

UGANDA / JUDGMENT

Rex v Maina (Confirmation Case No. 692 of 1945) [1945] EACA 41 (1 January 1945)

[1945] EACA 41

COURT

East African Court of Appeal

BEFORE

Horne J, Lucie-Smith, J. (Kenya)

CASE / FILE NUMBER

Confirmation Case No. 692 of 1945

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CRIMINAL CONFIRMATION

BEFORE LUCIE-SMITH AND HORNE, JJ.

REX. Prosecutor $\dot{v}$. CHÉPKWOIN ARAP MAINA, Accuséd Confirmation Case No. 692 of 1945

Criminal law—Practice—Joinder of charges arising out of same facts—Sentence.

The accused was convicted of both receiving stolen property contra section 315 (1) Penal Code and possession of stolen stock contra section 10 (1) of the Stock and Produce (Levy of Fines) Ordinance, 1933, in respect of the same three head of cattle. He was sentenced to consecutive terms of one year I. H. L. on each count.

Held (30-8-45).—(1) The two offences should have been charged in the alternative.

- (2) It is not proper to convict an accused on two charges arising out of the same transaction and impose consecutive sentences.

An order in revision was made setting aside the conviction on the second count.

Dennison. Crown Counsel, for the Crown.

ORDER.—In our opinion the charges herein should have been alternative and the accused has been improperly convicted on both. Had the court not found that there was a **prima facie** case **contra** section 315 (1) P. C. then the Magistrate could in his discretion have made use of section 10 (1) of Ordinance 18 of 1933.

In our opinion only the conviction and sentence on the first count can stand and this we affirm.

As regards the second count the conviction is quashed and sentence set aside. This means that the accused will serve only 12 months I. H. L.

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