

UGANDA / JUDGMENT

Rex v Kisa (Revision Case No. 73 of 1942) [1942] EACA 85 (1 January 1942)

[1942] EACA 85

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Revision Case No. 73 of 1942

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CRIMINAL REVISION.

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

REX, Prosecutor**SAKWA KISA, Accused****Revision Case No. 73 of 1942**

Employment of Servants Ordinance, 1938, section 59 (e)-Desertion-Costs awarded against convicted servant.

In addition to a fine of Sh. 10 with 14 days detention in default a servant convicted of desertion was ordered to pay Sh. 14/80 costs with 21 days detention in default of distress.

Held (2-6-42).—That the Employment of Servants Ordinance, 1938, contained no authority for awarding costs against a servant convicted of desertion.

Accused absent, unrepresented.

Spurling, Crown Counsel, for the Crown.

JUDGMENT.—The accused was convicted of desertion under the Employment of Servants Ordinance (No. 2 of 1938) and sentenced to pay a fine of Sh. 10 with 14 days detention in default. In addition costs to the amount of Sh. 14/80 with 21 days detention in default of distress were ordered to be paid to the Labour Officer. This period of detention was directed to be served consecutively. The trial Magistrate has informed the Court that similar orders for costs have been made in Nakuru since the date of the passing of the Employment of Servants Ordinance. This has been confirmed by Mr. Kneller, the Acting Labour Commissioner. He also stated that such orders

are only made in Nakuru. It would seem then that the Magistrate is under the impression that there is contained in the Ordinance provision for making such orders. Else why should the practice date from the passing of the Ordinance? The Ordinance when examined contains provisions relating to orders for costs but nowhere is there contained in it authority for the order criticized in the present case. So the position is that the propriety of the making of such orders is in no way affected by the enactment of the Ordinance. On the contrary it might be said that the Ordinance, which is a comprehensive measure on a special subject, did not contemplate that such orders should be made.

We do not say that recourse may not be had to section 171, Criminal Procedure Code, to award costs against an accused in an individual case of desertion when the circumstances of the case would seem to justify such an order, but that is quite a different matter from laying it down as a practice that a native convicted of desertion shall be ordered to pay costs in all cases.

Another matter falling for consideration is that the only effect an order for costs with imprisonment or detention in default can have in the great majority • of the cases is to add a further period of imprisonment or detention to the period already being served as a term of imprisonment in default of payment of fine.

It seems to us therefore that as a general rule the costs should be borne by the Crown.

The order for costs with detention in default is quashed, the amount if paid being ordered to be refunded.

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