

UGANDA / JUDGMENT

Rex v Merali (Criminal Appeal No. 109 of 1945) [1945] EACA 49 (1 January 1945)

[1945] EACA 49

COURT

East African Court of Appeal

BEFORE

Horne J, Lucie-Smith Ag CJ (Kenya)

CASE / FILE NUMBER

Criminal Appeal No. 109 of 1945

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APPELLATE CRIMINAL

BEFORE LUCIE-SMITH, AG. C. J., AND HORNE, J.

REX, Respondent

§\nu\$.

HASHAM MERALI, Appellant Criminal Appeal No. 109 of 1945

Criminal law—Practice—Summary trial of minor offences—Kenya Criminal Procedure Code Section 197—Appeal—Procedure—Sentence.

The appellant was convicted of common assault after a summary trial before a magistrate under section 197 Criminal Procedure Code and bound over in his own recognizance in the sum of Sh. 200 for six months under section 34 Penal Code and ordered to pay Sh. 50 costs.

The appellant appealed.

Held \$(21-6-45)\$.—(1) The order of the magistrate was competent.

- (2) In an appeal against conviction on a summary trial on the ground that the judgment does not embody the substance of the evidence heard one or more affidavits would be required showing what the omitted evidence was and that it was substantial and if incorporated would be likely to affect the decision.

Appeal dismissed.

Khanna for the Appellant.

Todd, Crown Counsel, for the Crown.

JUDGMENT.—Appeal fails: to enable this Court to set aside a judgment given under section 197 on the ground that it does not embody the substance of the evidence heard, an affidavit or affidavits would be required showing what the omitted evidence was and that it was substantial and if incorporated would be likely to have effect upon the decision. Here apparently the evidence has been embodied in the judgment. With regard to the order binding over we think it is within the jurisdiction. Sub-section 4 of section 197 restricts the amount of imprisonment and fine and no more.

Appeal dismissed.

Editorial Note.—Leave to appeal to the Privy Council was refused by the Privy Council, the appellant being ordered to pay the costs.

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Prepared on 14 October 2026 · Esheria