

UGANDA / JUDGMENT

Rex v Meyerowitz (Criminal Appeal No. 215 of 1947) [1947] EACA 53 (1 January 1947)

[1947] EACA 53

COURT

East African Court of Appeal

BEFORE

Graham Paul CJ, Nihill P, Stuart J

CASE / FILE NUMBER

Criminal Appeal No. 215 of 1947

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COURT OF APPEAL FOR EASTERN AFRICA

Before NIHILL, C. J. (Kenya), SIR G. GRAHAM PAUL, C. J. (Tanganyika), and STUART, J. (Tanganyika)

REX, Respondent (Original Prosecutor)

v

CHARLES HENRY MEYEROWITZ, Appellant (Original Accused)

Criminal Appeal No. 215 of 1947

(Appeal from decision of H. M. Supreme Court of Kenya)

Criminal law—Obtaining credit by false pretences—S 309 (1) Penal Code (Kenya)—Intention to defraud—Misdirection.

The appellant was charged on an information containing seven counts, two of which were for obtaining credit by false pretences contrary to s. 309 (1) Penal Code. The learned Judge directed the jury that on these two counts there was no necessity to prove an intention to defraud. The jury returned a verdict of guilty and the appellant was convicted. He appealed,

Held (11-11-47).—(1) There cannot be an offence under S. 309 (1) P. C. unless there is an intention to defraud.

(2) The misdirection was so serious that the verdict of the jury could not be allowed to stand.

Appeal allowed and conviction quashed on the two counts in question.

Case referred to: Rex v. Muirhead 1 C. A. R. 189.

Appellant absent, unrepresented.

Sir James Henry, Crown Counsel (Tanganyika), for the Crown.

JUDGMENT (delivered by SIR G. GRAHAM PAUL, C. J.).—The appellant was convicted in the Supreme Court of Kenya at Nairobi on seven counts:-

First Count.—Forgery contrary to section 344 of the Penal Code.

Second Count.—Uttering a false document contrary to section 347 of the Penal Code.

Third Count.—Obtaining credit by false pretences contrary to section 309 (1) of the Penal Code.

Fourth Count.—Obtaining credit by false pretences contrary to section 309 (1) of the Penal Code.

Fifth Count.—Obtaining goods by false pretences contrary to section 306 of the Penal Code.

Sixth Count.—Obtaining money by false pretences contrary to section 306 of the Penal Code.

Seventh Count.—Obtaining money by false pretences contrary to section 306 of the Penal Code.

As regards the first, second, fifth, sixth and seventh counts the appeal is based entirely on questions of fact, and in our view the evidence amply justified the conclusions of fact at which the jury, quite correctly directed by the learned Judge, arrived. We can find no substance whatever in the appeal from the convictions on these four counts.

The position is different as regards the verdicts of the jury on the third and fourth counts because of the very definite misdirection by the learned Judge. on these two counts. This misdirection is unfortunate and was regrettably due to the interruption of the learned Judge's summing-up by the learned Acting-Solicitor General. The learned Judge was actually directing the jury that on these two counts, as on the others, they must be satisfied that the accused had

the intention to defraud, when the learned Acting Solicitor General thought fit to interrupt the learned Judge with the suggestion that on these counts there was no necessity to prove intent to defraud. Unfortunately the learned Judge, so interrupted, accepted the submission of the learned Acting Solicitor General and directed the jury accordingly. There was, of course, no substance whatever in the interrupting submission of the learned Acting Solicitor General, who apparently was unaware of the very clear decision of the Court of Criminal Appeal in the case of *Rex v. Muirhead*, one of the earliest cases decided by that Court (1 C. A. R. 189). That was a case under section 13 (1) of the Debtors Act, 1869, which is in the same terms as section 309 (1) of the Kenya Penal Code. under which the third and fourth counts in the present case were brought. The decision in *Muirhead's* case authoritatively settled that there cannot be an offence under that section unless there is an intent to defraud.

By that unfortunate interruption of his summing-up the learned Judge was misled into giving to the jury such a serious misdirection in regard to these two counts that the verdict of the jury on these counts cannot possibly be allowed. to stand. The convictions and sentences on the third and fourth counts are therefore quashed.

After imposing sentences of imprisonment with hard labour on the various counts the learned Judge proceeded to impose an "omnibus" fine of Sh. 500. This, of course, was quite wrong and we quash that part of the sentence.

As regards the convictions, other than the convictions on the third and fourth counts, the appeal is dismissed.

The sentences of imprisonment imposed in respect of the convictions on the first, second, fifth, sixth and seventh counts are no doubt severe, but having regard to the previous conviction we do not consider that the severity is so excessive as to justify interference by this Court on appeal, and as regards the sentences of imprisonment on these counts the appeal is therefore dismissed.

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