



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.1462 OF 1993**

(From Original Conviction and Sentence in Criminal Case No.3721

of 1992 of the Chief Magistrate's Court at

Kiambu:M. Rungare,Esq).

**SAMUEL IHONGO KABURU ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... . RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO.1466 OF 1993**

(From Original Conviction and Sentence in Criminal Case No.3721

of 1992 of the Chief Magistrate's Court at

Kiambu:M.Rungare,Esq).

**JUDGMENT**

Criminal Appeal Nos.1462 and 1466 of 1993 are consolidated. The 1st appellant was convicted of rape whereas the 2nd one was convicted of Indecent assault on a female.

The complainant's evidence and that of Ndegwa's (P.W.2) shows that they had known the two appellants well prior to the date in question. The appellants admit this fact but they denied the charge.

The complainant stated how she was raped by the appellant and another accused (who was convicted but his appeal, if he - filed it, is not before me). She also said that the 2nd

appellant held her breasts.

The evidence of Ndegwa was that he saw the 1st appellant and another holding the complainant while the others held him. He managed to run away. Later the complainant (P.W.1) went to him and reported that she was raped. A report was made and the appellants arrested.

The medical examination confirmed that the complainant was raped.

The appellants denied the charge.

The Magistrate did not believe the appellants on the face of the clear evidence against them from the prosecution and rightly so.

The convictions are upheld. The appellants have served the sentence passed.

Order: Both appeals are dismissed.

**V. V. PATEL**

**JUDGE**

**5/2/96**