

UGANDA / JUDGMENT

Rex v Shah and Another (Criminal Appeal No. 210 of 1938) [1939] EACA 103 (1 January 1939) [1939] EACA 103

COURT

East African Court of Appeal

BEFORE

Dalton, C.J(Tanganyika), Sheridan, (C.J. Kenya),
Whitley CJ

CASE / FILE NUMBER

Criminal Appeal No. 210 of 1938

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COURT OF APPEAL FOR EASTERN AFRICA

BEFORE SIR JOSEPH SHERIDAN, C. J. (KENYA), WHITLEY, C. J. (UGANDA) AND SIR
LLEWELYN DALTON, C. J. (TANGANYIKA)

REX, Respondent (Original Prosecutor)

versus

MOHAMED SHAH s/o LAL SHAH, Appellant (Original Accused) CRIMINAL APPEAL
NO. 210 OF 1938**Criminal law—Leave to appeal to the Privy Council—Eastern African (Appeal to Privy
Council) Order in Council, 1921, Article 3 b.**

Held. (17-2-39).—That assuming that the Eastern African (Appeal to Privy Council) Order in Council, 1921, applies to criminal cases the court must be guided by the test as to whether the questions involved are of great general or public importance: the matters in question in the present case were not of such importance. (Leave refused.)

Appellant's appeal from a conviction of murder having been dismissed by the Court of Appeal for Eastern Africa he applied for leave to appeal to the Privy Council. The application was grounded on the following affidavit: -

"I, Edward Keene Figgis of Nairobi in the Colony of Kenya, Advocate, aged 21 years and upwards, make oath and say as follows:—

1. I, in conjunction with Mr. J. A. C. Burke, Advocate, have had conduct of the above-mentioned appeal on behalf of the above-named appellant.

2. I believe the questions arising from the judgment of this Honourable Court on the said appeal to be of great general and public importance and also of great importance in connexion with the conduct of Criminal Trials in the Colony of Kenya.

3. Among the questions referred to in the last preceding paragraph, I would instance the following:—

- (a) The weight to be attached to considered opinions of $\frac{1}{2}$ assessors and the necessity or otherwise of specific consideration by the Trial Judge of the reasonableness of such opinions in view of the recorded evidence as distinct from the disagreement of the Judge with such opinions.
 - (b) To what extent a Trial Judge is bound to accept the (a, b) evidence as to distances and such like matters as recorded on his file of proceedings, in particular where better evidence could have been produced by the Crown by the preparation of plans or otherwise.
 - (c) How far (if at all) a Judge is justified in allowing his $\frac{1}{2}$ mind to be influenced by the failure of an accused to give evidence as to what he said at a Police Station in circumstances such as those detailed in the evidence in the above-mentioned original case.
 - (d) How far a Judge is justified in forming an opinion as $\sim$ to a state of facts existing which is inconsistent (without material alteration of the evidence) with the evidence as recorded and in particular where he states his belief in the veracity of all the witnesses.
 - (e) How far a Court of Appeal is justified in discounting the considered opinions of assessors on the ground that they might have formed a different opinion had certain points of importance been more clearly before them, which points have not been dealt with by the Trial Judge in his summing up and involve evidence which has not been adduced at the hearing.
4. It is submitted that whatever the result of an appeal to His Majesty in Council might be the questions referred to are such that they are of great importance with future Criminal Trials and that the questions involved are calculated to recur.
 5. For the above reasons it is submitted that the present is a fit case for this Honourable Court to exercise its discretion in granting leave to appeal to His Majesty in Council.

The above statements are made from my personal acquaintance with the record in the above-named original criminal case my knowledge of the arguments in this Honourable Court on Appeal and my knowledge of the contents of the judgment of this Honourable Court above referred to."

Figgis, K. C., and Burke for the appellant.

Dennison, Crown Counsel (Kenya), for the Crown.

ORDER (delivered by Sir Joseph Sheridan, C. J.): In submitting a case to the Privy Council for decision this Court, on the assumption that the Order in Council applies to criminal cases, must be guided by the test as to whether the question involved is one of great general or public importance. We are unable to agree that the grounds stated in support of this application raise questions of great general or public importance. They raise questions which must constantly occur in criminal trials and if we were to grant leave in this case the result would be that in many other cases this case could be quoted as a precedent for granting leave—cases for instance where it was contended that sufficient consideration had not been given to the opinions of assessors, where the best evidence had not been given and such other cases as could be multiplied *ad infinitum*. We do not consider that the case falls within the provisions of Article 3 (b) and must refuse leave. This does not of course prevent the applicant from applying direct to the Privy Council.

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