



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Criminal Appeal 389 of 1999**

**SAMUEL NDEGWA NJOROGE ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Appeal from original Judgment and Conviction in District Magistrate's Court at Kigumo  
in Criminal Case No. 978 of 1999 dated 4<sup>th</sup> October 1999 by P. Mwangulu – D.M.I –  
Kigumo)*

**J U D G M E N T**

Samuel Ndegwa Njoroje hereinafter referred to as the appellant was tried by the District Magistrate's Court in Kigumo for the offence of attempted Rape contrary to Section 141 of the Penal Code with an alternative charge of Indecent Assault of a female contrary to section 144 of the Penal Code. He was convicted of the alternative charge of Indecent assault and sentenced to serve 4 years imprisonment with hard labour and 4 strokes of the cane. The appellant lodged an appeal against his conviction and sentence through Mwangi Kamau & Co. Advocates on the 15<sup>th</sup> October 1999.

Unfortunately the record from the lower court were not received until 22<sup>nd</sup> September 2005. The appeal was thereafter admitted to hearing and the advocate for the appellant served with a hearing notice. The advocate did not however attend court and the hearing of the appeal therefore proceeded ex-parte.

The Principal State Counsel Mr. Orinda supports the appellant's conviction and sentence. Having carefully perused the proceedings and judgment, I cannot but concur with the Principal State Counsel that there was overwhelming evidence against the appellant as he was caught red-handed. Apart from the complainant there were 2 other independent witnesses who found the appellant struggling with the complainant. The complainant's torn underpant was recovered from the scene thus providing further corroboration of the complainant's evidence. The appellant's conviction was therefore well founded.

As for the sentence, given the circumstances of the case, the same was neither harsh nor excessive.

I find no substance in this appeal and do therefore dismiss it in its entirety.

***Dated signed and delivered this 24<sup>th</sup> day of July 2006.***

**H. M. OKWENGU**

**JUDGE**