

UGANDA / JUDGMENT

Rex v Karingu (Criminal Appeal No. 111 of 1948) [1948] EACA 66 (1 January 1948)

[1948] EACA 66

COURT

East African Court of Appeal

BEFORE

De Lestang J, Nihill P

CASE / FILE NUMBER

Criminal Appeal No. 111 of 1948

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APPELLATE CRIMINAL

Before SIR BARCLAY NIHILL, C. J., and DE LESTANG, J.

 $\mathcal{L}$ REX, Respondent. $\mathbf{v}$.

GIKUNJA s/o KARINGU, Appellant Criminal Appeal No. 111 of 1948

Criminal law—Burglary and theft, sections 298 (1) and 273 (b), Penal Code—No evidence to link accused with actual breaking—Irresistible presumption that he did so—Conviction for burglary—Appeal Court's comments on Magistrate adopting custom of adding notes to a signed judgment—Practice.

The accused was charged with burglary and theft (sections 298 (1) and 273 (b), Penal Code) on the night of 9/10 January, 1948. He was found in possession of part of the stolen property on the evening of the 10th January. Whilst there was no evidence to link the accused with the actual breaking, on the facts found the Magistrate was satisfied that he should be convicted of burglary. The accused appealed.

Held (28-6-48).—(1) That it would have been safer to have convicted the appellant for theft only contrary to section 269 of the Penal Code.

- (2) That the unusual custom of the Magistrate of adding notes to his signed judgment is not a practice to be encouraged even though the notes dealt with points of law which the Magistrate felt the appellant could not have understood. It is better that a judgment should contain all the reasons which have acted on the Magistrate's mind in coming to his conclusion.

Conviction varied to one for theft, section 269, Penal Code. Sentence upheld. Appeal dismissed.

Appellant present, unrepresented.

Todd, Crown Counsel, for the Crown.

JUDGMENT.—The evidence in this case clearly established that the appellant was found in very recent possession of a blanket stolen from a house in Sclaters Road, Parklands. The only point that arises for our consideration is whether the learned Magistrate was entitled to convict him of burglary.

There was no evidence linking the appellant with the actual breaking into the house from which the blanket was stolen, but the learned Magistrate was convinced on the facts before him that the presumption that he did so was almost irresistible.

We think, however, that it would have been safer to have convicted the appellant for theft only under section 269 of the Penal Code. The appellant's explanation as to how he came to be in possession of the blanket was obviously false if the evidence of identification could be accepted, which it was. There is also nothing to suggest either in the prosecution evidence or in the accused's statement that he was a receiver of the property after it was stolen. In view of the fact that he was found in possession less than 24 hours after the property had been taken from the house in Parklands, and in the absence of any credible explanation by the appellant we think it safe to act on the presumption that he was at least the thief.

In this case the learned Magistrate has adopted the somewhat unusual custom of adding notes to his signed judgment. He has explained that his reason for doing so is that he wished to consider points of law which he felt could not possibly have been understood by the appellant, even if they could have been properly translated. We do not think that this is a practice which should be encouraged for it is better that a judgment should contain all the reasons which have acted on the Magistrate's mind in coming to his conclusion. There is also no statutory obligation on a Magistrate to do more than explain the substance of a judgment to an accused person.

The sentence imposed by the learned Magistrate was 12 months and although the appellant appears to be a first offender we do not think that excessive, in the circumstances of this case even on a conviction of theft. We do not propose, therefore, to make any variation. $\mathcal{L}^{\mathcal{A}}$

Subject to the substitution in the offence set out above, we dismiss his appeal.

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