

UGANDA / JUDGMENT

Rex v Liduma and Another (Cr. Conf. Case No. 861/1934.) [1934] EACA 2 (1 January 1934) [1934] EACA 2

COURT

East African Court of Appeal

BEFORE

Gamble. Ag. J. (Kenya), Sheridan CJ

CASE / FILE NUMBER

Cr. Conf. Case No. 861/1934.

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CRIMINAL CONFIRMATION.

Before SIR JOSEPH SHERIDAN, C. J., and GAMBLE, Ag. J.

REX. Prosecutor**\$\boldsymbol{v}\$**.**CHEDE s/o LIDUMA alias ONYANGO, Accused.**

Cr. Conf. Case No. 861/1934.

Sentence—Reduction on ground of severity.

The convict was convicted of burglary under section 282(1) of the Penal Code and sentenced to five years' hard labour and to be subject to police supervision for three years on release. The case was listed for argument on the question of sentence which the Crown supported.

Held (19-2-35).—That as the sentence was based on the Magistrate's view that accused was of the "type of confirmed criminal"—a view unsupported by his record—the sentence was excessive. Sentence reduced.

Semble: Mere severity is not sufficient justification for reduction of sentence.

Bruce, Solicitor-General, for Crown, supported the sentence on the ground that the previous history of the accused justified it.

Referred to: $\rightarrow$

Rex v. Weaver, 1 Cr. App. R. 12. Rex v. Sidlow, 1 Cr. App. R. 28. Rex v. Nuttall, 1 Cr. App. R. 180. Rex v. Dunbar, 21 Cr. App. R. 19. Rex v. Warner, 2 Cr. App. R. 177.

Compared Rex v. Malakwen arap Kogo, 15 K. L. R. 115.

JUDGMENT.—The accused is about eighteen or nineteen years of age and has been convicted of burglary. He has three other previous convictions against him for which he was sentenced respectively to three months, six months, and one year. In lieu of the sentence of six months he was sent to a reformatory for three years. He was released from the reformatory on 31-7-32 by order of the Governor as a person not eligible for detention in a reformatory. All four convictions were in respect of housebreaking or kindred offences.

The learned Magistrate in sentencing the accused to five years undoubtedly imposed a severe sentence but the question is whether we should interfere with it. Mere severity is not sufficient justification for our interference. The learned Solicitor-General has referred us to the case Rex v. Dunbar (21)

Cr. A. R. 19) where at page 20 the Court of Criminal Appeal stated that "This Court does not make slight reductions of This Court only interferes on matters of principle sentences. and on the ground of substantial miscarriages of justice." In the present case the magistrate has referred to the accused as "this type of confirmed criminal". Reviewing his previous history, the sentences imposed in respect of previous convictions, taking into account his youth and contrasting the case with $\rightarrow \text{Rex v. Muhohilo s/o Hamisi}$ in which the accused was correctly described as "a habitual criminal" having had many more convictions registered against him than in this case and sentenced to five years, we are of the opinion that the magistrate's description is not apt. For these reasons we reduce the sentence to three years, the order that he be subject to police supervision to stand.

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