

UGANDA / JUDGMENT

Rex v Tucha (Cr. Conf. Case No. 550/1936) [1936] EACA 137 (1 January 1936)

[1936] EACA 137**COURT**

East African Court of Appeal

BEFORE

Horne J, Sheridan CJ

CASE / FILE NUMBER

Cr. Conf. Case No. 550/1936

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CRIMINAL CONFIRMATION

Before SIR JOSEPH SHERIDAN, C. J., and HORNE, J.

REX. Prosecutor

 $\mathbf{L}$ **SABOB s/o TUCHA, Accused****Cr. Conf. Case No. 550/1936**

Attempted murder—Reduction of charge by magistrate—Intent to do grievous harm—Criminal Procedure Code, section 223.

- Held (26-11-36).—That, where a person is accused, before a magistrate, of unlawfully inflicting on another such injuries as would normally be likely to cause death, the proper procedure for the magistrate to adopt is to hold a preliminary inquiry under the provisions of the Criminal Procedure Code to inquire whether or not the accused person should be committed for trial by the Supreme Court on a charge of attempted murder.
- Held further.—That, in default of such proceedings, it is not proper for the magistrate to conclude that the intention of the accused person was to do grievous harm rather than to kill, so as to enable the magistrate to reduce the charge to one triable under his own jurisdiction.

- Held further.—That, the proper procedure to be followed by the magistrate in such a case, in reducing the charge of an offence triable only by the Supreme Court to a charge of an offence which the magistrate has jurisdiction to try, is indicated by section 223 of the Criminal Procedure Code.

The facts appear from the judgment.

Accused present.

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Wallace, Acting Solicitor General, for Crown.

JUDGMENT.—In this case, we are of opinion that the sentence should be confirmed. We do not reach this conclusion without some difficulty for the procedure adopted by the magistrate in dealing with this very serious case does not entirely conform to that laid down by the Criminal Procedure Code. Admittedly, it may be sometimes difficult for a District Officer, who is single handed, to follow that procedure, but we desire most strongly to point out that the Code does give a magistrate an opportunity under section 223 Cr. Pro. Code to adjudicate upon the case even though the proceedings have commenced in the form of a preliminary inquiry.

On September 14, the accused was formally charged and on the facts then known to the magistrate, he, the magistrate, was not in a position to say whether an intent to maim or an intent to murder could or would be established. Indeed, the facts pointed very strongly to an intent to murder as the wounds inflicted would normally of themselves cause death; that the man did recover could not reasonably be considered a probable consequence. His proper course was not to clutch at jurisdiction and charge the accused with an offence which was within his jurisdiction to try but to open the proceedings as a preliminary inquiry. If in the course of or at the close of the inquiry it appeared to him that the offence was of such a nature that it might suitably be dealt with under the powers

he possessed, he could then, as we have pointed out, finally hear and determine the matter. Even if, after proceeding in this way, he had committed the accused for trial, the case might have been remitted to him by the Attorney General.

In this case it was very difficult to say, in advance of evidence having been called, whether the accused should have been charged with attempted murder, or wounding with intent to maim or cause grievous bodily harm. It appears that the latter charge was made and the accused pleaded to it in words which the magistrate accepted as a plea of guilty.

We think that the words do not amount to an unequivocal plea of guilty. The magistrate then heard evidence nominally for the purpose of assessing sentence. This evidence was about all the available evidence. In our opinion it is sufficient to support the conviction. But also, in our opinion, it is evidence upon which a charge of attempted murder should have been brought and the accused should not have been dealt with by the magistrate but committed for trial.

He has been charged, however, with causing grievous bodily harm and sentenced to 12 years imprisonment with hard labour which we confirm.

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