

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.130 OF 2013

(An Appeal arising out of the conviction and sentence of L. MBUGUA - SRM delivered on 25th July 2013 in Nairobi CM. CR. Case No.440 of 2012)

JEFFERSON MUTHEE NGANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Appellant, Jefferson Muthee Nganga has applied to this court to compel the State to provide him with counsel as provided under **Article 50** of the **Constitution**. The Appellant stated that on account of failure by the trial court to appoint an advocate to act on his behalf, he was occasioned substantial injustice. In particular, he stated that at the time of his arrest, he was a minor of slightly less than 18 years. He reiterated that the right to counsel was constitutionally enshrined and therefore the State should appoint him an advocate before this appeal is heard. He told the court that his parents were unable to hire a lawyer for him and therefore he was pleading with the court to compel the State to appoint an advocate to act on his behalf in this appeal.

Ms. Aluda for the State opposed the application. She submitted that there was no provision under the law that would compel the State to provide an advocate for the Appellant in this appeal. She stated that the State only budgeted for counsel who will appear on behalf of indigent accused persons who are facing the charge of murder or whose appeal on capital offences was being canvassed at the Court of Appeal. She explained that the Appellant was at liberty to procure any *pro bono* lawyer to act on his behalf in the case. She was afraid that if the court compelled the State to provide counsel for the Appellant, then a precedent would be set which will ultimately be a burden to the tax payer. She urged the court to dismiss the application.

This court has carefully considered the rival submission made by the parties to this application. **Article 50 (2)(h)** of the **Constitution** provides thus:

“Every accused person has the right to fair trial, which includes the right to have an advocate assigned to the accused person by the State at the State expense, if substantial injustice would otherwise result and be informed of this right promptly.”

The Appellant has invoked this **Article** of the **Constitution** seeking to compel the State to provide an advocate to act on his behalf on this appeal. At the time the application was heard, there was no legal mechanism upon which this court would have compelled the State to give effect to the said **Article** of the **Constitution**. However, with the enactment by Parliament of the **Legal Aid Act 2016**, such mechanism is now in place. The said **Act** came into effect on 10th May 2016. The **Act** envisages that a body known as **National Legal Aid Service (see Section 5 of the Legal Aid Act)** will be established in due course to administer legal aid in Kenya. The State shall be required to provide budgetary provision for the establishment of the said body. The Appellant herein is therefore advised to be patient and seek legal aid from the body upon its establishment.

In the premises therefore, this court will not grant the orders sought by the Appellant at this stage. In the event that the Appellant's application for legal aid from the body established under the **Legal Aid Act, 2016** is not favourably considered, he shall be at liberty to file an appropriate application before this court. Otherwise, the application stands dismissed for the time being. It is so ordered.

DATED AT NAIROBI THIS 14TH DAY OF JUNE 2016

L. KIMARU

JUDGE