

UGANDA / JUDGMENT

# Chumba v Rex (Criminal Appeal No. 272 of 1950) [1950] EACA 93 (1 January 1950)

## [1950] EACA 93

## COURT

East African Court of Appeal

## BEFORE

Nihill, C.J, Thacker J

## CASE / FILE NUMBER

Criminal Appeal No. 272 of 1950

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### APPELLATE CRIMINAL

Before SIR BARCLAY NIHILL, C. J., and THACKER, J.

AYODI CHUMBA, Appellant (Original Accused)

REX, Respondent (Original Prosecutor) Criminal Appeal No. 272 of 1950

(From original sentence in Criminal Case No. 831 of 1950 of the R. M.'s Court at Eldoret—E. B. Hosking, Esq.)

Penal Code—Sections 299 (1) and 274 (b)—Composite charge—Burglary and Theft—Two sentences to run concurrently.

Appellant was convicted, under sections 299 (1) and 274 (b), of burglary and theft, and sentenced to nine months' imprisonment with hard labour for each offence, the sentences to run consecutively.

Appellant appealed.

\$Held\$ (30-8-50).—(1) That in a composite charge such as this, which relates to one and the same transaction, although it is proper, and indeed necessary, to pass two sentences in respect of the two offences, these sentences should run concurrently and not consecutively.

(2) Sentence varied.

Appellant absent, unrepresented.

Templeton, Crown Counsel. for the Crown.

JUDGMENT.—This is an appeal against the appellant's conviction on a charge of burglary and theft contrary to sections 299 \$(1)\$ and 274 \$(b)\$ of the Penal Code.

So far as his appeal against conviction is concerned there is no merit in this appeal. The appellant was identified without hesitation at a properly conducted identification parade as the person who had attempted to sell some of the proceeds of the burglary. The Magistrate, in passing sentence, however, did make the mistake of making the sentence run consecutively, for it has been laid down many times that in a composite charge such as this which relates to one and the same transaction, although it is proper and indeed necessary to pass two sentences in respect of the two offences, these sentences should run concurrently. In this case the Magistrate imposed sentences of nine months' imprisonment for burglary and nine months for theft, and as he made the sentences consecutive the appellant in fact has to serve 18 months in all. We are far from saying that this is an excessive sentence for the appellant, who has one previous conviction for theft, and if the appellant was before us we should be inclined to substitute for the sentence imposed by the Magistrate sentences of 18 months' imprisonment for each offence. As, however, the appellant has not had an opportunity of addressing us, and we think that such sentences might be regarded as an enhancement, we propose instead to set aside the sentences imposed by the Magistrate and to substitute a sentence of 12 months' imprisonment with hard labour for the burglary and 12 months for the theft. These two sentences will, of course, run concurrently.

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