

UGANDA / JUDGMENT

Rex v Said (Cr. App. No. 134 of 1938) [1938] EACA 196 (1 January 1938)

[1938] EACA 196**COURT**

East African Court of Appeal

BEFORE

Hayden J, Sheridan CJ

CASE / FILE NUMBER

Cr. App. No. 134 of 1938

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APPELLATE CRIMINAL

BEFORE SIR JOSEPH SHERIDAN, C. J. AND HAYDEN, J.

REX, Respondent (Original Prosecutor)**HUSSEIN BIN SAID, Appellant (Original Accused) Cr. App. No. 134 of 1938**

Criminal Law—Rogue and a vagabond—"Found wandering"—Penal Code, section 167(4).

The particulars of the offence with which the appellant was charged were "that about 5.30 p.m. on 9-6-38 the accused was found in Miembe Tyari in a manner and circumstances that he was there for an illegal purpose in that he was found gambling for money by means of three cards trick with other natives. The accused was arrested and the other natives ran away". In answer to this charge the appellant said: "Yes it is true" and thereupon was convicted of being a rogue and a vagabond under section 167 (4) of the Penal Code. Appellant appealed.

Held (3-9-38).—That the charge and plea contained no suggestion that the appellant was "found wandering" which is an essential ingredient of the offence defined in section 167 (4) of the Penal Code.

(Appeal allowed.)

Appellant, absent, unrepresented.

Dennison, Crown Counsel, for the Crown.

JUDGMENT.—The appellant was convicted under section 167 (4) of the Penal Code of being a rogue and a vagabond and sentenced to one year's imprisonment, the maximum sentence under this section. The section reads: "The following persons ... Every person found wandering in or

upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose, shall be deemed to be a rogue and vagabond and shall be guilty of a misdemeanour and shall be liable ... for every subsequent offence to imprisonment for one year." The particulars of the offence charged against the appellant are set out in the following terms: "That at about 5.30 p.m. on 9-6-38, the accused was found in Miembe Tyari in a manner and circumstances that he was there for illegal purpose, in that he was found gambling for money by means of three cards trick with other natives". Reading the section and the particulars of the charge we are at a loss to understand why the appellant was charged under The governing words in the section are "found section \$167\$ (4). wandering" and there is no suggestion in the charge that the appellant was found wandering. Possibly the learned magistrate was of the opinion that the governing word was "found", if so we disagree with his interpretation. Cases such as the present one are prosecuted under the Gambling Ordinance (Cap. 72 of the Laws of Kenya) in Nairobi and one of the members of this Court to the best of his recollection dealt with such cases under the Gambling Regulations (No. 7/1901) when Town Magistrate, Mombasa. The learned Crown Counsel who appeared before us finds himself unable to support the conviction. We allow the appeal, set aside the conviction and sentence and order the appellant to be released.

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