

UGANDA / JUDGMENT

Rex v Ngechu (Criminal Appeal No. 70 of 1948) [1948] EACA 60 (1 January 1948)

[1948] EACA 60

COURT

East African Court of Appeal

BEFORE

Nihill P

CASE / FILE NUMBER

Criminal Appeal No. 70 of 1948

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APPELLATE CRIMINAL

Before SIR BARCLAY NIHILL, C. J.

REX, Respondent (Original Prosecutor) v

WILFRED NGECHU, Appellant (Original Accused) Criminal Appeal No. 70 of 1948

Criminal Procedure Code, section 142—Proof of previous convictions in absence of accused.

The appellant pleaded guilty in writing to a charge of carrying passengers in his motor omnibus in excess of the number permitted in his licence *contra* section 29 (f) Traffic Ordinance, 1928. He did not appear in Court at the hearing and the Magistrate in pronouncing judgment stated that it was within his own knowledge that the appellant had three convictions for the same offence during that same year, and on that account imposed a fine of Sh. 600.

The appellant lodged an appeal.

Held (30-3-48).—Where an accused person pleads guilty in writing to a charge and remains absent from Court, on convicting him the mere recording by the Magistrate of his personal knowledge of the accused's previous convictions for similar offences is insufficient. If the Magistrate wishes to pass a severe sentence taking into account such previous convictions he must at least have before him documentary evidence from a proper quarter.

Appeal dismissed. Sentence reduced.

Malcomson for the Appellant.**Holland, Crown Counsel, for the Crown.**

JUDGMENT.—The appellant in my opinion clearly pleaded guilty in writing to carrying an excess number of passengers on his motor omnibus. The fact that he does not appear to have been informed of his right of appeal against sentence is of no materiality because for the reason this Court has admitted his appeal out of time. The only point that remains for consideration is whether the Magistrate was entitled to take into consideration as he states "from his personal knowledge" three previous convictions for similar offences in 1947. Certainly the provisions as set out in the Criminal Procedure Code for the proving of previous convictions not admitted by a convicted person were not followed in this case but it must be appreciated that the Magistrate had not the accused before him and was therefore not in a position to call upon him to admit or deny. If a person charged with an offence against the Traffic Ordinance elects to stay away from Court and to content himself with putting in a written plea he can hardly be heard when he complains later that his absence from Court enured to his disadvantage.

However in the present case I think that the mere recording by the Magistrate of his personal knowledge of the appellant's previous convictions is insufficient, for in such a matter there is always a possibility of genuine mistake. If the Magistrate wished to pass a severe sentence taking into account previous convictions of a like character he should have least have had before him documentary evidence from a proper quarter. Mr. Holland for the Crown has not sought to uphold the sentence imposed on the grounds given by the Magistrate, namely that there had been flagrant and repeated violence of the Traffic Ordinance.

I dismiss the appeal against the conviction but I reduce the sentence imposed to one of a fine of Sh. 200. If the fine has already been paid Sh. 400 must be remitted to the appellant.

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