



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL APPEAL NO. 44 OF 2017**

**NICHASIO NYAGA GICHOBI.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

*(From original conviction and sentence in Criminal Case No. 19 of 2015 of the Senior Resident Magistrate's Court at Gichugu).*

**RULING**

The appellant Nichasio Nyaga Gichobi was tried and convicted on a charge of Incest contrary to **Section 20(1) of the Sexual Offences Act**. He was sentenced to imprisonment for life. This was before the Senior Resident Magistrate Gichugu Court in Criminal Case No. 19 of 2015. The appellant was dissatisfied with the conviction and sentence and filed this appeal.

The Court gave directions that the appeal proceeds by way of oral submissions. The appellant made an oral application that the court assist him with a lawyer as he has no money and a teacher by name J M at [particulars withheld] Primary School stated that he will push him until he is jailed.

The state through the prosecution counsel stated that it has not heard such an application and so would not oppose it, left the matter to court to decide.

I have considered the application. An accused person has a right to legal representation. Article 50(2)(g) of the Constitution provides:-

***“Every accused person has the right to a fair trial which includes the right – to choose and be represented by an advocate and to be informed of this right promptly.”***

It is for an accused person to exercise the right by choosing to be represented by an advocate of his own choice. The appellant was not represented in the lower court during the trial. He has not submitted that a miscarriage of Justice was occasioned due to the fact that he had no legal representation.

The law does not provide for the state to give an accused legal representation unless in a situation where the accused alleges that substantial injuries would otherwise result and to be informed of this right promptly. **Article 50(2) (h) of the Constitution**, provides –

***Every accused has a right to fair trial which includes the right –***

***to have an advocate assigned to the accused person by the state and at the state expense if substantial injustice would otherwise result and to be informed of this right promptly.”***

The appellant has been convicted by a court with competent jurisdiction. He did not apply for legal representation before the trial court. He was therefore not apprehensive that substantial injustice would result in the trial. Failure to have an advocate during trial does not mean that justice would not be done. Courts are competent to determine cases even where parties are not represented by advocates as the decision is based on facts and the law. It is for the appellant to present his case for determination by the court. The appellant has not alleged any impediment to presenting his appeal before this court. As such, he is not likely to suffer any prejudice or injustice due to failure to have an advocate. My view is that this application is not made under any provision of the law and no provision of the law allows this court to order the appellant to be provided with an advocate. The application has no legal basis and is without merits. The application is rejected.

**Dated and delivered at Kerugoya this 12<sup>th</sup> day of July 2018.**

**L. W. GITARI**

**JUDGE**