



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL APPEAL NUMBER 218 OF 2011**

**SILAS KINYUA NTHIGA..... APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence in Siakago Criminal Case No 245 of 2011  
by S.M. Mookia P.M on 6<sup>th</sup> December, 2011)*

**JUDGMENT**

The appellant was charged and convicted of the offence of attempted defilement contrary to Section 9(1) and (2) of the Sexual Offences Act. He appeal against conviction and sentence. In his submission to the court, the appellant states that he was not permitted to cross-examine the two child witnesses who gave direct evidence of the offence for which he was convicted.

I have perused the record. Both PW 1 and PW 2 were children and after examination, they were permitted to give “sworn evidence”. The record does not indicate that the appellant was given an opportunity to cross-examine the two witnesses for the prosecution.

Article 50(k) of the Constitution protects the right of every accused to challenge evidence given against him. The failure by the learned Magistrate to grant this right vitiates the trial.

In the circumstances, the appeal is allowed and the conviction and sentence quashed. The appellant shall however be retried for the offences.

**D.A.S MAJANJA**

**JUDGE**

**17.10.13**

**Court:**

Judgment read and delivered in open court this 17<sup>th</sup> day of October, 2013

**D.A.S MAJANJA**

**JUDGE**

**17.10.2013**

In the presence of

Mr Njogu for state

Appellant

Njue – Court clerk