

UGANDA / JUDGMENT

Laurie v Rex (Criminal Appeal No. 110 of 1949) [1949] EACA 40 (1 January 1949)

[1949] EACA 40

COURT

East African Court of Appeal

BEFORE

Graham Paul CJ, Gray CJ, Nihill, C.J

CASE / FILE NUMBER

Criminal Appeal No. 110 of 1949

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

COURT OF APPEAL FOR EASTERN AFRICA

Before SIR BARCLAY NIHILL, C. J. (Kenya), SIR G. GRAHAM PAUL, C. J. (Tanganyika)
and SIR JOHN GRAY, C. J. (Zanzibar)

WILLIAM LAURIE, Appellant (Original Accused) $\text{\textbf{v}}$

REX. Respondent (Original Prosecutor) Criminal Appeal No. 110 of 1949

(Appeal from decision of H. M. Supreme Court of Kenya—THACKER, J.)

Summing up—Omission—Whether misdirection.

Objection was taken that the learned Judge had omitted in his summing up to refer to the fact that neither the appellant nor his defence witness had been cross-examined with respect to the invoice and receipt produced in support of his defence story that the pipes had been obtained from the Township Stores.

Held $(26-7-49)$ $\text{\textbf{\$}}$.—(1) Though cross-examination was not specifically directed to the documents in question, the nature of the cross-examination made it plain that the Crown plainly intimated to the jury that the defence story ought to be disbelieved.

Rex v. Hart (1932) 23 Cr. App. R. 201 p. 207 cited.

- (2) The omission referred to was not a misdirection $\text{\textbf{\$}}\text{\textbf{\textit{Rex}}} \text{\textbf{\$}}$. Stoddart (1909) 2 Cr. App. R. 217 p. 246, and Abrath v. North-Eastern Railway (1883) 11 O. B. D. 440, cited.
- (3) In order to set aside a conviction on the grounds of non-direction it must be shown that they amounted to a misdirection and that such misdirection has in fact occasioned a failure of justice.

Rex v. Trueman (1913) 9 Cr. App. R. 20 p. 24 cited.

- (4) It is the duty of the Judge to put the substantial defence of the accused to the jury, he is not required to put every part or particular of that defence.

The appeal dismissed.

Cases referred to: Rex v. Hart (1932) 23 Cr. App. R. 201; Rex v. Stoddart (1909) 2 Cr. App. R. 217; Abrath v. North-Eastern Railway (1883) 11 Q. B. D. 440; Rex v. Trueman (1913) 9 Cr. App. R. 20.

Morgan (with Kapila) for the Appellant.

Holland (Crown Counsel, Kenya), for the respondent.

JUDGMENT.—The appellant has been convicted in the Supreme Court of Kenya in a trial by jury of stealing by a public servant.

The Memorandum of Appeal attacks the summing up of the learned trial Judge in respect of a number of details. It is alleged that there are a number of omissions from that summing up which have occasioned a failure of justice.

Before considering those omissions it is desirable to state briefly the facts in the case. The prosecution allege that the appellant, who was employed in the Public Works Department, sold without authority certain pipes which were the property of that Department to a Colonel Oulton and delivered them to him on 28th February, 1948. The sale to Colonel Oulton is not disputed, but the appellant alleges that the pipes were obtained by him from a firm called the Township Stores, of which the defence witness, Hakamrai Aggarwal, is the proprietor. The appellant explains that the piping was required by the Public Works Department for a certain job of work, but the Department was unable to supply the necessary pipes and that some time in 1947 on his own responsibility and without authority from his superiors, he obtained the pipes from the Township Stores on credit, giving his personal chit for the same. Later, it was found that the pipes were not required for the particular job and then, to use his own words, the appellant "went to the Township Stores and told them the Public Works Department did not require the piping and I would sell it for them". Thereafter, as already stated, he sold the pipes to Colonel Oulton,

Therefore, as Counsel for the appellant has said at the hearing of this appeal. the substantial matter in issue at the trial was whether the pipes sold to Colonel Oulton belonged to the Public Works Department or whether the appellant had obtained them from the Township Stores in the manner which he alleged.

The principal objection with regard to omissions from the summing up is that the learned trial Judge had omitted in his summing up to refer to the fact that neither the appellant nor the defence witness, Hakamrai, had been cross-examined by the Crown with respect to the invoice and receipt which were produced by appellant in support of his story that the pipes in question had been obtained from the Township Stores. Admittedly, there was no specific cross-examination of either witness with regard to the genuineness of these two documents and counsel for the defence, as he was perfectly entitled to do, stressed this point in his address to the

jury. Admittedly also, the learned trial Judge made no reference in his summing up to the omission of prosecuting counsel to cross-examine the witnesses directly upon these documents.

As said in **Rex v. Hart (1932) 23 Cr. App. R. 201 at page 207: \$-\$**

"if, on a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness, it is right and proper that the witness should be challenged in the witness box, or, at any rate, that it should be made plain, while the witness is in the box that his-evidence is not accepted."

In *Rex v. Hart* three witnesses were called for the defence to prove an alibi; the summing up made no mention of the fact that these witnesses were left without being cross-examined; and for these reasons the conviction of the appellant was quashed. But the facts are entirely different in the present case. Both the appellant and Hakamrai were cross-examined and, though that cross-examination was not specifically directed to the documents in question, the nature of the cross-examination made it plain that the Crown gave the jury to understand that on the crucial point in this case, as to whether or not the appellant had bought the pipes on his own account from the Township Stores, the evidence of both appellant and Hakamrai ought not to be believed. For example, in answer to one question in cross-examination the appellant denied that it was "absolutely untrue" that I bought these pipes from Hakamrai. No plainer intimation could possibly have been given to the jury that this story ought to be disbelieved.

One has also to look at the documents in question. The appellant's story was that he obtained the pipes on credit from the Township Stores in the latter part of 1947. According to him and to his witness Hakamrai he then gave the Township Stores a chit for the pipes. Admittedly, the pipes, whatever their source of origin, were delivered to Colonel Oulton on 28th February, 1948, who paid for them by a cheque, which the appellant cashed a few days later. According to the appellant he then informed Hakamrai that he had sold the pipes to Colonel Oulton. Hakamrai then gave him an invoice for the pipes and the original chit was destroyed. The invoice is dated 1st April, 1948, that is to say, four months or more after the appellant says he received the pipes from the Township Stores. The receipt is dated 9th September, 1948, and purports to be "in full settlement" of our account up to date".

The jury had these documents before them. Standing by themselves, these documents certainly do not bear out the appellant's story that the pipes which he delivered to Colonel Oulton on 28th February, 1948, were obtained by him on credit from the Township Stores some time in 1947. A further explanation was needed in order to satisfy the jury that they refer to the transaction which the appellant alleges took place. The appellant and Hakamrai offered such an explanation in their evidence and Counsel for the Crown by his cross-examination gave the jury to understand that that explanation was not accepted by him. The jury, having seen and heard the appellant Hakamrai give evidence, disbelieved them and they were within their rights in doing so.

In the circumstances the omission of the learned trial Judge to refer to the fact that there had been no cross-examination of the defence witnesses which was specifically directed to these documents cannot be held to have amounted to a misdirection of the jury, which has occasioned a failure of justice.

The remaining objections to the summing up of the learned trial Judge may be considered together. There is no necessity for us to go into them with all the wealth of detail with which they are dealt in the Memorandum of Appeal. Probably very few summings up in trials, which have extended over more than one day, are not liable to be exposed to the criticism that there are a number of matters to which the trial Judge has not referred. But a verdict of a jury cannot be set aside merely on the ground that there are omissions from the summing up. In order to set aside a conviction on the grounds of non-direction of the jury it must be shown not only that the omissions from the summing up amounted to a misdirection of the jury but also that such misdirection has in fact occasioned a failure of justice (Criminal Procedure Code, section 381). In this connexion it is **not** out of place to refer to what Lord Alverstone, L. C. J., said in **Rex v. Stoddart** (1909) 2 Cr. App. R. 217 at page 246\$:

"To quote Lord Esher's words in *Abrath v. North-Eastern Railway* (1883) 11 O. B. D. 440-

'It is no misdirection not to tell the jury everything which might have been told them. Again, there is no misdirection unless the Judge has told them something wrong or unless what he has told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood.'

Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by counsel for the prosecution and the defence respectively. This Court does not sit to consider whether this or that phrase was the best that might have been chosen, or whether a direction which has been attacked might have been fuller or more conveniently expressed, or whether other topics which might have been dealt with on other occasions should be introduced. This court sits here to administer justice and to deal with valid objections to matters which may have led to a miscarriage of justice."

As said by Darling, J., in *Rex v. Trueman* (1913) 9 Cr. App. R. 20 at page 24, it is the duty of the Judge in his summing up to put the substantial defence of the accused person to the jury, but he is not required to put every part or particular of that defence.

Here, the substantial point in issue was explained to the jury by the learned trial Judge, namely, whether the property sold to Colonel Oulton by the appellant was the property of the Public Works Department or had been obtained by the appellant on his own account from the Township Stores. A finding that it was the property of the Public Works Department depended in a large measure upon the credibility to be attached to the evidence of the witness, John William Ochieng. Regarding this witness, the learned trial Judge made the following observations to the jury: \$-\$

"What still is of importance is the credibility which you can attach to him There was some shuffling by the witness, of which Mr. Morgan has quite rightly taken full advantage; and you have to consider whether the whole of his evidence is to be rejected as to how long the pipes were at the station, or whether you can accept it in all essential matters as true despite the muddle he got into, and apparent reluctance to give a frank explanation. I leave that to you: you are the judges of the facts, that is, to say whether you believe Ochieng on all material points or whether he is a witness who cannot be believed."

There has been, and indeed can be, no complaint regarding this particular passage in the summing up. In addition, both at the outset and the conclusion of his summing up the learned trial Judge carefully directed the jury that the burden was upon the prosecution to prove the guilt of the appellant beyond all reasonable doubt. His concluding words to the jury were: —

"In considering any fact, as I tried to show when Mr. Morgan raised the point at various times, if you have any reasonable doubt upon it, if you have any doubt as to any minor or major fact, then again you must give the benefit of that doubt which is in your mind to the accused."

Once again, there can be no complaint as to this concluding passage in the summing up.

The jury, having seen and heard the witnesses in the case give their evidence and having been carefully directed by the learned trial Judge as to what was the substantial issue in this case and as to the burden upon the prosecution of proving the guilt of the accused beyond reasonable doubt, proceeded to find the accused guilty. It is quite impossible for us to say that they were wrong.

This appeal is accordingly 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/1949/40/eng@1949-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/laurie-v-rex-criminal-appeal-no-110-of-1949-1949-eaca-40-1-january-1949-unknown-topic-unknown-court-1949>

Prepared on 13 October 2026 · Esheria