

KENYA / JUDGMENT

Shamala v Republic

[2026] KEHC 13197 (KLR)

[2026] KEHC 13197 (KLR)

COURT

High Court

BEFORE

PK Rotich

CASE / FILE NUMBER

Criminal Appeal 130 of 2016

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Shamala v Republic (Criminal Appeal 130 of 2016) [2026] KEHC 13197 (KLR) (3 July 2026)
(Judgment) Neutral citation:

[2026] KEHC 13197 (KLR) Republic of Kenya In the High Court at Eldoret Criminal Appeal 130 of 2016 PK Rotich, J July 3, 2026 Between Fredrick Ambani Shamala Appellant and Republic Respondent (Being an appeal against the conviction and sentence from the Judgement of Hon. S. Telewa (RM) delivered in Eldoret CM Criminal case No. 1974 of 2015)

Judgment

1. The appellant was charged with defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offence Act No. 3 of 2006. The particulars of the offence are that on 20th April, 2015 at [Particulars Withheld] village in Likuyani Sub- County within Kakamega County, the appellant intentionally and unlawfully inserted his genital organ (Penis) to penetrate the anus of B.S.K, a boy aged 11 years. 2. The trial magistrate considered the evidence of prosecution witnesses and the appellant chose to remain silent and found the appellant guilty. Upon conviction, the appellant was sentenced to serve life imprisonment. 3. Being aggrieved by the conviction and sentence by the trial court, the appellant preferred this appeal. The appeal is based on the following 4 grounds of appeal: a. That the learned magistrate erred in law and fact by awarding conviction and sentence based on fatally defective charge. b. That the learned magistrate erred in law and fact by convicting the appellant when the age of the complainant was not conclusively proved. c. That the trial magistrate erred in law and fact by convicting the appellant on the basis of fabricated evidence of penetration. d. That the learned trial magistrate was biased and prejudiced against the appellant and hence, his conviction was unlawful. 4. PW1, BS the complainant gave unsworn evidence. He stated he was aged 10 years old and standard 4 pupil. PW1, further, stated that the appellant was a herdsman working for their neighbour. 5. On 20th April, 2015 at 3 pm while he was herding cows in the forest, PW1 stated, the appellant

followed him and did bad manners to him. 6. PW1, further stated that the appellant removed his “dudu” and forced it into his anus and he screamed. PW1 also stated the appellant threatened him and he did not tell anyone what happened. The following day, PW1 stated, he, however, told Duncan what happened in the company of one Veronica and they used Veronica’s phone to call his Dad. Thereafter, PW1 stated, he was taken to hospital where he was treated and later reported the matter at a police station. On cross-examination the complainant identified the accused by name. 7. PW2, RKW, is the complainant’s father. He stated that the complainant was born on 3rd March, 2006. PW2, further, stated that he took his son to Likuyani Sub-County District Hospital. 8. PW4, Vincent Bosire is a Clinical Officer based at Likuyani Sub- County Hospital. On examining the complainant, PW4 stated, he noted that his anal region had scratches and redness. PW4 concluded that the complainant’s anus was actively penetrated. PW4 filed the filled the complainant’s P3 form which he produced it at the trial court as P. Exhibit No. 3. He also stated the signs of penetration were fresh. 9. PW5 No. 67273 CPI Daniel Kirunguru produced a copy of the complainant’s birth certificate. The birth certificate was marked as P. Exhibit 4. 10. The issue for determination in this matter is whether the appellant defiled, PW1, the complainant. In 1st appeal this court has jurisdiction to revisit the evidence tendered in the lower court afresh, evaluate the same and come to own conclusion, bearing in mind that the lower court had the advantage of observing the demeanour of witnesses and give due allowance to that. (see Mark Oiruri Mose -vs- Republic (2013)eKLR) 11. Section 8(1) of Sexual Offence Act defines defilement as an Act which causes penetration. Penetration is defined in section 2 of the Act to mean the partial or complete insertion of the genital organs of a person into the genital organs of another person. 12. In JOO -vs- Republic (2015)KEHC 1946(KLR) the court noted that the key ingredients of defilement include proof of the age of the complainant, proof of penetration and proof that the appellant was the perpetrator. 13. PW5 No. 67273 CPI Daniel Kirunguru produced the complainant’s birth certificate. The certificate shows the complainant was born on 3rd March, 2006. He was therefore aged 10 years on the date of the alleged offence herein. 14. PW1, the complainant stated that the appellant was a herdsman working for a neighbour. On 20th April, 2015 while he herding cows in a forest, PW1 stated, the accused followed him and did bad manners to him. The complainant, further, explained that the accused removed his dudu and forced into his anus and he screamed. He also threatened him and he did not tell anyone what happened. I take Judicial notice that “dudu” means the appellant’s penis. 15. The evidence of PW1 is corroborated by a Clinical Officer based at Likuyani sub-county Hospital. The officer examined the complainant and noted his anal region had scratches and redness. The Clinical Officer was complainant’s anus was actively penetrated. 16. The complainant knew the appellant. He was a herdsman who worked for a neighbour and the incident herein happened at 3:00 pm, broad daylight. On being cross-examined by the appellant the complainant identified the appellant by name. It is, therefore, my finding that the complainant identified that the appellant as perpetrator of the crime herein by way of recognition. 17. In his defence, the appellant elected to remain silent. The evidence tendered by the prosecution witnesses was, therefore not controverted. 18. Based on the evidence on record, this courts finds that

prosecution proved the case of defilement contrary to section 8(1) and read with section 8(2) of the Sexual Offences Act against the beyond reasonable doubt. It is also my finding the claim of bias and prejudice against the trial magistrate has no basis. 19. The upshot of this findings above is that this appeal lacks merit and the same is dismissed. Right of appeal within 14 days. DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS PLATFORM THIS 3 RD DAY OF JULY 2026 HON. P. K. ROTICH JUDGE In the presence of: Ms.Kerenge for DPP Accused in person

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/13197>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/shamala-v-republic-2026>

Prepared on 27 October 2026 · Esheria