

UGANDA / JUDGMENT

Hook v Rex (Criminal Appeal No. 217 of 1951 .) [1951] EACA 128 (1 January 1951)

[1951] EACA 128

COURT

East African Court of Appeal

BEFORE

Bourke J, Hearne CJ

CASE / FILE NUMBER

Criminal Appeal No. 217 of 1951 .

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APPELLATE CRIMINAL

Before SIR HECTOR HEARNE, C. J., and BOURKE, J.

COMMANDER W. LOGAN HOOK, Appellant (Original Accused)

REX, Respondent (Original Prosecutor) Criminal Appeal No. 217 of 1951

(Appeal from decision of R. M.'s Court at Nyeri—A. C. Harrison, Esq.) $\mathbf{A}$

The appellant was, on reconsideration (see Criminal Appeal No. 468 of 1950) convicted under section 238 (c) of Kenya Penal Code with having omitted to take precautions against fire in his hotel. The appellant appealed, mainly on the ground that the Court had admitted inadmissible evidence regarding previous fires.

Case referred to: McLennan v. Segar, L. R. (1917) 2 K. B. 325.

Gledhill for the Appellant.

Somerhough, Deputy Public Prosecutor, for the Crown.

The relevant portion of the judgment is set out below.

JUDGMENT (14.8.51).—"The learned Deputy Public Prosecutor referred to a few English cases. One of them, MacLennan v. Segar L. R. (1917) 2 K. B. 325, was the case of a woman who claimed damages from a hotel proprietor for personal injuries sustained by her on the occasion of an outbreak of fire at the defendant's hotel. One of the questions left to the jury was whether the defendant was negligent in not having made further inquiry than he did as to the cause of a previous outbreak of fire at the same hotel. Another was Aldridge v. Great Western Railway 3 Man. and G. 515. The question was whether the premises of the plaintiff had been ignited by sparks from a railway engine, and evidence that the same engine and other engines of similar

construction belonging to the same company had previously caused fires on the same line was held to be admissible. The case has clearly led to confusion of thought on the part of the prosecution. If the fire scare and the fire in March or April, 1949, has been proved to have been caused by the heating plants (and this was not proved) the evidence of the fire scare and the fire would have been admissible as an element of proof that the fire in banda No..7 had been caused in a similar way. This is in accordance with an established principle of evidence that the action of physical and natural agencies may be inferred from their action, under similar conditions, at other times and places. The case is an authority for no more.

The evidence of the previous fires was, however, admissible to show knowledge on the part of the accused of previous fires, but when the Magistrate, as his ruling to which we have referred shows, regarded the evidence of previous fires unconnected with or at the least not having been proved to have been connected with "the heating arrangements"—as evidence that the heating arrangements were in themselves dangerous, he misdirected himself.

One further question remains to be discussed. When the appellant was cross-examined he was asked whether he had been threatened by the Licensing Authority, whether there were complaints by guests of bad smells, and whether he was running the hotel without a licence. The Deputy Public Prosecutor attempted to justify these questions on the ground that the appellant had stated that his wife generally looked after the hotel and that he had no precise knowledge of the conditions obtaining in the hotel. It is in evidence that the appellant's wife was largely responsible for the management of the hotel. Does this circumstance, accepted by the Magistrate as true, justify the questions that were asked?

The appellant admitted that he had been threatened by the Licensing Authority. If the conduct of the appellant which occasioned the threat had been relevant and admissible it could have been proved. As no attempt was made to prove it, the question was merely calculated to suggest that the appellant had been guilty of bad conduct at some time, although his character was not in issue.

In answer to a suggestion by the prosecution that the appellant was running the hotel without a licence he stated that it was not true, and he was then asked a further question which elicited from him the reply that he had renewed his licence about Christmas time. Even if the appellant had committed the criminal offence of running his hotel without a licence, contra section 16 of the Control of Hotels Ordinance, chapter 275, extended by G. N. 569/51 from 6th July, 1948, when it was enacted, till 30th June, 1952, that offence could not have been proved in order to suggest that he was likely from his criminal conduct to have committed the offence with which he was charged; and the veiled suggestion that he had been guilty of a criminal offence was merely calculated to prejudice the appellant in the mind of the Magistrate.

The conviction of the appellant cannot be regarded as satisfactory. He was convicted in the Magistrate's second judgment on a fresh finding of fact. There was no evidence worthy of the name that the heating plants were in themselves unsafe. The evidence in regard to the condition of the grass between the 15th August and 30th September, 1949 was of little or no value. The

Magistrate possibly misdirected himself in regard to the complaints. It would appear that he did misdirect himself in regard to the pieces of timber, and he certainly did so in regard to the previous fires. Finally the prosecution imported into the case an atmosphere of sheer prejudice by asking the questions we have mentioned.

The conviction is quashed and the sentence set aside. The fine of one thousand shillings, if paid, must be refunded to the appellant."

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