



**REPUBLIC OF KENYA**

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

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

**CRIMINAL APPEAL NO. 71 OF 2018**

**BETWEEN**

**DANIEL KIPCHIRCHIR KIMELI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. D. Milimu, RM dated 7<sup>th</sup> September 2018 at the Magistrates Court at Eldoret in Criminal Case SO No. 67 of 2017)*

**JUDGMENT**

1. The appellant, **DANIEL KIPCHIRCHIR KIMELI**, was charged and convicted of the offence of attempted defilement contrary to **section 9(1) and (2)** of the *Sexual Offences Act*. The particulars of the charge were that on 17<sup>th</sup> April, 2017 in Eldoret West District within Uasin Gishu County, he intentionally attempted to cause his penis to penetrate the vagina of VC, a child aged 7 years.
2. I have reviewed the evidence against the appellant and I am unable to agree that the circumstances disclose the offence of attempted defilement. The evidence of PW 1 and PW 2 is not consistent. PW 1 testified that the appellant held and twisted her hand and she fell and he tried to unbutton her blouse yet when PW 2 came, she did not see PW.1 who is alleged to have fallen. PW 1 told her that the appellant had twisted her hand and it was painful. While PW 1 told her that the appellant was trying to defile her, I find that there is no evidence to show that he had taken steps to commit an act of defilement.
3. I am however satisfied that the acts disclose a lesser offence of assault with intent to cause actual harm contrary to **section 251** of the *Penal Code (Chapter 63 of the Laws of Kenya)* and I convict him accordingly.
4. I sentence the appellant to **two (2) years'** imprisonment from **30<sup>th</sup> August 2017**.

**DATED and DELIVERED at ELDORET on this 24<sup>th</sup> day of APRIL 2019.**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Ms Mokua, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.