

UGANDA / JUDGMENT

Rex v Kirur and Another (Revision Case No. 118 of 1942) [1942] EACA 86 (1 January 1942) [1942] EACA 86

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Revision Case No. 118 of 1942

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CRIMINAL REVISION

BEFORE SIR JOSEPH SHERIDAN, C. J., AND BARTLEY, J.

REX, Prosecutor

\$v\$.

KIBET ARAP KIRUR AND CHELIL ARAP KOLIL, Accused

Revision Case No. 118 of 1942

Convicting magistrate not proceeding to sentence—Effect of.

Held (30-6-42).—That if a magistrate proceeds to conviction but not to sentence the conviction stands and the magistrate's successor cannot proceed to sentence nor can further proceedings be taken for the same offence.

Accused absent, unrepresented.

Stacey, Crown Counsel, for the Crown.

ORDER.-In the circumstances that Mr. Carnelley proceeded to conviction Sir Howard Elphinstone the magistrate who followed him at Kisumu cannot proceed to sentence the accused. The case is distinguished from the case referred in Circular to Magistrates No. 6 of 1941, inasmuch as there the second magistrate without jurisdiction sentenced the accused on the conviction recorded by his predecessor. As the conviction in this case stands it seems to us that further proceedings

cannot be taken for the same offence against the accused. The accused are directed to be released from custody.

It was held in the case of Frank Sheridan, 26 Cr. App. Rep. 1, that where the Justices had proceeded to conviction and then thinking that the sentence they had power to inflict would be inadequate committed the accused to Quarter Sessions, the conviction was a bar to the further proceedings before Quarter Sessions. This case seems to us to be an authority for our holding that there should not be further proceedings in the present case.

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