

UGANDA / JUDGMENT

Rex v Biguli and Another (Criminal Appeals Nos. 158 and 159 of 1947) [1947] EACA 43 (1 January 1947)

[1947] EACA 43**COURT**

East African Court of Appeal

BEFORE

Edwards CJ, Graham Paul CJ, Nihill P

CASE / FILE NUMBER

Criminal Appeals Nos. 158 and 159 of 1947

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COURT OF APPEAL FOR EASTERN AFRICA**Before NIHILL, C. J. (Kenya), SIII G. GRAHAM PAUL, C. J. (Tanganyika) and EDWARDS, C. J. (Uganda)****REX. Respondent (Original Prosecutor)** **$\mathbf{v}$** **BIGULI s/o LWEMERA, RUSWA s/o KASIGWA, Appellants (Original Accused)****Criminal Appeals Nos. 158 and 159 of 1947****(Appeals from decision of H. M. High Court of Tanganyika)**

Criminal law—Accessory—Section 24 Tanganyika Penal Code.

The first appellant was convicted of murder by burning down a house with his victim inside. The second appellant was convicted of being an accessory. before the fact by counselling and procuring the first appellant to carry out the crime.

Appellants absent, unrepresented.

Lowe, Crown Counsel (Kenya), for the Crown.

JUDGMENT (delivered by NIHILL, C. J.).—We have consolidated these two appeals of the two appellants, who were jointly convicted of murder by the High Court of Tanganyika. As regards the first appellant the evidence, which concluded his own confession that he had set fire to the house of the deceased, amply supports the conviction, and we dismiss his appeal.

The case of the second appeal raises different consideration. The evidence shows that he advised the first appellant to burn the house of the deceased because he possessed the knowledge that it was the deceased's wife who was responsible for the death by witchcraft of some of the first appellant's children. There is no evidence that the counselling of the first appellant went further than an injunction "to burn Sembeba's house", and on this point the learned trial Judge misdirected himself when he held that the evidence established that the second appellant had given this advice in order to destroy Sembeba's wife. We have had to consider therefore whether the mere injunction to commit arson, not necessarily at night, places the second appellant in a position where he can be rightly convicted of murder, because in consequence of the carrying out of the injunction by the first appellant Sembeba lost his life. Under section 24 of the Tanganyika Penal Code, where one person counsels another to commit an offence, the offence actually committed must be a probable consequence of carrying out the counsel. We do not think it could be reasonably held that loss of human life is a probable consequence of arson per se. Everything will depend on the circumstances in which the crime is committed. In this case the first appellant committed the crime at night and without warning to Sembeba and others who were sleeping in the hut, but there is no evidence that those were the circumstances in which the second appellant counselled the first appellant to commit the crime. In our opinion, therefore, he has been wrongly convicted of murder. We quash the conviction and order him to be set at liberty.

Held (18-8-47), -That the circumstances of the case did not show that loss of human life would be the probable consequence of the burning when the second appellant counselled it and he must be acquitted.

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