

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO.1180 OF 2000

**From Original Conviction(s) and Sentence(s) Criminal Case No.2239 of
2000 of the Snr. Principal Magistrate's Court at Kiambu**

JOSEPH MUNYORI NJOROGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of Indecent assault on a female c/s 144(1) of the Penal Code and sentenced to four years imprisonment, hard labour and three strokes of the cane. He appealed. The evidence adduced by the complainant was brief. She was returning home from collecting some milk from a neighbour's home. She heard people asking her to stop but she refused and instead ran. The people gave chase and when she(the complainant) looked back, she saw two people.

The complainant fell and the two people reached her. One held her and slapped her on the mouth. The same man took soil and put it in her mouth. The second man removed her petticoat and pant parted her thighs, removed his trousers half way and lay on her. The complainant then went on to describe how the man who lay on her put his urinating thing into hers. The complainant said she recognized the two people. She had seen them for over a year. There was moonlight and the encounter was close.

A motor vehicle approached with its headlights on. The two people ran away. The complainant also ran away and reported the incident to her mother who saw soil on the face of her daughter.

The learned trial magistrate approached the evidence adduced with caution. She warned herself of the danger of convicting on such evidence. She nevertheless believed the complainant as truthful. On my part, I have evaluated the evidence on record. There was all justification for the learned trial magistrate to believe the same. The charge was not a fabrication. It was proved beyond reasonable doubt. The conviction was therefore safe.

Accordingly, this appeal fails. The same is dismissed.

Order accordingly.

MBOGHOLI MSAGHA

JUDGE

17/12/2002