

UGANDA / JUDGMENT

Rex v Sowe (Con. C. 538/1932.)

[1932] EACA 13 (1 January 1932)

[1932] EACA 13**COURT**

East African Court of Appeal

BEFORE

Lucie-Smith, J. (Kenya), Thomas, J. (Kenya)

CASE / FILE NUMBER

Con. C. 538/1932.

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CRIMINAL CONFIRMATION.**Before THOMAS and LUCIE-SMITH, J. J.****REX****\$\overline{v}\$ \$.****GEORGE SAMUEL SOWE.****Con. C. 538/1932.**

- Criminal Procedure Code, section 195-Statement of charge to accused—Section 199—Power 'to amend charge if improperly drawn
- Held (24-9-32): That it is not sufficient merely to tell the accused that he is charged under a particular section of the Penal Code; that if the charge is faulty the Magistrate has power to amend, but must record the amendment on the record; that accused's plea was not one of guilty to any offence under the charge as drawn.

The charge as drawn alleged that "accused at some date during July, 1932, did make two false documents and did sell them for Sh. 1 each in Nakuru." On the record the Magistrate noted: "Accused charged section 329 (1), Penal Code," and the accused's plea: "I confess that." Accused further stated: "I admit these are false documents and the charge."

The Magistrate convicted the accused on his own plea and after considering records of three previous convictions sentenced him to one year's hard labour in respect of each offence to run consecutively, and ordered him to be subject to police supervision for three years from his release.

The Attorney General was asked if he wished to support the conviction, and on his indicating that he did the case was listed for argument.

Branigan, for Crown, supported the conviction as accused's plea was guilty to a charge under section 329 (1) of the Penal Code. The Charge Sheet was inaccurate, but the Magistrate charged the accused under section 329 (1). The presumption is justifiable that he explained the full nature of the charge to the accused.

JUDGMENT.—This case comes before the Court on revision.

The charge against the accused in the Criminal Charge Sheet was as follows: "Section 329 (1), Penal Code. Accused at some date during July, 1932, did make two false documents and did sell them for Sh. 1 each in Nakuru."

This charge did not include the words "with intent to defraud," which is one of the material elements of the offence.

The Magistrate's note is "Accused charged section 329 (1). P. C." The plea of the accused was: "I confess that." Thereupon a plea of guilty was entered. It has been argued that the note by the magistrate was a sufficient compliance with section 195 of the Criminal Procedure Code.

That section requires that the substance of the charge or complaint shall be stated to the accused person by the Court. In our opinion the note by the Magistrate cannot be taken to infer anything more than is contained in the Criminal Charge Sheet. If there had been, in fact, any amendment of the charge, then such amendment should have been noted by the Magistrate and explained to the accused. It would be preferable that the offence with which the accused is charged should be written out by the Magistrate in all cases. Such a course should certainly be adopted in cases where, as in the present, a heavy sentence may be imposed.

As the case at present appears the accused was charged and pleaded guilty to making and selling two false documents. That is not an offence under section 329 (1) of the Penal Code. It has not been suggested that it is an offence under any other section of the Penal Code.

Therefore the conviction must be quashed. A new trial is ordered. In the event of a conviction, the term of imprisonment already served should be taken into consideration in any sentence which may be imposed.

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