

UGANDA / JUDGMENT

Rex v John (Criminal Appeal No. 147 of 1940) [1940] EACA 26 (1 January 1940)

[1940] EACA 26**COURT**

East African Court of Appeal

BEFORE

Lucie-Smith, J. (Kenya), Sheridan CJ, Whitley CJ

CASE / FILE NUMBER

Criminal Appeal No. 147 of 1940

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COURT OF APPEAL FOR EASTERN AFRICA

BEFORE SIR JOSEPH SHERIDAN, C. J. (KENYA), WHITLEY, C. J. (UGANDA) AND LUCIE-SMITH, J. (KENYA)

REX. Respondent $\mathbf{v}$ **JOHN BIN ANTON, Appellant Criminal Appeal No. 147 of 1940**

(Appeal from the decision of H. M. High Court of Tanganyika)

law—Manslaughter—Criminal negligence—Over-dose Criminal injection by experienced dresser in absence of precise measuring instruments—Error of judgment.

Appeal from conviction of manslaughter. Appellant a trained native dresser employed as such on a sisal estate gave an injection of bismuth sodium tartrate to a native employee of the estate. Subsequently the native died of bismuth poisoning. The maximum safe dosage for the drug being three grains, appellant intended to inject a half grain. No scales were available to him so he estimated the dosage by measurement with the closed blades of a small pair of scissors. The evidence suggested that on a subsequent occasion the appellant measured a quantity which weighed six grains when asked to show how he measured the drug and the amount he had injected. There was medical evidence to the effect that a medical dresser should be capable of giving a bismuth injection and that it was to be expected of a dresser employed on a sisal estate that he should be trained in such duties. The further facts appear from the judgment.

Held (15-11-40).—That the evidence did not disclose beyond doubt that the appellant was guilty of such negligence as to show a criminal disregard of human life. Appeal allowed.

Christie for the appellant.

Spurling, Crown Counsel, for the Crown.

JUDGMENT (Delivered by Sir Joseph Sheridan, C. J.).—From the medical evidence the appellant must be taken to have been competent to prescribe and administer drugs in cases such as the one under consideration in this appeal. The question for our decision is whether the manner in which he measured the drug showed such a disregard of human life as to amount to the offence of manslaughter. The evidence discloses that his intention was to inject the deceased with only $\frac{1}{2}$ -grain of bismuth, that he measured out the bismuth on the closed blades of a small scissors and that he had been informed by Dr. Chiltern that this was a method which might be adopted in the absence of scales. There is evidence that he had asked his employers for scales without success. It is his own evidence but there is no reason to disbelieve it. If it is true, the remissness of his employers in not obtaining scales calls for adverse comment. As to the actual amount of bismuth injected, the evidence is not very satisfactory. After the death of the deceased Dr. Burfield asked the appellant to show him how he had measured the drug and the amount he had injected, that the appellant dipped the scissors into a tin of bismuth and that the amount extracted proved to be six grains when according to Dr. Burfield's evidence he weighed it. In the absence of any explanation it seems strange to us that no post-mortem was held when possibly (though this we do not know) the result might have thrown further light on the matter. Nor do we understand why the bismuth taken away by Dr. Burfield was not exhibited in Court. We should also like to have known whether if an overdose of bismuth was injected on the 1st July whether symptoms

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