

UGANDA / JUDGMENT

Rex v Ferrari (Criminal Appeal No. 200 of 1944) [1945] EACA 53 (1 January 1945)

[1945] EACA 53

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Criminal Appeal No. 200 of 1944

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

APPELLATE CRIMINAL

Before Sir Joseph Sheridan, C. J., and BARTLEY, J.

REX, Respondent

 $\mathbf{v}$.

L. A. FERRARI, Appellant (Original Accused No. 3) Criminal Appeal No. 200 of 1944

Defence Regulations—Price Control—Meaning of "officer of the body corporate" -The Defence (Control of Prices) Regulations, 1942, S. 25 (4).

A company was charged with offences under the Defence (Control of Prices) Regulations, 1942, and the appellant was convicted of such offences in his capacity of officer of the company. The appellant was styled the Chief Agent of the company but was holding no office provided for in the Articles of Association. The learned magistrate held that the appellant was "a general manager having control of the company's business policy and charge of its affairs."

Held (7-5-45).—The evidence regarding the activities of the appellant in the running of the company is equally consistent with his being an exceptionally able employee of the company as equally consistent with his being an exceptional and employee of the company as with his being an officer of the company and in the absence of any written contract or instrument of appointment testifying to his

Appeal allowed and convictions and sentences set aside.

Gibson v. Barton, L. R. 10 Q. B. 329; In re Western Counties Steam Bakeries and Milling Company 1 Ch. 617 referred to.

Khanna for the Appellant.

$\mathcal{L}^{\mathcal{L}}$

$\frac{1}{2}$

$\frac{1}{1}$

$\frac{3}{4}$

Phillips, Crown Counsel, for the Crown.

JUDGMENT.—For the purpose of deciding this appeal it is only necessary for us to consider one ground, the sixth in the Memorandum of Appeal: "That the learned Magistrate was in error in holding that the appellant was an officer of the Company."

The trial magistrate seems to have misconstrued the meaning of the extract he quoted from Hailsham, Vol. 5, at p. 344. The extract reads: \$-\$

"Any persons who are regularly employed as part of their business or occupation in conducting the affairs of the company may be officers of the company."

The tenor of the judgment seems to indicate that the magistrate did not realize that all that extract meant was that such persons might be officers of the company.

The learned magistrate dealt with the question of the appellant being an officer of the company in his ruling which he gave at the close of the case for the prosecution and he also referred to the matter in his judgment. In the ruling he states:-

"Exhibit 13 is in fact the Minute Book of the company. The minutes recorded on the first six pages are unsigned and therefore inadmissible in evidence. I disregard also the minute recorded on page 8 for the reason that the words 'not confirmed' appear over the Chairman's signature. The minute on page 7 purports to have been signed by V. Wilkinson as Chairman, and that on page 9 by Rattan Singh as Chairman. I rule that these two minutes are admissible in evidence, and I find that they contain abundant evidence to establish that Mrs. V. Wilkinson, Amar Singh Nandra and Rattan Singh were Directors of the company and that L. A. Ferrari was an officer of the company within the meaning of that term which I have taken from Hailsham. If any further evidence is needed to confirm the view that L. A. Ferrari was an officer of the company, it is provided by his dealings with the company's books when the premises of the company were visited by Major Alexander and A. S. P. Elliot of the C. I. D. It is clear that he had control of all the company's books and papers."

With regard to the evidence contained in the two minutes referred to, the first one is dated the 25th July, 1943, and the second the 12th August, 1943. Those minutes merely establish that the appellant who is styled Chief Agent was present, at a meeting of the Board of Directors by invitation and also at a General Meeting of the Company also by invitation. In passing, it is not without interest to note that at the dates of those meetings the first four alleged offences out of the five on which convictions were entered had already been committed. With regard to the

appellant's dealing with the books the ruling was given before the appellant gave his evidence in which he states that before handing over the books he called a Director Amar Singh and got his authority to hand them over. As however Inspector Elliott testified that he was armed with a warrant empowering him to seize all books and documents found on the premises it is difficult to understand how the appellant could have acted otherwise.

In his judgment the magistrate dealt with the point as follows: —

"I now come to the question of Ferrari, and, as I have already indicated in the ruling which I gave at the close of the prosecution case, I am perfectly satisfied that whatever title the directors may have conferred upon him, and whatever he may have chosen to call himself, he was not merely a broker arranging contracts on behalf of the company, or an 'office boy' making himself generally useful in matters of office routine, but in all respects the equivalent of a general manager having control of the company's business policy and charge of its affairs. 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 question who is an officer of a company is one which has occasioned some difficulty." That quotation is taken from Stiebel's Company Law. In this case the appellant, even accepting the fact that he was styled Chief Agent of the Company at the time the first four alleged offences were committed, was holding no office provided for in the Articles of Association. In *Gibson v. Barton*, L. R. 10 Q. B. 329, on a case stated by the Lord Mayor of London, the conviction of Gibson as Manager of the Steam Stoker Company Limited under sections 26 and 27 of the Companies Act, 1862, was upheld by a majority judgment. By section 26 of that Act a company had to forward a copy of the list of members to the Registrar yearly. Section 27 provided that, "If any company... makes default in complying with the provisions of the Act with respect to forwarding such list such company shall incur a penalty ... and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur a like penalty."

The appellant was the secretary of the company. The Articles of Association did not provide for a manager and none had been appointed. The majority judgment held that there was evidence that the appellant was manager de facto and therefore a manager within section 26.

Although that case has only a limited bearing on this case we quote it in order to refer to the judgment of Rigby, L. J., in *In re Western Counties Steam Bakeries and Milling Company*. 1 Ch. 617 at p. 632, where he stated: -

"The view that I take of *Gibson v. Barton* (1) is a very simple one. The Act of Parliament mentioned 'manager' and the decision of the majority of the Court in that case was that in the Act the word 'Manager' meant the person who manages. It was not a question of office at all. It could not be so, because in that particular case, according to the view taken by the majority of the Court, there was no office of manager in the company at all. That is made clearer, I think, by the way in which Quain, J., the dissentient judge treated the case. He thought that there were managers, but that those managers were the directors—the managing body. But the majority of

the Court considered, rightly or wrongly, that the appellant Gibson managed the affairs of the company: they held that he was manager within the 26th section of the Act, because as a matter of fact, without becoming an officer, he did unquestionably manage the affairs of the company."

In our opinion the evidence regarding the activities of the appellant in the running of the company is equally consistent with his being an exceptionally able employee of the company as with his being an officer of the company and in the absence of any written contract or instrument of appointment testifving to his position we are of the view that the prosecution failed to establish that the appellant was an officer of the company.

The appeal is allowed and the convictions and sentences are set aside.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/aa/judgment/eaca/1945/53/eng@1945-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/rex-v-ferrari-criminal-appeal-no-200-of-1944-1945-eaca-53-1-january-1945-unknown-topic-unknown-court-1945>

Prepared on 14 October 2026 · Esheria