

UGANDA / JUDGMENT

Rex v Khan (Criminal Revision Case No. 13 of 1950) [1950] EACA 110 (1 January 1950)

[1950] EACA 110

COURT

East African Court of Appeal

BEFORE

Modera J, Thacker, Ag. C.J

CASE / FILE NUMBER

Criminal Revision Case No. 13 of 1950

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CRIMINAL REVISION

Before THACKER, Ag. C. J., and MODERA, J.

REX (THROUGH THE LABOUR DEPARTMENT), Prosecutor
IJ.

LALL KHAN. Accused

Criminal Revision Case No. 13 of 1950

Appeal out of time—Section 349 Criminal Procedure Code—Plea of guilty by third party not an accused—Effect of—Revisional jurisdiction.

A plea of guilty was endorsed on a summons, "For Lal Khan I plead guilty to this charge". The appellant was convicted in his absence from the Colony. An appeal was filed after the period of limitation (30 days) had elapsed.

Held (21-2-50).—(1) There was no "good cause" prerequisite for the admission of an appeal. (2) As the endorsement by some person not the accused was in no way a plea of guilty the trial was a nullity.

(3) As the Court in its revisional jurisdiction was not fettered by time limits the conviction and sentence were set aside.

Morgan for accused.

Templeton, Crown Counsel (Kenya), for Crown.

JUDGMENT.—This is an application under section 349 Criminal Procedure Code to admit an appeal though the period of limitation prescribed in the section (namely 30 days) has elapsed.

The application is supported by the affidavit of Mr. Morgan from which it appears that the applicant was convicted on 29th September, 1948, in his absence from the Colony to which he returned in October, 1948.

We have considered the facts as set out in the affidavit and have listened to the arguments adduced in support of the application but we are not of the opinion that these constitute the "good cause" which is a prerequisite to the admission of this appeal.

The application is accordingly rejected.

We have however had the opportunity of perusing the proceedings in the subordinate Court, the record of which has come to our knowledge and we perceive that the learned Magistrate recorded a plea of guilty as follows: "Plea of guilty endorsed on the summons". The endorsement on the summons in fact read: "For Lal Khan I plead guilty to this charge and I arrange for the water for lab. and I shift the lab. from that camp to Nairobi, Noor Alam".

It is abundantly clear to us that such endorsement by some person other than the accused who was not even in the Colony at the time constituted in no way a plea of guilty. The trial was a nullity. Therefore in our Revisional Jurisdiction which is not fettered by any time limit, and lest a manifest injustice should be perpetuated we quash the conviction. It follows that the sentence which was appealed against only upon the ground of severity and which at the moment stands confirmed upon the assumption that the conviction was legal, will be set aside and the fine if paid will be refunded.

The prosecution is free to institute fresh proceedings if it so wishes.

Before finally leaving this matter, we would point out that much time of the several Courts which have been engaged in this case would have been saved, if the advocate who originally appealed for the appellant in this case had appealed against conviction and not merely against sentence. This view has already been expressed by H. M. Court of Appeal for Eastern Africa.

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