

UGANDA / JUDGMENT

Butt v Queen (criminal Appeal No. 200 of 1954) [1954] EACA 175 (1 January 1954)

[1954] EACA 175**COURT**

East African Court of Appeal

BEFORE

Bourke J, De Lestang J

CASE / FILE NUMBER

criminal Appeal No. 200 of 1954

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

APPELLATE CRIMINAL**Before BOURKE AND DE LESTANG. JJ.****MOHAMED ABDUL HAMID BUTT, Appellant****\$\nu\$.****THE QUEEN, Respondent****Criminal Appeal No. 200 of 1954**

Criminal Procedure and Practice—Substitution of "X" for person named in particulars of charge—Whether prejudice to accused—Penal Code section 93 (2)-Official Corruption-Bribe tendered to police officer to withdraw charge-Officer without legal capacity to quash charge-Whether offence committed-Sentence-Bribery by court clerk-Whether sentence excessive.

The accused, who occupied a responsible position as a clerk in the Supreme Court offered a bribe of Sh. 10,000 to a police officer to withdraw a criminal prosecution pending against one "Kapur Chand" which that officer had initiated. The accused was charged with official corruption under the provisions of section 93 (2), Penal Code, and "Kapur Chand" was named in the charge. To avoid any suggestion of prejudice to Kapur Chand, against whom a criminal prosecution was pending, the prosecution applied for and obtained an amendment of the charge substituting for "Kapur Chand" the letter "X". The accused appealed on this ground and also on the ground that as to constitute the offence, the bribe had to be given to the police officer to do something "in discharge of the duties of his office" and as the officer had no legal right to withdraw the charge pending against Kapur Chand he was not guilty of the offence charged. The appellant also

submitted that the sentence of three years' hard labour imposed upon him was excessive.

Held (30-6-54).—(1) Even if it was accepted that the charge as amended disclosed an irregularity, the appellant was in no way misled or prejudiced by the substitution of "X" for "Kapur Chand" and no failure of justice was occasioned.

- (2) The appellant when he corruptly gave the gratification did so in the belief and hope that the police officer could and would, by virtue of his official position, put an end to the proceedings initiated by him. Whether the officer had a right in law formally to withdraw the charge laid by him was irrelevant charge which he himself had brought into being.
- (3) The appellant occupied a responsible position as a Clerk of the Supreme Court. He had sought to corrupt a senior police officer by giving a substantial bribe in money so that the course of justice might be perverted. It was a very grave offence and the sentence of three years' imprisonment with hard labour

Appeal dismissed and sentence confirmed.

O'Brien Kelly for the accused.

Le Gallais, Crown Counsel, for the Crown.

[Editor's note.—An appeal from this judgment was dismissed by the Court of Appeal for Eastern Africa on 5th October, 1954, in Criminal Appeal No. 577 of 1954.]

JUDGMENT.—The charge to which the appellant pleaded "not guilty" reads as follows: —

"Official Corruption, Contrary section 93 (2), Penal Code, Mohamed Abdul Hamid Butt on 19-11-53 at Nairobi in the Nairobi Extra-Provincial District corruptly gave to Mr. J. Baker an Assistant Superintendent of Police, a person employed in the public service, the sum of five thousand shillings (Sh. 5,000) in order that the said J. Baker should withdraw a criminal prosecution against one Kapur Chand who had been charged by the said J. Baker in the discharge of the duties of his office".

On that plea the trial proceeded, but before entering upon the evidence the prosecutor applied for and obtained an amendment of the charge by substituting the letter "X" for the name "Kapur Chand". The object of this was made clear before the lower court. It was a means adopted "to avoid possible prejudice at the trial of the accused in question", Kapur Chand, against whom, as everyone concerned obviously realized, and as appeared from the charge as it originally stood, a prosecution for a criminal offence had been brought and was awaiting trial. "X" was a cipher employed as representing the name "Kapur Chand" and was so used and regarded throughout the whole proceedings including the judgment. We express no opinion as to whether it was necessary or proper to alter the charge in this way, for even if one accepts that the charge as amended disclosed an irregularity it is surely apparent that the appellant was in no way misled or prejudiced and there was in fact no failure of justice occasioned. We find no substance in the

ground of appeal set out in paragraph 3 of the petition of appeal because from the outset, that is, from the time the appellant had pleaded to the charge containing the name "Kapur Chand", it was recognized that a reference to "X" was to be understood as a reference to "Kapur Chand". It is true that A. S. P. Baker was led to say in cross-examination that he did not know or investigate a case against a person whose actual name was "X"; of course he did not; but in speaking of "X" in the course of the material parts of his testimony, it is evident that he was speaking of "Kapur Chand" in pursuance of the arrangements made for the reason that appears, namely to avoid direct reference to this name of a person who would later be standing his trial and, as it was thought, might be prejudiced. This witness said in his evidence that "the man 'X' is the same as accused in file \$2107/53\$ " (exhibit A), that is "Kapur Chand".

The other ground of appeal that was argued against the conviction is that the money was not given to Mr. Baker to do something that was "in the discharge of the duties of his office". Mr. Baker is an Assistant Superintendent of Police who was attached to the C. I. D. and was in charge of the Investigation Branch at the time "X", or rather Kapur Chand, was charged with an offence the prosecution of which Mr. Baker was asked by the appellant to withdraw in return for a substantial payment of money. At the time the money was offered and paid A. S. P. Lawrence was in charge of the Investigation Branch of the C. I. D. It is submitted that Mr. Baker had no right under the law to withdraw the charge and so it could not validly be said that he was given the money on account of an act to be done by him in the discharge of the duties of his office. We think this is putting altogether too narrow a construction upon section 93 (2) of the Penal Code having regard to the circumstances of the case. It is evident from the findings that the appellant believed that this police officer could, in virtue of his official position, prevent the prosecution from going any further. Had Mr. Baker proved venal, which to his credit he did not, it is useless to speculate as to what means he might seek to employ to effect the burial of the charge that he had been instrumental in bringing into being. He might not be able to achieve the result desired by the appellant, who withheld half of the sum of Sh. 10,000 until he was presented with a fait accompli. The appellant when he corruptly gave the gratification did so in the belief and hope that the police officer could and would, by virtue of his official position, put an end to the proceedings initiated by him. Whether Mr. Baker himself had a right formally to withdraw the charge laid before a court seems to us to be irrelevant to the offence of which the appellant has been found guilty. It is enough, in the opinion of this Court, that the appellant thought that the officer could, in the exercise of his official functions, do the act on account of which the money was paid. We think the verdict right and confirm the conviction.

The appellant was originally put on probation but in the exercise of its revisional jurisdiction it was held by this Court (Holmes, J.), that the case was not one in which such a course was justified. Accordingly, the matter was remitted to the magistrate to pronounce a sentence of punishment. In the event the appellant was sentenced to three years' imprisonment with hard labour. We have considered all that has been said in support of the appeal for a reduction of this sentence and we see no ground for interference. The appellant occupied a responsible position of a clerk of the Supreme Court. He sought to corrupt a senior police officer by the giving of a substantial bribe in money so that the course of justice might be perverted. It is a very grave offence and we think the

punishment inflicted is not excessive. The appeal is dismissed.

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://ulii.org/akn/aa/judgment/eaca/1954/175/eng@1954-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/butt-v-queen-criminal-appeal-no-200-of-1954-1954-eaca-175-1-january-1954-unknown-topic-unknown-court-1954>

Prepared on 13 October 2026 · Esheria