

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NOS.297/2001 AND 303/2001(CONSOLIDATED)

(From original conviction and sentence in Criminal

Case No.163/99 of the Principal Magistrate's Court

at Nyahururu –C.O. MOITUI, ESQ.)

JOSEPH LOKITANO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was charged with the offence of rape contrary to Section 140 of the Penal Code. The particulars of the charge were that on May 18, 1999, at [particulars withheld] Secondary School, Laikipia District, had carnal knowledge of M K M without her consent. The alternative charge was indecent assault of a female contrary to Section 144(1) of the Penal Code. That on May 18, 1999, at [particulars withheld] Secondary School, the Appellant unlawfully and indecently assaulted M K M by touching her private parts without her consent.

The Trial Magistrate (C.O. MOITUI,SPM) found the Appellant guilty of the main charge and sentenced him to serve 14 (Fourteen) years imprisonment together with 8 strokes of the cane.

The Appellant led evidence to the effect that he was not at the scene of the crime at the material time which the Trial Magistrate dismissed by stating that the Appellant had not proved that matter. This was wrong. As properly conceded by Mr. Onyango Oriri for the State, it is not the responsibility of an accused person to prove his defence of alibi. Again, it was conceded that the testimony of the complainant had not been corroborated as required for in offences of the nature before the court. Going by the general record, it would appear that the conviction of the Appellant was unsafe. There are several matters which would lead one to believe that his trial was motivated by some ulterior motive and not driven to facilitate justice. The appeals are therefore, allowed. The conviction of the Appellant is hereby quashed and he is hereby set free forthwith unless otherwise lawfully held.

Dated and Delivered at Nakuru this 19th day of September, 2002.

ALNASHIR VISRAM

JUDGE