

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPEAL NO. 461 OF 2000

**(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO 399 OF 2000 OF THE CHIEF MAGISTRATE'S COURT AT
THIKA)**

WILSON KINYANKIA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of rape and sentenced to 7 (seven) years imprisonment. Being aggrieved by the said conviction he lodged an appeal.

As the first appellate court I have made an independent evaluation of the evidence on record. The complainant gave a concise account of her encounter with the appellant. Her screams attracted Pw2, who saw her ran out of the house where she had been assaulted by the appellant. Pw2 took the complainant in hospital where after examination the doctor confirmed sexual assault.

The record would show that the appellant lied in the first place to pw2 but later changed in his defence. Lack of consent is clear from the conduct of the complainant threats were used. Violence was visited upon the complainant. She cried.

I am persuaded that sufficient evidence was adduced to sustain the conviction. On sentence, the offence is no doubt serious. The penalty is life imprisonment with hard labour with or without corporal punishment. Whereas corporal punishment is discretionary, hard labour is not. I uphold the sentence of 7 years imprisonment and hard labour thereto. In the end, this appeal is hereby dismissed. Orders accordingly.

Dated and delivered at Nairobi this 2nd day of May, 2002.

MBOGHOLI MSAGHA

JUDGE