

UGANDA / JUDGMENT

# Rex v Mdoka and Another (Cr. App. 150/1933.) [1937] EACA 79 (1 January 1937)

[1937] EACA 79

## COURT

East African Court of Appeal

## BEFORE

Abrahams CJ, Ag P (Uganda), Lucie-Smith Ag CJ (Kenya), Sheridan CJ

## CASE / FILE NUMBER

Cr. App. 150/1933.

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**COURT OF APPEAL FOR EASTERN AFRICA.**

Before ABRAHAM, C. J. Ag. P. (Uganda), SIR JOSEPH SHERIDAN, C. J. (Tanganyika), and LUCIE-SMITH, Ag. C. J. (Kenya).

**REX (Respondent)**

\$\\pmb v.\$

**HASHIMU alias DAUDI BIN MDOKA (Appellant)****(Original Accused).****Cr. App. 150/1933.**

Tanganyika Criminal Procedure Code, sections 266 and 267-Statement of accused.

Held (2-1-34).—That if an accused person gives evidence on oath<br>before the committing magistrate in lieu of or in addition to the<br>statement contemplated by section 211, Tanganyika Criminal Pro-<br>cedure Code, such evidenc

Branigan (for Attorney General, Tanganyika) for Crown.

Branigan.—The statement referred to in section 211, if properly conforming to that section, comes before the trial court as part of the committal proceedings, but if made on oath, as in the present case, it may either be treated as part of the committal proceedings or should be produced from proper custody. There is sufficient evidence to support the conviction, apart from this statement.

JUDGMENT.—The appellant was convicted of the murder of a former mistress, and sentenced to death. He appeals on the ground that evidence on oath which he gave in the lower Court was wrongly admitted in evidence.

It appears that when the Magistrate at the inquiry asked the appellant in the usual way whether he had anything to say in answer to the charge, the appellant elected to give evidence on oath. At the trial, the Crown prosecutor claimed to have this statement read before closing the case for the prosecution. Objection was taken by counsel for the defence to the admission of this evidence, but the learned Judge overruled the objection on the authority of *Rex v. Boyle* (1904), 20 T. L. R. 192, and made a note on the record to the effect that accused's statement on oath had been put in and read to the assessors.

We are of opinion that, if an accused person gives evidence on oath in his own defence before the committing Magistrate, his deposition can be used against him at the trial. This has been established by *Rex v. Boyle* and *Rex v. Bird* (1898), 15 T. L. R. 26.

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But there is a further point in this particular case. The deposition was admitted without proof. If it can be regarded as a statement within the meaning of section 266 of the Criminal Procedure Code of Tanganyika, such formalities as are required by that section were satisfied. But we are of opinion that the expression "statement" used in that section refers to an unsworn statement made in answer to the charge, and not to evidence on oath. The Legislature has discriminated between the method of putting in these two kinds of statement, and we must hold that the evidence was improperly admitted.

The exclusion of this evidence, however, does not, in our opinion, disturb the propriety of the conviction. A substantial prima facie case was made out at the trial. Only one witness was cross-examined, and that on a trifling matter; the appellant made no statement of any kind and called no witnesses; and his counsel, in addressing the Court, seems to have done no more than make a faint suggestion of provocation. It is manifest that only one decision was reasonable. We dismiss the appeal.

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