supreme Court which ordered that the appeal be heard by another panel of the Court of Appeal.

**HELD** (Unanimously allowing the appeal per **KATSINA-ALU JSC**)

***Appeals - Murder - Right of appeal to the Supreme Court***

1. Appellant had been convicted and sentenced on the offence of murder. The Constitution of Nigeria guarantees to the appellant an automatic right of appeal up to the Supreme Court. (p. 3700 C)

***Appeals - Murder - Giving effect to the constitutional provision***

2. It seems to me that the court below in the circumstance had the duty to appoint counsel for the appellant to prosecute the appeal if counsel who brought the appeal had been dilatory. This is the only method in my

view, to give true effect to the constitutional provision guaranteeing automatic right of appeal.

I am satisfied that the court below was in error to have peremptorily dismissed the appeal. (p. 3700 D)

### **REPRESENTATION**

Oladipo Okpeseyi, Esq., (with him, Emeka Okpala), for the Appellant.  
Mrs. Laide Olayinka, (Solicitor-General) Lagos State, (with her, Mrs. M. O. Asumah, Chief State Counsel), for the Respondent.

### **KATSINA-ALU JSC**

**Appellant had been convicted and sentenced on the offence of murder. The Constitution of Nigeria guarantees to the appellant an automatic right of appeal up to the Supreme Court.** The Record before us shows that this appeal was dismissed by the court below for want of diligent prosecution.

**It seems to me that the court below in the circumstance had the duty to appoint counsel for the appellant to prosecute the appeal if counsel who brought the appeal had been dilatory. This is the only method in my view, to give true effect to the Constitutional provision guaranteeing automatic right of appeal.**

**I am satisfied that the court below was in error to have peremptorily dismissed the appeal.** In the final conclusion, appeal is allowed. The order dismissing the appeal is set aside, it is directed that the appeal be heard by another panel of the court below.

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### **OGUNTADE JSC**

This appeal was improperly dismissed this being an appeal on the offence of murder. The appellant's automatic right of appeal under the Constitution is rendered useless if his appeal can be so casually dismissed. The appeal is allowed. The order dismissing the appeal is set aside. It is directed that the appeal be heard afresh by another panel of the court below.

**MUKHTAR JSC**

Appeal allowed. The conviction and sentence is that of murder which carried ultimate punishment. Matter returned to the court below.

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**MOHAMMED JSC**

The appeal is allowed as the appellant who was sentenced to death for murder had not have his appeal heard at court below. The appeal be heard by another panel of Court of Appeal.

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**OGBUAGU JSC**

This is a murder case. There is an automatic Constitutional Right of Appeal for an accused person convicted of murder to this court. The court below was therefore, with respect, not justified to have dismissed the appeal as it did at page 143 of the Records.

This court therefore, allows the appeal and orders that the appeal be remitted to the court below, to hear the appeal on its merits by another Panel.