

UGANDA / JUDGMENT

# Rex v Manaa (Cr. App. No. 131/1935.) [1936] EACA 29 (1 January 1936)

**[1936] EACA 29****COURT**

East African Court of Appeal

**BEFORE**Abrahamas, C.J. (Tanganyika), Hall, C.J. (Uganda),  
Sheridan CJ**CASE / FILE NUMBER**

Cr. App. No. 131/1935.

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**COURT OF APPEAL FOR EASTERN AFRICA.**

Before SIR JOSEPH SHERIDAN, C. J. (Kenya), SIR SIDNEY ABRAHAMAS, C. J. (Tanganyika), and HALL, C. J. (Uganda).

**REX, Respondent (Original Prosecutor)** $\mathbf{a}$ **MWANGO S/O MANAA Appellant (Original Accused). Cr. App. No. 131/1935.**

Criminal Procedure—Reading deposition of absent witness— Identification parade...

Appellant in person.

Dennison, Crown Counsel, for the respondent.

JUDGMENT (delivered by HALL, C. J.).—In this case, the learned trial judge said in the course of his judgment: "The case for the Crown is based on statements made by the deceased and on his identification of the accused before his death. These statements are corroborated to a certain extent by Musili Malonza who impressed me as a witness of truth," and he then went on to point out that the defence put forward was an alibi which was not supported, as it possibly might have been, by any other witness.

In our view, there was undoubtedly sufficient evidence before the Court below on which to convict and we see no ground for interference. There are, however, two points arising out of this case which call for criticism.  $\mathcal{L} \neq \mathcal{L}$

In the first place, at the so-called identification parade which took place at the hospital it seems that only three men (including the accused) were actually paraded. It is true that, in addition, two askaris in plain clothes were in the ward at the same time, but it is not at all clear from the record that they were actually paraded with the other three men. Further, according to the evidence of one of the plain clothes askaris already referred to, the officer in charge of the parade asked deceased, "Amongst these three men who assaulted you?"

This method of identification was very unsatisfactory, to say the least of it, and we think it well, in this connection, to set out in extenso Kenya Police Order No. 15/26 dealing with identification parades which received the approval of the then Chief Justice prior to issue. It reads as follows:-

INSTRUCTION FOR IDENTIFICATION PARADES.

1. That the accused person is always informed that he may have a solicitor or friend present when the parade takes place.
2. That the officer in charge of the case, although he may be present, does not carry out the identification.
3. That the witnesses do not see the accused before the parade.
4. That the accused is placed among at least eight persons, as far as possible of similar age, height, general appearance and class of life as himself or herself.
5. That the accused is allowed to take any position he chooses, and that he is allowed to change his position after each identifying witness has left, if he so desires.
6. Care to be exercised that the witnesses are not allowed to communicate with each other after they have been to the parade.
7. Exclude every person who has no business there.
8. Make a careful note after each witness leaves the parade, recording whether the witness identifies or other circumstance.
9. If the witness desires to see the accused walk, hear him speak, see him with his hat on or off, see that this is done. As a precautionary measure it is suggested the whole parade be asked to do this.
10. See that the witness touches the person he identifies.
11. At the termination of the parade or during the parade ask the accused if he is satisfied that the parade is being conducted in a fair manner and make a note of his reply.
12. In introducing the witness tell him that he will see a group of people who may or may not contain the suspected person. Don't say, "Pick out somebody," or influence him in any way whatever.

13. Act with scrupulous fairness, otherwise the value of the identification as evidence will depreciate considerably.

The other point in the case to which we wish to refer is the putting in of the deposition of Juma Matambo at the trial. In this connection, the record reads: "Juma Matambo called no appearance—summons returned into Court unserved. It is proposed to put in the deposition under Sec. 287 (a) (ii) Cr. P. C. .... Deposition of Juma Matambo put in evidence and read."

We are of opinion that, before a deposition can be put in evidence at a trial, on the ground that a witness cannot be found, it is essential that evidence should be given by the person or persons concerned that diligent and adequate search has been made for the missing witness. When the trial judge is satisfied that such search has been made, then and then only should he allow the deposition to be read. We consider that the deposition in question was wrongly admitted in this case, there being no proper foundation for its reception; but, at the same time, we are satisfied from a perusal of the record that its misreception had no effect on the result of the case. The appeal is dismissed.

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