

UGANDA / JUDGMENT

Leseret v Ibrahim (C.C. 42/1929 (Eldoret).)

[1929] EACA 50 (1 January 1929)

[1929] EACA 50

COURT

East African Court of Appeal

BEFORE

Barth, C.J (Kenya)

CASE / FILE NUMBER

C.C. 42/1929 (Eldoret).

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ORIGINAL CIVIL.

Before SIR JACOB BARTH, C. J.

NGESO ARAP LESERET

1) .

IBRAHIM.

C. C. \$42/1929\$ (Eldoret).

Masai custom—custody of children and property of deceased native.

\$Held:\$ That according to Masai custom the plaintiff, as brother of the deceased, is entitled to the custody of the children and of the cattle.

JUDGMENT.—The plaintiff in this case is seeking to recover from the defendant who is a Nubian, the widow of his brother, seven children and fifty-three head of cattle. The plaintiff's case is that he is the brother of one Kemilil. Kemilil before the days of Government died, it is alleged, in a foray in the Kitosh and, as part of the spoil, was awarded seven head of cattle. The Kemilil died leaving a son, Ndewa, and plaintiff is a Masai. four other children. His widow is said to have borne three other children after Kemilil's death making a total of seven. Ndewa is also dead leaving two infant children. The defendant's case is that Ndewa placed the cattle and the children in his care; the defendant was to look after the cattle for Ndewa's brother and son. Ndewa informed him that he had no other relatives living.

The plaintiff has produced two wazee who state that they were in the raid with Kemilil, but one of them states that Ngeso is not the son of Kemilil but of his brother Lemara. The raid is put by Makero, one of the wazee, as having occurred 100 years ago, that is presumably fifty years ago according to the calendar. The defendant has called Ndewa's mother who contradicts entirely the story for the plaintiff. She denies that Kemilil was her husband or that he was a Masai, although she admits his part in the raid.

I am of opinion that this woman is not telling the truth.

In my view the plaintiff is entitled according to Masai custom to the custody of the children and of the cattle, but in this case the children are presumably being brought up as Mohammedans and the question arises as to whether or not native custom should be followed. I am however, influenced by the fact that hard cases make bad law. I give judgment for the plaintiff for the custody of the cattle, which the defendant states to be sixty-five head, and the custody of the children. In view of the facts I make no order as to costs.

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