

UGANDA / JUDGMENT

Abdulla v Rex (Criminal Appeal No. 76 of 1941) [1940] EACA 57 (1 January 1940)

[1940] EACA 57

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Criminal Appeal No. 76 of 1941

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APPELLATE CRIMINAL Before SIR JOSEPH SHERIDAN, C. J. and BARTLEY, J. ADEN ABDULLA, Appellant

\$\nu\$.

REX, Respondent Criminal Appeal No. 76 of 1941

Criminal Law-Possession of Native Intoxicating Liquor in township other than in licensed premises without permit—New section 25A (1) (b) of the Native Liquor Ordinance (36 of 1930) introduced by G. N. 116/41—Sub-section (1) of the new section reading as follows:-

"Where native intoxicating liquor is found on any premises the following persons shall be deemed to be in possession thereof, that is to say—

\$(a)\$ the landlord; and

(b) every person occupying any room, or having access to any part of the premises, in which such liquor is found,

unless such landlord or person, as the case may be, proves to the satisfaction of the Court that such liquor was found on such premises or in such room or part of the premises without his knowledge."

Close proximity to persons in physical possession of liquor—Limits of the new law and its application.

The appellant was charged in the Second Class Magistrate's Court, Nairobi, with being in possession of Nubian gin. Although there was a conflict of evidence on the point, the magistrate in his judgment did not decide whether the appellant was at any time actually inside the premises in which the Nubian gin was apparently found; but held that appellant had been proved to be so

close to persons in actual possession, that the possession must, by virtue of the new law, be said to be his possession also. The appellant was convicted and sentenced to three months imprisonment with hard labour.

Appellant appealed.

Held \$(17-4-41)\$.—(1) Possession had been more stringently defined by a recent regulation and the resultant present law, though probably necessary, was of a very drastic character.
(2) The mere fact of close proximity to persons in possession, however, coupled as

it was in this case with vision, could not by itself bring the bystander within the new section, drastic though it was.

(3) The conviction was therefore, on facts proved, a wrong one and must be quashed. Appeal allowed.

Accused absent unrepresented.

Spurling, Crown Counsel, for the Crown.

JUDGMENT.—The accused in this case was convicted under what is admittedly a very drastic though probably necessary regulation. We do not, however, consider that the proved facts of this case bring either the accused or his companion within the provisions of the regulation. The regulation provides: -

\$25A.\$ (1) Where native intoxicating liquor is found on any premises the following persons shall be deemed to be in possession thereof, that is to say—

(b) every person occupying any room, or having access to any part of the \$(b)\$ premises in which such liquor is found,

unless such landlord or person, as the case may be, proves to the satisfaction of the Court that such liquor was on such premises or in such room or part of the premises without his knowledge."

The accused and his companion were near two persons who were in physical possession of Nubian gin and were convicted of that offence. The evidence merely discloses that the accused and his companion "were standing about nine or ten yards from them and must have seen the Nubian gin in the hands of the two men". However drastic the law may be this evidence is insufficient to found a conviction. We quash the conviction and sentence and in the exercise of our revisional powers we make a similar order in the case of Mohamed bin Ali.

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