



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**HIGH COURT CRIMINAL CASE NO. 58 OF 2018**

**JOSEPH BOKE SERERIA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The appellant was convicted and sentenced to 10 years imprisonment for the offence of “attempted defilement”. The appellant was charged with “Attempted defilement contrary to Section 9 (1) (2) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that, ‘On the 30<sup>th</sup> day of November 2016 at Mashanwa location in Transmara West Sub County of Narok County, intentionally attempted to cause his penis to penetrate the vagina of F N K a child aged 8 years. The 2<sup>nd</sup> count he was facing was, “Committing an indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that, “On the 30<sup>th</sup> day of November 2016 at Mashanwa location in Transmara West sub County of Narok County, intentionally touched the vagina of F N K a child aged 8 years with his penis. His appeal as per his petition of appeal filed on the 23<sup>rd</sup> of July is on the sentence. He seeks a lenient sentence. He stated that his appeal is not against the conviction.

2. At the hearing of the appeal he submitted that he did not commit the offence as Pw6’s evidence shows that he did not commit the offence and that he was charged because he asked for his change.

3. As a court of first appeal am required to re-evaluate the evidence. The evidence adduced at the lower court shows that the appellant was found red handed about to defile the complainant. Pw1’s (the child) evidence was corroborated by the evidence of Pw4 who saw the appellant go with Pw1 to the maize plantation and she went and alerted Pw1’s mother. Pw2 the mother of Pw1 went to the place Pw4 had seen the appellant with the child and found the appellant on top of the child, his zip was open. Pw1 identified the appellant as the one who called her and led her to the place with trees removed her pant, removed his penis but did not penetrate her as Sabina saw them and went to get her mother. The P3 form confirmed that there was no penetration. This does not mean that there was no attempt of defilement of Pw1 .The evidence of Pw1 was corroborated by the evidence of Pw2 and Pw4. The appellant did not raise the issue of asking for his change when he cross-examined Pw3. His defence did not was an afterthought. The prosecution case was proved beyond reasonable doubt.

4. The appellant was convicted for attempted defilement and sentenced to 10 years imprisonment. Section 9 (1) (2) provides as follows;

**(1) A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.**

**(2) A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years**

The minimum sentence is 10 years. This court does not have the discretion to reduce the said sentence. The appellant’s appeal is therefore dismissed.

**Dated signed and delivered at Kisii this 5<sup>th</sup> day of December 2018.**

**R.E.OUGO**

**JUDGE**

**In the presence of;**

**Appellant In person**

**Mr. Otieno For the State**

**Ms. Rael Court Clerk**