

UGANDA / JUDGMENT

Rex v Haq (Cr. App. 40/1931.)

[1931] EACA 26 (1 January 1931)

[1931] EACA 26**COURT**

East African Court of Appeal

BEFORE

Dickinson, J, Thomas, J. (Kenya)

CASE / FILE NUMBER

Cr. App. 40/1931.

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APPELLATE CRIMINAL

Before THOMAS, J., and DICKINSON, J.

REX (Respondent) (Original Prosecutor)

HAQ (Appellant) (Original Accused). ABDUL Cr. App. 40/1931.

Employment of Natives Ordinance-section 44-discretion of Magistrate to order civil action in place of proceedings under Ordinance.

\$Held\$ (29-7-31):—Following Chhajja Singh v. Crown, 11 E. A. L. R., p. 91, that a taxi driver is not a servant, and that the magistrate should have exercised the discretion vested by section 44 of the Ordinance.

These proceedings originated in the Second Class Subordinate Court at Mombasa under the Employment of Natives Ordinance, the Crown prosecuting on behalf of a taxi driver employed by the appellant who claimed Sh. 228/70 wages.

The judgment of the Court was delivered by Mr. Justice Thomas in the following terms.

JUDGMENT.—This is an appeal from the decision of Mr. Norman, Assistant District Commissioner, who found that a taxi driver employed by the appellant was entitled to a sum of Sh. 228/70 in respect of wages, and convicted the appellant on a complaint of the servant and ordered him to pay the sum of Sh. \$228/70\$ or in default fourteen days imprisonment.

The appellant raised various defences and stated that he intended to counter-claim in respect thereof. The Magistrate seems to have gone very slightly into these defences.

The appellant raises as one of his grounds of appeal that the Magistrate did not make use of his powers under section 44 of Chapter 139.

The case seems essentially one to be dealt with in a Civil Court, and this Court is not satisfied that the Magistrate either fully realized his special powers or applied them.

Moreover although it is not a ground of appeal it seems clear that a taxi driver is not a servant coming within the definition in section 2 of Cap. 139. The case of Chhajja Singh v. Crown, 11 E. A. L. R. p. 91, makes this contention quite clear.

The conviction must be quashed.

The sum of Sh. 228/70 paid into Court to be transferred to the Court before which any civil action is taken to abide the result of any civil trial. If no civil action be brought within three months to be paid out to the appellant.

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