



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Appeal 267 of 2004**

*(From original conviction and sentence in Criminal Case 188 of 2004 of the Chief*

*Magistrate's Court at Nakuru –A. MONGARE)*

**EVANS NDEGE MOENI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with attempted defilement of a girl under fourteen years contrary to **Section 145(2)** of the **Penal Code**. The particular of the offence were that on 12<sup>th</sup> January 2004 at **[Particulars withheld]** Village in Nakuru District of Rift Valley Province he attempted to have carnal knowledge of PN, a girl under the age of fourteen years. He also faced an alternative charge of indecent assault on a female contrary to **Section 141** of the **Penal Code** the particulars of the offence being that on the same date and place as hereinabove the appellant unlawfully and indecently assaulted PN by touching her private parts.

After a full trial, the court convicted the appellant in the alternative charge and sentenced him to seven years imprisonment. The appellant was aggrieved by the said conviction and sentence and preferred an appeal to this court against both the conviction and sentence. However, when the appeal came up for hearing he told the court that he did not intend to pursue the appeal against his conviction but only as against the sentence. He urged the court to reduce the same, saying it was harsh. On the other hand, Mr. Gumo, Assistant Deputy Public Prosecutor, urged the court to exercise its discretion and deal with the appeal appropriately.

I have carefully perused the proceedings herein. The complainant was twelve years old at the time when the said offence was committed against her. From her own evidence it appears that the appellant forcefully defiled the complainant and there was medical evidence to that effect. It is therefore not clear why the appellant was not charged with actual defilement of the complainant.

The appellant committed a very serious offence to a young and innocent girl and in my view he was given a rather lenient sentence considering that such an offence attracts a sentence of life imprisonment with hard labour. I am therefore satisfied that the trial magistrate exercised her discretion properly in handing down the said sentence to the appellant. The appellant's appeal has no merits and I dismiss the same.

DATED, SIGNED and DELIVERED at Nakuru this 5<sup>th</sup> day of October, 2006.

**D. MUSINGA**

JUDGE

Judgment delivered in open court in the presence of the appellant and the Mr. Gumo, Assistant Deputy Public Prosecutor for the state.

**D. MUSINGA**

JUDGE