

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

CRIMINAL APPEAL 265 OF 2002

JULIUS GACHOKI KIBIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**(Appeal from original judgment and conviction in Principal Magistrate's Court at
Kerugoya Criminal Case No. 2642 of 2001 dated 26th April 2002 by W. N. Njage –P.M.
–Kerugoya)**

J U D G M E N T

The Appellant Julius Gachoki Kabiru was convicted of the offence of indecent assault on a female contrary to section 144(1) of the Penal Code. He was sentenced to serve 2 years imprisonment and to suffer 5 strokes of the cane. Being dissatisfied he appealed against his conviction and sentence contending inter alia that he was not identified as the person who committed the offence, that he was convicted on circumstantial, hearsay, uncorroborated and contradictory evidence.

Learned State Counsel Ms Ngalyuka supports the conviction and sentence. I have on my part considered the evidence which was adduced before the trial magistrate. The complainant Faith Wanjiru Mugo testified that she was accosted and raped by the Appellant who threatened her with a knife. P.w.4 Nicoreta Wawira, heard the Complainant scream and when she went to the scene she found the Appellant with his trousers down at his knees lying on top of the complainant who was on the ground with her skirt and knickers torn. Although it was at night both witnesses were positive that the Appellant was the person they saw with the assistance of torchlight.

I find that there was clear evidence of eye-witness who actually saw the Appellant red handed committing the offence. In the light of this evidence, the appellant's denial could not stand. I find that there was sufficient evidence to prove the charge of indecent assault.

The conviction of the appellant was therefore safe. I find further that the sentence of 2 years and 5 strokes was not so excessive as to warrant the intervention of this court. Accordingly I find no merit in this appeal and do therefore dismiss it in its entirety.

Dated signed and delivered this 29th day of June 2005

H. M. OKWENGU

JUDGE