



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO.200 OF 1999**

(Being an Appeal from Original Conviction and Sentence in Criminal Case  
No.4347 of 1998 of the Chief Magistrate's Court at Mombasa – L.N.

Mbatia, RM)

STANLEY MAINA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

In this appeal the appellant was charged with offences of attempted rape contrary to Section 141 of the Penal Code. He was also facing a second count of assault causing actual bodily harm under Section 251 of the Penal Code. He was convicted and sentenced to imprisonment for a period of 5 years with 3 strokes of the cane for the attempted rape and 9 months imprisonment for the offence of assault. He now appeals against conviction and sentence.

The prosecution case is that the complainant was resting on her bed waiting for her husband to come from work. At about 10 p.m. she noticed the appellant trying to remove her underwear as she lay on the bed asleep. She jumped up and fought back the appellant whom she knew and in the process she injured the appellant and took his T shirt while the appellant hit her face with a stool. All this was happening inside her house. Later her husband came in and she told him of the incident. He advised her to go to police station in the morning. At the police station she made a report and was given P.3 form to get medical examination. The police officer receiving the report was able to see the injuries on the complainant's face. He also received the T/Shirt the complainant had taken from the appellant.

To all this evidence the appellant was not able to say anything. He did not dispute that the T Shirt was his. He did not dispute that he was a neighbour of the complainant. He did not dispute that he had gone to her house that evening. The Trial Magistrate was therefore left only with the evidence of prosecution to weigh against the silence of the appellant. The trial magistrate reached the only conclusion open that what the prosecution said was true. It is true that the only evidence as to what happened was of the complainant, but the said evidence was firm and consistent and was not shaken in cross examination. In the case of ***Abdalla Bin Wando & Another vs. R. EACA 166*** It was held that a fact may be proved by evidence of single witness. In the circumstances I find that the Trial Magistrate convicted on sound principles and I see no reason to interfere.

On the issue of sentence the trial magistrate is best placed to decide on the punishment. In this case the maximum sentence is life imprisonment. I find that taking into account the nature of the offence and the circumstances surrounding the acts the sentence meted out was not harsh or excessive and I decline to interfere.

The upshot is that the appeal is hereby dismissed.

**Dated at Mombasa this 1st Day of November, 2001.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

**Read in Court in presence of Appellant and the State Counsel.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**