

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL APPEAL NO. 947 OF 2001

**(From Original Conviction(s) and Sentence(s) in Criminal Case no. 1380 of
2001 of the Chief Magistrate's Court at Thika**

SAMUEL KINYANJUI KUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of attempted Rape C/s 141 of the Penal Code and sentenced to serve three years imprisonment and suffer six strokes of the cane. This an appeal arising therefrom.

The complainant was accosted by two people who knocked her down.

They held her and started to unzip her trousers. The appellant who was holding the hand of the complainant let it loose and started to open his zip.

The complainant picked soil from the ground which she threw onto the eyes of the appellant and raised an alarm. People came to her rescue and these included Pw2.

The appellant was held at the scene while the other man ran away. Police visited the scene and the appellant was subsequently charged. The appellant denied the offence. The evidence against the appellant was direct. He was arrested at the scene and the learned trial magistrate believed the prosecution witnesses. I have no reason to find otherwise.

The offence was proved. The sentence was not harsh. This appeal must fail. The same is hereby dismissed.

Order accordingly.

Dated and delivered at Nairobi this 17th day of December, 2002.

MBOGHOLI MSAGHA

JUDGE