

UGANDA / JUDGMENT

Rex v Chegge (Criminal Revision Case No. 63/34.) [1934] EACA 11 (1 January 1934)

[1934] EACA 11**COURT**

East African Court of Appeal

BEFORE

Gamble. Ag. J. (Kenya), Horne J

CASE / FILE NUMBER

Criminal Revision Case No. 63/34.

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CRIMINAL REVISION.

Before HORNE J. and GAMBLE Ag. J.

REX (Original Prosecutor)

MWAMUO S/O CHEGGE (Original Accused).

Criminal Revision Case No. 63/34.

Resident Native Ordinance, No. 5 of 1925.

Held.-Failure to complete 180 days' work within one year does not constitute an offence against section 14 of the Ordinance.

The occupier has a remedy against the tenant under the provisions of section 4 (2) (g) and section 13 (2) of the Ordinance.

ORDER.—The accused has been convicted of an offence contra section 14 (4) of Ordinance 5 of 1925 and fined Sh. 100 or one month's detention in default.

The substance of the charge appears to be "Failing to work" between August 1933 and date of complaint, sufficient to complete his contract".

It is assumed that the contract was an ordinary contract under the Resident Natives Ordinance by which a native enters into an agreement for three years, under which he must work not less than 180 days in any one year, such days to be at the election of the occupier.

The relevant words in section 14 (4) are: "If he shall neglect or refuse to perform any work which it was his duty to perform". This wording is identical with section 47 (4) of the Employment of Natives Ordinance, Chapter 139 Laws of Kenya. In fact, the whole of section 14 of Ordinance 5 of 1925 is identical with section 47 Cap. 139.

In our opinion, reading section 14 (4) as a whole, it was not framed to cover such a set of circumstances as failure to complete 180 days in any one year. This section would come into operation where a native had been allotted a specific task and neglected or refused to perform such task. It must be borne in mind that the relation of the parties under Cap. 139 Laws of Kenya is that of master and servant whereas under Ordinance 5 of 1925 it is that of landlord and tenant. *Thathi wa Mbate v. Rex*, (9 E. A. L. R. 1).

As far as we can gather from the exceedingly meagre record in this case the accused had since August 1933 not done a sufficient number of days' work to enable him to complete the necessary 180 days by August 1934.

v.

In our opinion the proper procedure when a tenant has failed to carry out his obligations under the Ordinance is to order him to turn out on a specified day when the occupier may lawfully require him to work: failure then to turn out is an offence contra section 14 (2). There is no evidence on this record that the accused was ever ordered to work on any specified day or that he failed to do so. We do not consider the employer is justified in taking no action for the better part of the year and then coming to Court to lay a complaint that the tenant has by his laziness rendered it impossible for the terms of the tenancy contract to be complied with & The occupier has a remedy by giving six months' notice under section 4 (2) (9) or by proceeding under section 13(2).

There is some reference on the record to tickets; this is not understood, as a thirty-day ticket has no application to Ordinance 5 of 1925, but is entirely a creation of Cap. 139. It has been held in *Thathi wa Mbate* (supra) that the provisions of the Resident Natives Ordinance cannot be supplemented by a reference to the earlier enactment, the Employment of Natives Ordinance.

For the above reasons we are of the opinion that the charge, as framed under section 14 (4) discloses no offence and the conviction must be quashed; the fine, if paid, to be returned to the accused. $\mathcal{A} = \mathcal{A} \mathcal{A} \mathcal{A}$

We would draw attention to section 187 of the Criminal Procedure Code which allows a certain summary procedure in minor offences. This section lays down what particulars shall be entered on the file; the trial magistrate has failed to comply with the provisions of section 187 which are mandatory and not permissive. The magistrate also observes that the accused is known to be an unsatisfactory squatter, of which there is no evidence.

The result of the failure to comply with the provisions of section 187 is that Counsel for the Crown and the Court have had the scantiest of material on which to come to a correct conclusion.

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