



**REPUBLIC OF KENYA**

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

**CORAM: D.S MAJANJA J.**

**CRIMINAL APPEAL NO. 69 OF 2018**

**BETWEEN**

**BENARD MUTAI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence of Hon. R.M Oanda – PM dated 19<sup>th</sup> December 2017 at the Principal Magistrate’s Court at Kilgoris in Criminal Case No.1374 of 2016)*

**JUDGMENT**

**1.** The appellant, BENARD MUTAI, was charged and convicted of the offence of attempted defilement contrary to **section 9(1) and (2) of the Sexual Offences Act (‘the Act’)**. The particulars of the offence were that:-

*On 24<sup>th</sup> October 2016 at around 1.00am in Trans-mara West Sub-County within Narok County, he intentionally attempted to cause his penis to penetrate the vagina of FC a child aged 15 years.*

**2.** This appeal is against the sentence of 10 years imprisonment imposed on the appellant. He claims that it is harsh and excessive. He also submits that he is entitled to lesser punishment.

**3.** This court can only interfere with a sentence if it is illegal or if the court, based on the fact, exercised its discretion wrongly by ignoring material facts and taking into account irrelevant facts or on the whole sentence is manifestly harsh and excessive.

**4.** The Act provides mandatory minimum sentence of 10 years for the offence of attempted defilement. This court cannot interfere in an otherwise lawful sentence in the circumstances.

**5.** The appeal is dismissed.

**Dated and delivered at Kisii this 15<sup>th</sup> day of March 2019.**

**D.S MAJANJA**

**JUDGE**

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.