

EAST AFR PROT
23118

51
23118
APR 10 1920

P.A.C. 361
1920
7th APRIL

ATTORNEY GENERAL

Trans petition from, does not consider it a case warranting intervention. Trans same and copy of judgement on

*The Applicant
M. J. ...*

*Will you please look at the
legal case x to see
Dept have you ...*

*Mr. Parkerson,
There seems to be no doubt that the
petitioner had to defend the woman
by bringing an action against her
on a claim he had made & known to be
false. I think the effect should be to the
effect that as the hearing was
justified by the facts & the appeal was*

1920 (10 May 20)

according to law the S. of S. will not
interfere

Oct 13. 5. 20

W. B. ...
J. B. ...

... reported by Mr. ...
that ... prefer to ...
as a ... - i.e. simply ...
the petition has been received but
not ... is it ... to interfere
in the matter.

Yes
ISA

all
13. 5. 20

ISA

...

13. 5. 20

Oct 13. 5. 20

C. O. 52
23118
APR 10 1920
BRITISH EAST AFRICA

AFRICA PROTECTED STATES

357

GOVERNMENT HOUSE
NAIROBI
BRITISH EAST AFRICA

7 April, 1920.

My Lord,

I have the honour to transmit to Your Lordship a petition from Athman bin Omar asking for Your Lordship's intervention in a case in which the petitioner imagines himself to have been wronged.

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endum
e. 19

let
10. 18.

2. The petitioner has frequently addressed Sir Edward Northey and myself on this matter, but it has not appeared to be a case demanding intervention, and the petitioner has been so informed.

3. I enclose a copy of a memorandum from Sir Robert Hamilton on the subject, together with a copy of the judgment delivered in this case by the Court of Appeal.

I have the honour to be,
Your Lordship's
humble, obedient servant,



ACTING GOVERNOR.

RIGHT HONOURABLE

VISCOUNT MILNER, P.C., G.C.B., G.C.M.G., &c. &c.

SECRETARY OF STATE FOR THE COLONIES,

DOWING STREET,

LONDON, S.W.1.

Mombasa, 16th March 1980.

Colonial Office,

London.

I beg most humbly and respectfully to report this matter in few lines, hoping that they will meet you at your kind consideration.

I beg to report and inform you that I have been wronged in the case between Baraka and me, at the Court of Mombasa. The defendant Baraka has mortgaged to me his property consisting of one Shamba (Plantation) and one iron safe, on condition that he should take from me the sum of Rs. one thousand, so that, I took him before the Government at Lamu where he had to sign his name on a registered paper which is the true evidence. And when I happened to ask him whether he had received his money, he replied that there was no doubt about it. But after a mean time he went to the Court of Lamu and reported that he did not get anything from me, and there he was believed without any certainty for that or evidence and when I went to the Court of Lamu showing his own signature on the registered paper on which it was written as agreement between he and me saying that he has received from me the sum of rupees one thousand, but Lwali (Judge) knew that it was my right, being against me, conducted the judgement innocently against me and finally he fined me the sum of rupees two hundred.

And I, having not been satisfied with the Lwali's judgement took appeal at the Court of Mombasa where two judges one said that the judgement of Lwali was not right while the other one disagreed on that that is one said this and the other said this, so this had not given hope that the judgement was taken legally. That I had to write to the Judge of Mombasa, stated of my dissatisfaction in the Court but he replied that could do nothing after that decision but he said it was always open for me to apply to His Excellency the Governor as long as it concerned me further steps can be taken in the Court of Mombasa. Then again I had to apply to His Excellency the Governor and stated all what happened to me about my case, but the Governor replied, after deep investigation, he did find, but he had no intention of putting himself into the matter. So if from him I could not get my right, wherefrom I may suppose to get it?

To say really I have been wronged in this matter in way of judgement

I could not satisfy myself as long as the two judges could not satisfy each other"

My reason for writing to is Sir that I want the appeal Court to be opened for me as it is always opened for the others

And if you will carefully pay your attention to this you surely will come to know that I have been wronged. Why others are satisfying their rights in the British Courts but not me. I am a British subject and under the British flag, so where can I get my right if not from you, the Mighty and the World famous. Now I am bending my knees before you sole, to help me to get my right. It is generally said that right is mighty and must conquer. I shall ever feel grateful your selection if you will be good and help me in this case. I enclosed to you Sirs, two letters one from Judge Hamilton and the second from H.E. Governor of Nairobi and with them you shall be interested and shall really understand that this matter was innocently taken against me besides a fine of Rs.200/ quite against law. First the registered deed cannot be null & void since it is lawfully registered. We in Africa our acts are not done according to law but by force.

The cause that made me to write to you is that I had written to the Acting H.E. Governor stated all about the judgement but he replied he had intention of entering in the case, that assured me that I was wronged in this case. The Governor can decide any case in E.E. Africa he cannot decide mine ?

It is then for you now to investigate Sir. No further steps can be taken besides you, then should you feel disposed as to assist me and I shall always remain thankful for kind assistance.

For the grace of our King George beg to get my right.

Your most obedient servant
to thank Sir Dear

Secretariate
Zanzibar.

H I H C O U R T

P. O. Box 10, ...

... ..

1919

Petition of Athman Dhanoo

Your Excellency,

The dispute between the parties to this matter might more properly have been made the subject of a civil action. In fact the petitioner was tried by the Divali of Law and convicted of cheating. The circumstances of the case were that Athman agreed to lend a woman Rs.1000 on the security of a mortgage of her house. The document of mortgage was drawn and the woman's receipt for Rs.1000 taken but no money was handed over, and Athman refused to give up the document.

Athman appealed from the Divali's finding and sentence of a fine of Rs.200, and the appeal was heard by Maxwell and Pichering JJ, who differed on the point as to whether or no the woman had been dishonestly induced to part with any property. Consequently in accordance with the provisions of the Criminal Procedure Ordinance the appeal stood dismissed.

Athman then wrote to me to get the matter reopened and I refused as the matter had been finally decided by the Court, and informed him that the only course open to him was to petition to Your Excellency.

I attach a memorandum by Pichering ...
 ... Athman to be a case
 ... the technical merits may be of the
 ... Athman ...
 ... his appeal had been dismissed.

Davis

CRIMINAL CASE NO: 16 of 1918.

The appellant arranged to lend Rs.1000 to complainant, the latter agreeing to mortgage a share. A document was written and registered; the complainant appeared before the registrar and admitted receipt of the loan. The Liwali found as a fact that it was usual that this should be done before the money was handed over.

The appellant became possessed of the registered document. The Liwali found that "after the document was executed he (the appellant) deceived her" (Respondent), and convicted the appellant of making "some tricks" and obtaining complainant's acknowledgment, "but has not paid her the money". There being no evidence of any debt prior to the registration, and the custom of registration prior to payment having been proved, I was of opinion that there was no evidence that appellant had dishonestly obtained the complainant to deliver any property, and that the conviction was wholly unjust. The appeal was allowed to stand. No appeal was allowed in this case, and the trial did not appear to me to be wholly satisfactory.

When he obtained the document the appellant asserted that the complainant owed him the Rs.1000. I was satisfied that in this case the appellant was liable and that any fine should be on the evidence and the appeal allowed. I think that the registration was upheld, and that upon the facts of the case the appellant was bound to be a respondent, and a fine of Rs.200 does not appear an unreasonable penalty.

IN THE SUPREME COURT OF EAST AFRICA AND SOMALIA
APPELLATE SIDE

57

Criminal Appeal No. 16 of 1918.

For Original Sentence in Criminal Case No. 1 of 1918, of the
District Court at Lamu.

Atanu bin Gani bin Gani, Appellant.

versus

Attorney General, Respondent.

(Original Prosecutor)

J U D G M E N T.

I am of opinion that the conviction in this case was correct. The evidence proves to my satisfaction that the Appellant committed the offence of cheating as defined in Section 41a I.P.C.

From the wording of the translated record I thought at first it might have been possible that the learned Judge had not had clearly before his mind the question whether the Appellant had or had not obtained the deed in question with the previous intention of "doing damage" to the "property" of the prosecutrix. But on perusal of the record and also of the Judgment, I am satisfied from Appellant's false statements as to payment and further from his subsequent deliberate perjurations that such possible misdirection did not in fact occur and that the conviction is correct and the appeal should be dismissed.

JUDGMENT

although my learned brother has formed the opinion that this conviction should be sustained, an opinion for which I necessarily feel the greatest respect, I find myself unable to concur in that view and although my dissent is of no weight in this appeal, I feel constrained to state my reasons in respect to the Court and because of some slight possible benefit to the Appellant. He was convicted at Lamu under Section 420 I. P. C. of cheating. No charge was framed in the case indeed, as was not unnatural in a Liviari's Court, the provisions of the Criminal Procedure Code were not strictly adhered to and for this reason it is, in my opinion, preferable that matters of this nature should not be prosecuted in a Native Court. The Inspector in his final address to the Court said "when the accused got the document he found that it was at his choice either to pay the money or not" and "the Sharia does not allow a person to have people's money and spend for himself" from which passages it is clear that the gist of the accused's defence from the view of the prosecution was a fraudulent withholding of the promised loan. From the Liviari's Judgment generally and from his stating that he was satisfied that the accused had created the complaint because he had got the document and that he has not paid the money, I am satisfied that the Court below convicted the accused of a breach of faith in not paying over the money loaned to the mortgagor. There is no doubt that the accused dishonestly obtained the advancement of money from the Court and I am by no means satisfied that this essential factor was even considered by the Liviari. From the "indiaz" that the Appellant subsequently attended, lying assertions to the contrary were made by the Complainant. I was not the

The slightest reason for differing but such acts
did not constitute an offence under Section 40
I. P. C. It is for that reason that I have said
that this conviction ought not to be permitted by this
Court to stand.

Sgd/- G. H. Pickering

12. X. 18

Low
1911/12

17

Ind

DRAFT.

Case
no 683

17 May 1920

MINUTE.

- Mr. Bennett 14 May
- Mr. Parkman 14/5
- Mr.
- Mr. Grindle
- Mr H. Lambert
- Mr H. Road
- Mr G. Fiddes
- Mr. Amery
- Lord Milner

Sir,

I have the honour to
 the ~~rest~~ of the
 day no. 351 of the
 of the paper, forwarding
 a petition from Athman
 bin Omar
 (2) I have to
 believe that ~~the~~
 the petition may
 be well that I
 have received the
 petition but that

in the vein

was not prepared to ~~take~~

in the matter

MILNER