

UGANDA / JUDGMENT

Rex v Chagona (Criminal Appeal No. 409 of 1948) [1948] EACA 78 (1 January 1948)

[1948] EACA 78

COURT

East African Court of Appeal

BEFORE

Nihill P

CASE / FILE NUMBER

Criminal Appeal No. 409 of 1948

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APPELLATE CRIMINAL

Before SIR BARCLAY NIHILL, C. J.

 $\mathcal{L}(\mathcal{A}) = \mathcal{L}(\mathcal{A})$ REX, Respondent (Original Prosecutor) $\mathbf{v}$

ASUMANI CHAGONA, Appellant (Original Accused) Criminal Appeal No. 409 of 1948

Criminal Procedure-Irregularities-No description of property set out in particulars to the charge—Criminal Procedure Code, section 137 (c) — Magistrate's failure to record that section 209 of the Code had been complied with. $\mathcal{L} \rightarrow \mathcal{L}$

The appellant was convicted of receiving stolen property contrary to section 315 (1) of the Penal Code. No description of the property was set out in the particulars of the offence. This case is reported mainly on account of the observations of the learned Chief Justice to stress the importance of strict compliance with the provisions of section 209 of the Criminal Procedure Code before putting an accused person on his defence.

Held (29-9-48).—(1) That in view of the appellant's admission in his plea concerning the property in question it would appear evident that he was under no misapprehension with regard to what property it was that he was being charged.

- (2) That in every case where there is nothing on record to show that the provisions of section 209 of the Criminal Procedure Code have been complied with the Court has to determine whether the accused person has in fact been prejudiced by the omission, which is no easy matter for the Court, and one to which the Court should not have to be subjected.

Appeal dismissed.

Appellant absent, unrepresented.

Modi for the Crown.

JUDGMENT.—The cloth found in the appellant's possession was sufficiently identified as having formed part of a stock of cloth stolen a few months before from a shop in Kakamega, and there was other evidence on which the Magistrate could reasonably infer guilty knowledge. The record is defective in two respects, and this Court has to consider whether these irregularities are sufficiently serious to vitiate the proceedings.

The appellant was charged with being in possession of stolen property, but no description of the property was set out in the particulars of the offence. As, however, the appellant in his plea admits that the articles concerning which it was alleged had been stolen were brought from Nairobi by his wife, it would appear evident that he was under no misapprehension with regard to what property it was that he was being charged. I do not think, therefore, that this irregularity in the substance of the charge can have prejudiced him. The other irregularity is more serious.

The Magistrate has not recorded that he complied with the provisions of section 209 of the Criminal Procedure Code at the conclusion of the case for the prosecution. This is the second case during the present sittings that this Court has had to observe this omission and in each case the offending Magistrate has been an administrative officer holding first class magisterial powers. In view of the strong expressions of opinion which have been made both by this Court and the East African Court of Appeal on this point, it is highly regrettable to find quite senior Magistrates falling into this error. In every case where there is nothing on the record to show that this important point of procedure has been

complied with the Court has to determine whether the accused person has in fact been prejudiced by the omission. This is no easy matter for the Court, and it is one to which this Court should not have to be subjected. In the present case the Magistrate has stated that the accused's statement was taken on affirmation. Whether from this fact it is safe to assume that the Magistrate explained to the appellant the differences between a sworn and an unsworn statement I find it impossible to say; but it is to be noted that the Appellant was not cross-examined. In view of the conclusive evidence of the prosecution, however, I have come to the conclusion, not without some hesitation, that this is a case where I can say that the Magistrate's non-compliance with that section cannot have occasioned any failure of justice.

ting page. As I have already indicated apart from these irregularities there was evidence to justify the conviction. $\tau_{\rm max} \tau_{\rm max}$

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The appeal is dismissed. $\cdot$

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