

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO.7 OF 2001

**(Being an Appeal from Original Conviction and Sentence in Criminal Case
no.3177 of 1999 of the Chief Magistrate's Court at Mombasa – A. Ngugi,
RM)**

ALEXANDER NGILA APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

In this appeal the State Counsel does not support either the conviction or sentence. She gave her grounds.

I have perused the record. I notice that although the scene was in a residential block and the complaint was at the material time in company of her neighbours resting at the verandah none of these people were called to give evidence. The complainant did not give any description of the injuries she suffered and the court failed to call the doctor who completed P3 form to give evidence and to explain the injuries to court. Although a fact may be proved by one witness in this case the evidence of the only witness – the complainant is not clear or consistent. She seems to have talked to Mwikali long after the event. On the side of the appellant he had put up a strong denial which is believable and was not shaken by cross examination. I therefore find that the submissions of the State Counsel are reasonable. The Trial Magistrate relied on unsafe evidence. I therefore allow the appeal, quash conviction and set aside sentence.

The Appellant shall be set at liberty forthwith unless otherwise lawfully held.

Dated at Mombasa this 29th Day of August, 2001

J. KHAMINWA

COMMISSIONER OF ASSIZE