

UGANDA / JUDGMENT

Rex v Central African Contractors Ltd (Criminal Appeal No. 198 of 1944) [1945] EACA 54 (1 January 1945)

[1945] EACA 54

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Criminal Appeal No. 198 of 1944

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APPELLATE CRIMINAL

Before SIR JOSEPH SHERIDAN, C. J., and BARTLEY, J.

REX, Respondent

v.

CENTRAL AFRICAN CONTRACTORS, LTD., Appellants

Criminal Appeal No. 198 of 1944

Defence Regulations—The Defence (Control of Prices) Regulations, 1943, Regulations 11 (1), 22, 25 (4)—Cost of Transport—Indian Evidence Act, sections 105, 106—Absence of mens rea no defence—Responsibility of body corporate and officers.

The appellant company appealed against convictions and sentences in respect of several charges of selling various price-regulated goods at prices exceeding the maximum prices fixed therefor contrary to regulation 11 (1) of the Defence (Control of Prices) Regulations, 1943. The facts and grounds of appeal appear sufficiently from the judgment.

Held \$(7-4-45)\$.—(1) The cost of transport is a matter exclusively in the knowledge of the accused and the onus is on them to prove it.

(2) There is no evidence that any charge was made for transport and the accused have consequently failed to discharge the burden of proof laid upon them.

- (3) Regulation 11 (1) imposes an absolute liability and mens rea is not an essential element of an offence against that Regulation.
- (4) An invoice is prima facie evidence of sale under regulation 22, Appeal dismissed.

Khanna for the Appellant Company.

Phillips, Crown Counsel, for the Crown.

JUDGMENT.—The appellant company was convicted by the learned Resident Magistrate, Nairobi, of five offences against regulation 11 (1) of the Defence (Control of Prices) Regulations, 1943. The first three counts concerned the sale of lake fish on the 5th June, 1943, the fourth count concerned the sale of 220 eggs on the 12th June, 1943, and the other count, the sale of 5,100 lb. of potatoes on the 30th August, 1943. All the sales were made to the No. 351 P. O. W. Camp, Nairobi.

We propose to deal with the appeal by considering each ground in the order set out in the memorandum of appeal.

The first three grounds were based on the misconception that Price Control Order No. 13a of 1943 was in force at the time the offence in connexion with the sale of eggs was committed. This Order was however varied by Order No. 21 of 1943, dated the 17th April, 1943, which fixed the price of eggs in the Nairobi District and no longer confined the control to the sale of eggs in the Municipality. On the latter Order being produced in Court Mr. Khanna suggested that the words "Producers price to distributor" referred to eggs as well as to chickens. This is borne out by the certificate of the Price Controller (Ex. 14).

The fourth ground of appeal read: \$-\$

"The difference over the price of eggs was well within the legitimate charge for transport on eggs, the onus unlike civil cases of proving the legitimate charge for same was on the prosecution, and the magistrate misconceived the effect of sections 105 and 106 of the Indian Evidence Act."

In no case did a sale invoice indicate any charge for transport on the sale and delivery of goods to the P. O. W. Camp and Exhibits A and G disclose that the company delivered fruit and vegetables with which it was mainly concerned to that camp free of charge. If it were necessary for the decision of this ground we would uphold the decision of the learned magistrate that "the cost of transport is a matter exclusively in the knowledge of the accused and the onus is on them to prove it. This has not been done."

This disposes of grounds \$5, 6, 7\$ and \$8\$.

Ground 9 reads as follows: —

"With regard to all counts the difference over the price was further accounted for in commission, since the company never sold any commodity, but merely bought for and on account of others against specific orders only. especially as to fish and eggs, and the magistrate failed to realize the significance of that evidence, and also of the evidence that the Company was not a trader since it did not deal in any commodity in question nor did it have any premises where such commodities were dealt in as in the case of a trader in the normal sense of the term."

Mr. Khanna has admitted that the company did buy and sell and were traders in respect of their dealings in fruit and vegetables and we understood him to admit also that the company also traded in respect of the potatoes sold. With regard to the dealings in eggs and fish however he submitted that the company was only obliging the P. O. W. Camp authorities and was purchasing these commodities on behalf of the Camp. We consider this submission specious. The invoices disclose no difference between the dealings in fish and eggs and the dealings in other commodities and those invoices are prima facie evidence of sales under regulation 22. We do not consider that the evidence in rebuttal was satisfactory. This decision also disposes of grounds 10 and 11.

With regard to ground 2 in which it was submitted that the magistrate erred in holding that the Defence (Control of Prices) Regulations imposed an absolute liability, we need only say that it is quite obvious that **mens rea** is not an essential element of an offence against regulation 11 (1). Quite apart from the provisions of the regulations governing the liability of a body corporate when the scope and object of the regulations are considered it seems clear to us that regulation 11 imposes an absolute liability.

With regard to ground 13, it is correct that the appropriate reference in this case is to regulation 25 (4) of the Defence (Control of Prices) Regulations, 1942, and not to Regulation 93 (1) or 93 (2) of the Defence Regulations, 1939. This, however, does not affect the issue.

The final ground of appeal properly draws attention to an obvious mistake in the learned magistrate's judgment where he wrote on page 6 of the transcript copy, "I am satisfied that Ferrari was the person responsible for fixing the prices of the goods sold, and I find that the charges have been proved as against him. It only remains to be considered whether the company, as distinct from its individual members, is to be convicted also." That extract if it stood alone might be fatal to the conviction, for the proceedings against Ferrari were taken under regulation 25 (4) by virtue of which when a body corporate is charged with ap

offence every person who at the time of the commission of the offence was an officer of the body corporate may be charged jointly with the body corporate and where the body corporate is convicted of the offence the officer of the company shall be deemed guilty unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence. That the above extract was penned by mistake in a momentary confusion of thought is we think clear from what the learned magistrate wrote near the opening of his judgment and also from the final paragraph of the judgment. At the end of paragraph 3 of

the judgment the learned magistrate quite correctly set out the legal position in these words: \$-\$

"Therefore, if it appears that the offences alleged in the charge have been committed, it will follow that I must find Ferrari guilty of having committed them."

The final paragraph of the judgment read:—

"I therefore find Central African Contractors Limited guilty as charged in respect of counts 1, 2, 3, 4 and 11 and I find the accused L. A. Ferrari guilty as charged on the same five counts."

For the reasons given we dismiss the appeal of the Company. Ferrari's appeal is being dealt with separately.

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Prepared on 14 October 2026 · Esheria