

UGANDA / JUDGMENT

Rex v Nyamoko and Another (Confirmation Case No. 956 of 1944) [1945] EACA 42 (1 January 1945)

[1945] EACA 42

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Confirmation Case No. 956 of 1944

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CRIMINAL CONFIRMATION**BEFORE SIR JOSEPH SHERIDAN, C. J., AND BARTLEY, J.**REX, Prosecutor $\mathbf{1}$ **NYAMBWERA s/o NYAMOKO, alias OKIEGA NYAMOGA, Accused Confirmation Case No. 956 of 1944**

Criminal law-Police supervision-Criminal Procedure Code, section 345-"second or any subsequent conviction"—Proper order to be made.

The facts appear sufficiently from the Order in Confirmation.

Held \$(4.4-45)\$.—(1) That it is only on "a second or any subsequent conviction" that the penalty for a breach of section 345 Criminal Procedure Code (failing to comply with a police supervision order) is increased from six months to twelve months imprisonment.

(2) That a second offence is an offence committed after conviction of a first offence.

ORDER.—On the 18th March, 1943, the accused having been convicted by the Resident Magistrate, Nakuru, was sentenced to imprisonment and an order for police supervision under section 343 of the Criminal Procedure Code was also made for a period of 18 months after his release from prison. The accused was released from prison on the 4th December, 1943. As the law was on the date of the order for police supervision the accused was required to report himself personally once a month to the officer in charge of the police station nearest to the place of residence during the period covered by the order. He failed to report himself during the period covered by the months of January to June, 1944, and he was charged on six counts with

failing to report contrary to section 345 Criminal Procedure Code.

On his pleading guilty to all six counts the first class Magistrate, Kisii, sentenced him in these words, "I..... sentence him to six months I. H. L. on
the first charge and one year on the subsequent charges making a total of 18 months I. H. L. and order him to report to the police at Kisii for a period of 18 months from date of release".

By that sentence it is understood that the Magistrate intended to order that the sentences on counts two and six should run concurrently but consecutively with the sentence on the first count.

Section 345 of the Criminal Procedure Code reads: —

"If any person subject to police supervision who is at large in the Colony refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months and on the second or any subsequent conviction for such offence to imprisonment for a term not exceeding twelve months".

It will be seen that it is only on "a second or any subsequent conviction" that the penalty is increased from six months to twelve months imprisonment. At page 303 of Maxwell on the Interpretation of Statutes (8th edition) it is stated. "When a second offence is the subject of distinct punishment, it is an offence committed after conviction of a first". The authorities cited for that statement were 2 Cokes Institutes 468 and R. v. South Shields Licensing Justices (1911) 80 L. I. K. B. 809. We are unable to refer to 2 Cokes Institutes but the report of R. v. South Shields Justices (supra) contains the necessary quotation from the Institutes, part of which reads, "the second offence must be committed after the first conviction and the third after the second conviction and several judgments thereupon given: for so it is to be understood in other acts of parliament where the degrees of punishment, for the first, second and third offences, etc., there must be several convictions, that is to say, judgments given upon legal proceedings for every several offence, for it appeareth to be no offence until judgment by proceeding of law be given against him".

We respectfully agree with that statement of the law and accordingly reduce the sentences on counts two to six months imprisonment with hard labour on each count the sentences to run concurrently but consecutively with the sentence on the first count.

With regard to the order made by the trial magistrate for the accused to report to the police at Kisii for a period of 18 months from date of release, that order is altered to read that the accused be subject to police supervision for a period of 18 months after his release to comply with the provisions of section 343 (1), Criminal Procedure Code.

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Prepared on 13 October 2026 · Esheria