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43, 1954 Kenya  
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IN THE PRIVY COUNCIL

No. 35 of 1954

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT NAIROBI

---

B E T W E E N

KURUMA S/O KANIU ... Appellant

- and -

THE QUEEN ... .. Respondent

---

RECORD OF PROCEEDINGS

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GASTER & TURNER,  
81, Chancery Lane,  
London, W.C.2.  
Appellant's Solicitors.

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand, W.C.2.  
Respondent's Solicitors.

IN THE PRIVY COUNCILNo. 35 of 1954ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT NAIROBIB E T W E E N**38035** KURUMA S/O KANIU ... Appellant

- and -

UNIVERSITY OF LONDON THE QUEEN ... Respondent  
W.C.1

23 MAR 1955

INSTITUTE OF ADVANCED  
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BUT NOT PRINTED

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Reply of Accused after Section 302(2) C.P.C. had been complied with	8th February 1954

IN THE PRIVY COUNCILNo. 35 of 1954ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL  
FOR EASTERN AFRICA AT NAIROBI.B E T W E E N

KURUMA S/O KANIU	...	<u>Appellant</u>
- and -		
THE QUEEN	...	<u>Respondent</u>

RECORD OF PROCEEDINGSIN HER MAJESTY'S SUPREME COURT OF KENYA AT  
NAIROBI.In the Supreme  
Court of Kenya

Emergency Assize Criminal Case No.16 of 1954

REGINA	...	...	<u>Prosecutrix</u>
	versus		
KURUMA S/O KANIU	...	...	<u>Accused</u>

No. 1.

Charge and Plea  
8th February  
1954.No. 1CHARGE AND PLEA8th February 1954 Coram Law E.J.E. Acting JudgeKURUMA S/O KANIU is charged with the following  
offence:-STATEMENT OF OFFENCEUNLAWFUL POSSESSION OF AMMUNITION contrary  
to regulation 8A (1) (b) of the Emergency  
Regulations, 1952.PARTICULARS OF OFFENCE

KURUMA S/O KANIU

about the 1st day of January, 1954, at Chania  
Bridge in Thika in the Central Province, HAD IN  
HIS POSSESSION AMMUNITION, TO WIT, TWO ROUNDS OF  
.303 AMMUNITION, WITHOUT LAWFUL AUTHORITY OR EXCUSE.

30 Accused states in reply:

I had no rounds in my pockets. My pockets  
were empty when I was searched.Plea of Not Guilty entered.Assessors selected: No. 1 Gathachi Kiriro.  
No. 2 Karanja Njuguna.  
No. 3 Mureithi Kairu.

In the Supreme  
Court of Kenya

No. 2.

EVIDENCE OF CONSTABLE JOHN NYAUNDI OGWANG

Prosecutor's  
Evidence

No. 2.

J.N. Ogwang  
Examination  
8th February  
1954.

On 1st January, 1954, I was on duty at Chania road block, near Thika. I have been on duty there since March, 1953. My duties were to inspect the documents of persons passing through and to search them by feeling their persons. On 1st January at about 10 a.m. I stopped the Accused (identified). He was preceded by three children. I checked the Accused's papers which were in order. I began feeling his clothes from outside. In his trouser pocket I felt what seemed to be a pocket knife and two rounds of ammunition. (Witness demonstrates on Accused, the pocket in question is the right shorts pocket).

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I at once held the pocket tight from outside, took out my whistle and blew it. My superior officer, Mr. Singh, arrived on the scene (a man comes into Court and gives his name as Rattan Singh and is identified by the witness). I told Mr. Singh I could feel something like ammunition. We took him aside and removed his shorts. Accused was wearing shorts like the ones he is wearing in Court. We turned the shorts upside down and two rounds of ammunition fell out. They were similar to the round of .303 ammunition now shown to me. (Witness identifies two rounds shown to him, one fired and one unspent). Both were unspent when I found them. I produce them. (Exhibit 1).

20

30

Rattan Singh took possession of them and we took the rounds together with the Accused to Thika Police Station, and handed them over to a European Police Officer (a man comes into Court, gives his name as R.E. Barnes and is identified by the witness).

I returned to my duties at the road block. Later that day a tall European with a beard came to the road block at about 1 p.m. (A man comes into Court, gives his name as Albrechtsen and is identified). Mr. Albrechtsen called me in and handed me the two rounds, Exhibit 1. I recognised them and, at Mr. Albrechtsen's request, I marked the rounds by scratching the letter "N" on them. I returned the two rounds to Mr. Albrechtsen. Mr. Rattan Singh was present, also Mr. Barnes.

40

Cross-ExaminedIn the Supreme  
Court of KenyaProsecutor's  
Evidence

No. 2

J.N. Ogwang  
Cross-  
Examination  
8th February  
1954.

10 I have been a policeman since 1951. I was stationed at Thika all the time. The road block is on the main road to Thika, near the road junction near the Blue Posts Hotel. The road is straight and there is a pole across the road. There is a little sand-bag building nearby where we can shelter if necessary. The road block has been there a long time. I have worked there since April. A lot of traffic uses the road. Accused was on a bicycle and had a basket on the carrier. Accused did not resist in any way even after I blew my whistle.

I also searched the basket and there was nothing in it. I did not find any money in Accused's pockets. There was certainly none in this trouser pocket. Accused was going from Thika towards the Reserve.

20 Only Mr. Singh came when I blew my whistle. He was on duty with me, talking to another person near the road block, another Asian whose job was to open and shut the road block. This other Asian stayed at the road block, he heard me blow my whistle and we took Accused near where this man was. There was nothing in Accused's coat pocket. The pocket in which the rounds were was not the side pocket of the shorts, but the little pocket on the right with an opening near the waistband. I knew the penknife was a  
30 penknife by feeling it. I saw it afterwards. It was as long as my middle finger, (demonstrated). We did take possession of the penknife, but we returned it to the Accused. We took the Accused to a small barbed wire enclosure where we place suspects before taking them to the Police Station and searched him there.

40 On duty I am armed with a .303 military rifle. I was issued with ten rounds, two I had used but I still have the empty cases, two were in my pocket and six were in the magazine. I fired the two used cartridges on the 24th December and kept the empty cases. These are the only two rounds I fired during the Emergency. I have never found ammunition on other people at the road block, nor even used ammunition. I have my ammunition with me.

Witness produces:

In the Supreme  
Court of Kenya

Prosecutor's  
Evidence.

No. 2.

J.N. Ogwang  
Cross-  
Examination  
8th February  
1954  
(Continued)

(a) magazine from rifle with six rounds.

(b) clip with two rounds unspent and two empty cases

Note: By Court:

All rounds in magazine are marked GB 51 7 on rim. The two unspent rounds are similarly marked. The two spent cases are similarly marked. The two cartridges, Exhibit 1, are marked as follows :-

(a) unspent round U40 VII

10

(b) spent round U40 VII

Cross-examination (resumed)

Since 1951 I have never had any other ammunition than the ten rounds I still have. On 1st January only I, Rattan Singh and the other Asian, whose name is Chhotabhai, were on duty at the Post. Both the Asians have a sten gun for which use short ammunition.

When we went into the enclosure I was holding Accused's pocket still, Rattan Singh was holding him by the arm. My rifle was slung on my shoulder. On our order the Accused undid his fly-buttons and pulled his trousers down. Both Rattan Singh and I picked up the trousers and turned them upside down and shook them. I turned the pocket inside out and two rounds of ammunition and a penknife dropped out. Mr. Singh picked up the two rounds. I did not turn out the other pockets of Accused's trousers because there was obviously nothing in them. We searched the Accused's other pockets, there was nothing in them. I mean nothing bad, I remember things like a cloth. There was no money.

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30

Then we took Accused to Thika Police Station in a Police vehicle. In the vehicle was a driver; Rattan Singh sat in front with the driver. I sat in the back with Accused. Accused was not handcuffed. He caused no trouble, sitting quietly in the back. At the Police Station Mr. Singh went to hand over the rounds. I saw him hand over the rounds. Accused was with me, he followed Mr. Singh and I came behind. We left Accused there, talking to the Bwana. Chhotabhai

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had been left in charge of the road block. The Police Officer who asked me to mark the rounds was the same as the one with whom we left Accused at the Police Station. I have not seen Accused since.

No Re-examination.

By the Court

10 By Court: The European we left talking to the Accused was the short one; the one who asked me to mark the rounds was tall with a beard. The short one was also present at the time. I had never seen Accused before 1st January. Most of the people who pass the road block I know well by sight. I had never seen the Accused, perhaps he goes past when I am not on duty. There is no other road for a man on a bicycle. He must pass the road block. A man on foot can go across the fields.

No. 3.

20

EVIDENCE OF RATTAN SINGH

I am a K.P.R. Officer. Since 3rd September 1953, I have been stationed at the Chania road block on the main Thika-Nyeri Road. I was on duty on 1st January, at 10 a.m. I heard Constable Ogwang blow his whistle. I was talking to another Sikh. We were forty feet from the Constable. I went to the Constable, he told me that the Accused had two rounds of ammunition. The Constable was holding the Accused, one hand at the neck and the other hand was holding Accused by the hand. I caught the Accused by the other hand. We took him to the cell inside the barbed wire enclosure. We made him take off his shorts. The Constable opened his fly-buttons. The Constable took out two rounds from one of the pockets. He turned out the pocket and the rounds fell out, so did a pocket-knife. The Constable picked up the rounds and handed them to me. The knife was returned to the Accused. We took Accused to the Police Station in a Police car. I sat in front with the driver, the Constable sat in the back with the Accused.

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In the Supreme Court of Kenya

Prosecutor's Evidence

No. 2

J.N. Ogwang  
Cross-  
Examination  
8th February  
1954  
(Continued)

No. 3

Rattan Singh  
Examination  
8th February  
1954



In the Supreme  
Court of Kenya

Prosecutor's  
Evidence

No. 3

Rattan Singh  
Examination  
8th February  
1954  
(Continued)

At the Thika Police Station we saw Inspector Khan, then he took us to Mr. Barnes, (who comes into Court and is identified). We told him the story. I gave him the ammunition (Exhibit 1).

We left Accused at the Police Station and returned to the road block post. At about lunch time Mr. Barnes and a bearded man (Mr. Albrechtsen identified in Court) arrived in a car. They asked the Constable to mark the rounds, which he did in my presence, by scratching the letter "N" on them. Exhibit 1 now shown to me are the rounds marked by the Constable.

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Cross-examined

Cross-  
examination

The man with me when I heard the whistle was a carpenter called Mohinder Singh. I went alone to the Constable, Mohinder Singh went and talked to Sewa Singh and Chotu, two K.P.R. Officers. Chotu is known as Chhotabhai. They were at the road block. They followed me afterwards to where the Constable was. The three arrived when I had caught hold of Accused and was about to take them to the cell, that is when I told them. All three men entered the enclosure with us and watched the search.

20

I never touched the shorts, the Constable picked them up. I was in charge. I saw the two rounds produced. At this time Mohinder Singh had left, Sewa Singh and Chhotabhai were still there. Chhotabhai picked up the rounds from the ground. He handed them to me. Only the rounds fell to the ground. After removing the shorts the Constable took out the penknife, but the rounds did not appear till he turned the pockets inside out. We searched Accused's other pockets. We took out Accused's papers. The Accused had no money.

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I made a statement to the Police on the 5th January. This is it (statement shown to him). In that statement I do not mention that other people were present at the search. At the Police Station I told Mr. Khan, the Inspector, of the circumstances of the arrest, he sent us straight to the European Officer. We showed him the two rounds. He did not hold them. There were two other Europeans with Mr. Barnes. I did not know Mr. Barnes. It was Mr. Khan who introduced me to him. I spoke to Mr. Barnes, the

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others listened. One of the others took the rounds from Mr. Barnes and inspected them. He still had them when we left.

No Re-Examination

Adjourned to 2.15 p.m.

No. 4

EVIDENCE OF ROGER ERNEST BARNES

10 I was Field Intelligence Assistant, attached to Special Branch at Thika on 1st January. At about noon, K.P.R. Rattan Singh came to the Police Station. He was accompanied by Constable Ogwang and the Accused. Rattan Singh handed me two unexpended .303 cartridges. They were similar to Exhibit 1 except that one has since been fired. I took possession of the exhibit and the Accused. I handed over the exhibit and the Accused to Mr. Albrechtsen, three quarters of an hour later. I went with him to the Chania road block on the Thika-Nyeri Road, where we saw  
20 Rattan Singh and Ogwang.

Ogwang was asked by Albrechtsen to make a mark on the cartridges which he could recognise later. He scratched a "N" on each cartridge case in my presence and that of Accused who was with us. Mr. Albrechtsen took charge of the rounds. A Mr. Marshall of the C.I.D. who had been in the office when Mr. Singh handed in the ammunition also examined the rounds in my presence for a short time. He never parted with  
30 it.

Cross-examined

Rattan Singh, Ogwang and Accused came into my office. I knew them as members of the road block which I pass several times daily. I think they were brought up to my office by somebody who did not stay. I do not remember if there was a third European Officer in the room at the time.

In the Supreme Court of Kenya

Prosecutor's Evidence

No. 3

Rattan Singh  
Cross-  
Examination  
8th February  
1954  
(Continued)

No. 4

R.E. Barnes  
Examination  
8th February  
1954

Cross-  
examination

In the Supreme  
Court of Kenya

Prosecutor's  
Evidence

No. 4

R.E. Barnes  
Cross-  
Examination  
8th February  
1954  
(Continued)

It was not my job to charge the Accused. I kept the rounds in my pocket until I handed them to Albrechtsen. I am issued with a .38 revolver. I have handled .303 ammunition before. On a range I may have kept .303 in my pockets.

No Re-examination

By the Court

I had no .303 on me on 1st January, 1954 Sten gun ammunition is short rimless ammunition of 9 m.m. size.

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No. 5

C.B. Albrechtsen  
Examination  
8th February  
1954.

No. 5

EVIDENCE OF CHRISTOPHER BURNARD ALBRECHTSEN

On 1st January I was a Special Police Officer attached to C.I.D. Formation at Thika. Mr. Barnes handed me two rounds of .303 service ammunition. These are they (Exhibit 1 identified).

I took Mr. Barnes and Accused to road block near Blue Posts Hotel. I sent for Ogwang (P.W.1) and in presence of Mr. Barnes, Rattan Singh and Accused I instructed Ogwang to mark cartridge cases of Exhibit 1 so that he could identify it. He scratched the letter "N" on both of them. I then took back the rounds and kept them until this morning when I handed them back to Ogwang.

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On 6th January I fired one of the rounds. It went off. So far as I know the other round is also serviceable.

Cross-  
examination

Cross-examined

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In addition to Rattan Singh, there were two other K.P.R. Officers at road block. I questioned the individuals at the road block and ascertained who had made the arrest. I did not see any African Constable other than Ogwang. I have been issued with a .38 revolver. I have handled .303 ammunition before. I have been concerned in five similar cases of finding .303 ammunition on persons. I keep such exhibits in the Police Station Armoury.

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No Re-examination

No. 6In the Supreme  
Court of KenyaEVIDENCE OF ROGER HAYWARD DRACUPProsecutor's  
EvidenceNo. 6R.H. Dracup  
Examination  
8th February  
1954

10 Chief Inspector of Police, attached to  
C.I.D. at Thika. On 6th January Accused was  
brought before me (identified). I charged him  
with being in unlawful possession of two rounds  
of .303 ammunition and administered the usual  
caution. He appeared to understand. Accused  
spoke in Swahili, which I understand. I recorded  
his statement which was voluntary. (Mr. Amin  
has no objection).

This is it (Exhibit 2).

I read it back to Accused in Swahili, he  
agreed it was correct and affixed his thumbprint.  
(Statement read and interpreted).

I do not know Accused from before this case.

Cross-examinedCross-  
examination

Mr. Amin has no questions.

Close of Case for Prosecution

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No. 7

No. 7

LEGAL SUBMISSION BY DEFENCELegal  
Submission by  
Defence  
8th February  
1954

30 Mr. Amin: I wish to make a legal submission  
Search invalid ab initio under Regulation 29,  
Emergency Regulations. Constable (P.W.1) had no  
right to search Accused and therefore anything  
found during search cannot be produced in evi-  
dence. Section 25 G.P.C. not applicable, because  
Accused not under arrest. There is authority  
(Supreme Court, Kenya) for the proposition that  
objects found during an illegal search are not  
produceable in evidence. (Rex v. Hirji Remji  
Shah v. Two Others. Cr. Case 1272/51). I have  
original case record. Regulation 29 for pro-  
tection of public.

Court does not call on Mr. Sandhu.

In the Supreme  
Court of Kenya

No. 8.

DECISION OF THE COURT

No. 8

Decision of  
the Court  
8th February  
1954

DECISION: Mr. Amin has submitted that the search of the Accused by Constable Ogwang and K.P.R. Constable Rattan Singh was irregular. The Accused was not, at that time, under arrest therefore Sections 24 and 25 of the C.P.C. do not apply, as he was not under arrest or detained under suspicion of conveying anything that might have been stolen, or unlawfully obtained. Regulation 29 of the Emergency Regulations, 1952, empowers any Police Officer "of or above the rank of Assistant Inspector" to stop and search any individual. Both Ogwang and Rattan Singh are under the rank of Assistant Inspector. Mr. Amin accordingly relies on a ruling by Windham, Judge in Rex v. Hirji Ramji Shah and Two Others, Supreme Court Criminal Case No. 1272 of 1951, in which it was ruled that certain books and documents seized in the course of an unlawful search were not admissible in evidence and claims that the bullets (Exhibit 1) are not admissible in this case.

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In this case, Ogwang was on duty at a road block near Thika. He says that his duties were to inspect the documents of persons passing by and to search them "by feeling their persons." On 1st January he stopped Accused, inspected his documents which were in order, and felt his pockets from outside. In a pocket in Accused's shorts, Ogwang felt some hard objects which he thought were bullets, he at once seized the Accused and blew his whistle for help. It may be that the original feeling of the garments, when Ogwang had no reason to suspect the Accused was not specifically allowed under any law, but when he felt what he thought might be bullets, he seized the Accused and blew his whistle. This he was entitled to do, under Section 28 C.P.C., as he then suspected the Accused of committing a most serious offence, that of being in unlawful possession of ammunition, a capital offence. What he did was to arrest Accused without a warrant and he therefore had the power of search conferred under Section 24 C.P.C. and under Section 25 (1) (c) C.P.C. This case is distinguishable from Rex v. Hirji Ramji Shah, because in that case the exhibits were seized before the arrest of the Accused. The present case seems to me to be on all fours with that of Elias and

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Others v. Pasmore (1934 2 KB. 164) where it was held that, although an original seizure of documents was unlawful, it was excused as regards documents afterwards used on the trial of the person who was searched, it being in the interest of the State that material evidence be preserved, and that the doctrine of trespass ab initio did not operate so as to render inadmissible exhibits so seized and then produced before the Court.

In the Supreme Court of Kenya

No. 8

Decision of the Court  
8th February 1954

(Continued)

10 I therefore hold:

- (a) that the exhibits were discovered after the Accused had been arrested without warrant for a cognizable offence, and that they are admissible.
- (b) That even if the original search, which led to the arrest, was unlawful, it was no more than a trespass and does not invalidate the production of the exhibits in Court which were found as a consequence of that irregular search.

20

In my opinion Regulation 29 of the Emergency Regulations 1952 is ill-designed to cope with the state of affairs now existing in Kenya. Africans are daily searched as a matter of routine by Constables even at the entrance to the Supreme Court. Consideration should be given at once to the revocation of the words "of or above the rank of Assistant Inspector" as they can only lead to confusion and misunderstanding.

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No. 9

Defendant's Evidence

10th February 1954: Trial resumed.

No. 9

EVIDENCE OF KURUMA S/O KANIU

Evidence of Kuruma S/O Kaniu Examination 10th February 1954.

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My full name is Josaphat Kuruma s/o Kaniu. On 1st January 1954, I was employed on a European's farm. I produce my personal documents (Exhibit A). I have worked on this farm for two years. It is near Thika. To go to and from Thika you have to pass through the Road Block where I was arrested. On 1st January I was going to my Reserve. I had permission to go for the New Year. I was on a bicycle. There are other roads to the Reserve, I could have gone on them.

At the road block I was searched. My kipande was removed. A twenty shilling note was taken out of my hip pocket. I think the Constable has stolen it. The Constable said my papers were in

In the Supreme  
Court of Kenya

Defendant's  
Evidence

No. 9

Kuruma S/O  
Kaniu  
Examination  
10th February  
1954  
(Continued)

order, but asked for a special tax receipt. I did not have one. The askari searched all my pockets but found nothing. He felt them from outside. There was nothing in my small front trouser pocket, not even a penknife. I was not taken to a wired-off enclosure, my shorts were not taken off. I was taken to the Police Station on foot. The Askari wheeled my bicycle. The askari slapped me when I asked for my twenty shillings back. After I was taken to the Police Station the askari produced the rounds, handed them to the Asian who in turn handed them to the European. This was the first time I had seen the rounds. They had told me I was being taken to the Police Station because I had failed to produce my tax receipt. I had not two rounds of ammunition on me that day or ever. I have never even seen ammunition before. There were other Asian K.P.R. at the road block, two others.

10

Cross-  
examination.

Cross-examined

I know that all roads leading out of Thika to the Reserve over the Chania River are closely guarded. I went along the main road because I knew I had nothing unlawful. I have often seen Ogwang and Rattan Singh before on my way to the Reserve and back. The reason for the false accusation is because I asked for my money back, it is then that the askari said I had ammunition on me. I asked for my money back at the Police Station. The European was not present. The rounds were not revealed to Rattan Singh even until we got to the Police Station.

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I made the statement, Exhibit 2, to Mr. Dracup. I received a severe beating before I made the statement. Mr. Barnes (P.W.3) gave me the beating with a kiboko. Afterwards I was taken to Mr. Dracup. I did not tell him I had been beaten. I told my Advocate I had been beaten. I did not tell Mr. Dracup my twenty shilling note had been stolen. I told Mr. Dracup I had no rounds "in my pocket". I used the words "in my pocket" because I knew I was going to be charged with being in possession of ammunition. The Constable at the Police Station had said that the Ammunition was found on me, on my person. He said it had been found in my pocket.

40

Re-examination

Re-examination

There are unguarded roads on the way to my Reserve. The askari told me he was taking me to the Police Station for not having a tax receipt. I had no penknife.

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By the Court

When we started off for the Police Station Rattan Singh knew nothing about the ammunition. It was as much of a surprise to Rattan Singh as it was to me.

In the Supreme  
Court of Kenya

Defendant's  
Evidence

No. 9

Kuruma S/O  
Kaniu. Re-  
examination  
10th February  
1954

(Continued)

No. 10

EVIDENCE OF NJEROGE S/O IKAHU

10 I know the Accused. He is in my Location. I am a headman. I have known him all my life. I have not seen him for the whole of last year. Before that he was attending school. I do not know his age. Before the Emergency he was of a good character.

Cross-examined

I did not see him the whole of 1953. I last saw him at the end of 1952.

No Re-examinationBy the Court

20 I do not know if he has been back to the Reserve lately. There have been no incidents in my location, there was a fight near at Kiruhawa.

No. 11

EVIDENCE OF SAMUEL GATHERU S/O GACHERU

30 I am a teacher, I know the Accused, we live in the same place. For three years he was a pupil at my school. At that time he was an obedient pupil. He was at school in 1946, 1947 and 1948. Then he lived at home. I do not know about his character after he left school and home. I am not in a position to speak about his character after he left my care.

Cross-examined

Nil.

No.10

Njeroge S/O  
Ikahu  
Examination  
10th February  
1954

Cross-  
examination

No.11

S. Gatheru S/O  
Gacheru  
Examination  
10th February  
1954

Cross-  
examination



In the Supreme  
Court of Kenya

Defendant's  
Evidence.

No.11

S. Gacheru S/O  
Gacheru. Re-  
examination  
10th February  
1954

By the Court

Accused left home in 1950. He has been coming to the Reserve sometimes. I have not seen him in 1953. I think he is about twenty years of age.

Re-examination - by leave

He was about thirteen in 1946.

Close of case for Defence

No.12

Speech for  
prosecution  
10th February  
1954.

No. 12

SPEECH FOR PROSECUTION

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Mr. Sandhu: Case for prosecution rests primarily on Askari and Asian K.P.R. Discrepancies, but extraordinary if none. Essential facts free of doubt. Accused obvious liar. Extraordinary tale. What motive for false accusation? Askari supposed to have stolen twenty shillings. No suggestion against Rattan Singh. Askari not cross-examined re twenty shillings. Barnes not cross-examined re ill-treatment. Obvious inference against Accused. Gist of cross-examination that bullets planted on Accused, but this is not Accused's case. Bullets can only have come from Accused. Concealed in unusual "fob" pocket. Witnesses as to character unable or unwilling to speak of Accused's character since 1952. Even of good character immaterial where guilt obvious.

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No.13

Speech for  
Defence.  
10th February  
1954

No.13

SPEECH FOR DEFENCE

Mr. Sheik Amin: Presumption of innocence. Crown to prove guilt beyond all reasonable doubt.  
Evidence: Material witnesses contradict each other to such an extent that neither can be relied on. Accused raised no objection to being searched. No resistance.

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Discrepancies: How was Accused being held? (1)  
Penknife fall to ground or taken out? (2)  
How did askari know what these articles were without seeing them? (3)

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Other roads to Reserve. Unlikely Accused would walk into lion's mouth and risk death by going through road block. Handling of exhibits. Rattan Singh says Chhotubhai picked up bullets, Ogwang says Rattan Singh picked them up. Why Chhotubhai not called? Duty of Prosecution to call all evidence whether favourable or unfavourable. Pen-knife should have been produced. Money: denial by Prosecution that any found. Unlikely. Prosecution case incredible. Doubt everywhere. Invite you to acquit Accused.

In the Supreme Court of Kenya

Defendant's Evidence.

No.13

Speech for Defence  
10th February 1954  
(Continued)

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No. 14

CHARGE TO ASSESSORS

Burden of proof. Reasonable doubt. Discrepancies in Prosecution case.

Evidence for Prosecution ) Even greater discrepan-  
Evidence of Accused ) cies between two cases  
 ) for Prosecution and  
 ) Defence.

20 No taking off of trousers? No trip in car? (Not challenged in cross-examination).

Bullets not mentioned or produced until Police Station reached? First Rattan Singh knew? Different number from askaris.

Stealing twenty shillings? ) No mention to  
 ) Dracup?

Beating by Mr. Barnes? ) No cross-examination?

Demeanour? False Accusation?

Whom can you believe? If reasonable doubt, say so.

No.14

Charge to Assessors  
10th February 1954

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No. 15

FINDINGS OF ASSESSORS

Assessor No. 1: I do not find Accused guilty. The knife should have been produced.

Assessor No. 2: I agree with No. 1. The knife should have been produced with the bullets. I do not believe Prosecution witnesses. I believe the story of the twenty shillings. I do not believe he was beaten.

No.15

Findings of Assessors  
10th February 1954

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In the Supreme  
Court of Kenya

No. 15

Findings of  
Assessors  
10th February  
1954

(Continued)

Assessor No. 3: I do not believe Accused is guilty. The Inspector did not write down in Accused's statement that he has seen the bullets on the Accused (! Sic). The knife should have been produced.

Adjourned to 11th February 1954 for judgment.

No. 16

Judgment  
11th February  
1954

No. 16

J U D G M E N T

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The Accused is charged with being in unlawful possession of two rounds of ammunition contrary to Regulation 8A (1) (b) of the Emergency Regulations 1952, and to this charge he has pleaded not guilty.

The evidence for the Prosecution is chiefly that of two K.P.R. Policemen who form part of the group in charge of the Chania Road roadblock on the Thika-Nyeri Road, an African Constable named Ogwang and a Sikh called Rattan Singh.

Ogwang says that on 1st January, Accused approached the roadblock on a bicycle. His documents were checked and were in order. He submitted without resistance or objection to his clothes being searched by being felt from outside. Ogwang says that in the front part of Accused's shorts he felt three hard objects like a penknife and two rounds of ammunition. He at once seized that part of Accused's clothing in a firmer grip and blew his whistle. The Asian Constable, Rattan Singh, came up. Ogwang told Singh that he had felt something like ammunition, and they took Accused to a wired enclosure at the roadblock and told him to remove his shorts. Ogwang turned out the small fob pocket and a penknife and two rounds of .303 ammunition fell out. Singh picked up the rounds. They then took Accused to Thika Police Station in a Police car and handed over the Accused and the two rounds to a European Police Officer, Mr. Barnes.

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Rattan Singh's account varies somewhat. He heard the whistle blown by Ogwang and went to him. He saw Ogwang holding the Accused by the hand and neck. They took Accused to the barbed wire enclosure where they made him remove his shorts.

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Ogwang took a penknife out of the fob pocket and then turned out the pocket, whereupon two rounds fell to the ground. Another K.P.R. Asian Constable, Chotubhai, who had come to watch the search picked up the two rounds and handed them to Singh. Singh and Ogwang took Accused to Thika Police Station in a Police car and there handed him over to Mr. Barnes.

In the Supreme  
Court of Kenya

No. 16

Judgment  
11th February  
1954  
(Continued)

10 Both Ogwang and Singh say that no money was found on Accused.

Mr. Barnes describes how Singh came to the Police Station and handed him two rounds, and Mr. Albrechtsen how he fired one round which went off. Mr. Dracup took a voluntary statement from the Accused in which he denied having had any ammunition in his possession.

20 I should also mention that Ogwang produced in Court the ten rounds of .303 with which he has been issued. They all bear the marks GB 51 7, whereas the two rounds allegedly found on the Accused are marked U40 VII.

30 The Accused gave evidence on oath. He is a young man of some twenty years age and he says that on 1st January he was given leave from the farm where he is employed and was on his way to his home in the Reserve. At the Chania road-block his papers were examined, but he could not produce a special tax receipt. For this he was arrested and taken on foot to the Police Station, escorted by Ogwang and Singh. Ogwang had searched him and removed a twenty shilling note. At the Police Station Accused asked for the return of his twenty shilling note, but Ogwang refused to return it. Instead he produced the two rounds of .303 saying he had found them on the Accused. This was the first time ammunition had been mentioned or produced, so that Singh must have been as surprised as the Accused. Accused was then handed over to Mr. Barnes, who gave him a beating with a kiboko.

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The Accused called two witnesses as to character, his Location Headman, Njeroge and his former school master, Samuel. Neither had seen him for over a year and they could give no estimate of his recent character. Before the Emergency Accused had been of good character. If, as the Accused says, he has paid several visits to the Reserve recently, these must have been of a very quick and confidential nature as neither his

In the Supreme  
Court of Kenya

Headman nor his former school master have seen him since 1952.

No.16

Judgment  
11th February  
1954  
(Continued)

Mr. Sheikh Amin for the Accused has argued that certain discrepancies in the Prosecution evidence are so grave that the witnesses cannot be relied on at all. He instances the different descriptions by Ogwang and Singh as to how Accused was being held, differences in their descriptions of the search leading to the discovery of the rounds, particularly the fact that Ogwang says a penknife and the two rounds fell out of the fob pocket when he turned it inside out, whereas Singh says Ogwang first took out the knife and then turned out the pocket, and also that Ogwang says Singh picked the rounds up, whereas Singh says one Chotubhai did so. In my view these discrepancies are only to be expected from witnesses who are relying on their recollection and not repeating a pre-concerted story. Mr. Amin also argues that it is very remarkable that Ogwang should have recognized a penknife and two rounds by the feel, but is it so extraordinary that a man who handles .303 every day should recognize rounds by the feel? I do not think so.

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I was very impressed by Ogwang who gave his evidence well and most fairly. He conceded throughout that Accused was quiet and did not try to resist or escape, whereas if he is falsely accusing the Accused, one would expect him to pretend that the Accused's behaviour was that of a guilty man. This he has not tried to do at all.

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The Accused on the other hand was a bad and untruthful witness. He told one blatant lie, when he said he had been beaten by Mr. Barnes, a matter of which he did not complain to Mr. Dracup or anyone else and which was never put to Mr. Barnes in cross-examination. He denies that he was made to take down his shorts in a wired enclosure, or that any ammunition was produced or even mentioned until they reached the Police Station, to which he says they walked. On all these points I disbelieve the Accused and accept the evidence of Ogwang and Singh. Similarly I do not believe the Accused's story that he was robbed of twenty shillings by Ogwang, a matter not put to Ogwang in cross-examination or reported to Mr. Dracup or anybody else.

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The Assessors advise me that they consider the Accused innocent, and the reason they all give

is that the penknife was not produced in Court. The penknife has nothing to do with the charge against the Accused and both Ogwang and Singh swear it was given back to the Accused. I am sorry to have to differ from the Assessors. In my opinion the Accused is an untrustworthy witness and nothing he has said has raised any doubt in my mind as to the truth of the Prosecution case. It is not for him to prove his innocence, but on a review of all the evidence I am satisfied that the Crown has discharged its duty of proving the Accused's guilt beyond all reasonable doubt.

In the Supreme Court of Kenya

No. 16

Judgment  
11th February  
1954  
(Continued)

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There is nothing to indicate in the evidence that the Accused's possession of these two rounds may have been lawful, and I hold that it was not. I find the Accused guilty of possessing two rounds of .303 ammunition on 1st January as charged, without lawful authority or excuse, contrary to Regulation 8A (1) (b) of the Emergency Regulations, 1952 and I convict him accordingly.

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No. 17

ALLOCATUS

Even if you convict me I am not guilty. Had I ammunition I would not have passed by the roadblock.

No. 17

Allocatus  
11th February  
1954

No. 18

SENTENCE

That you be hanged by the neck until you are dead.

No. 18

Sentence  
11th February  
1954

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No. 19

JUDGMENT ON APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR  
EASTERN AFRICA AT NAIROBI.

CRIMINAL APPEAL No.128 of 1954.

(From Emergency Assize Criminal Case No. 16 of  
1954 of H.M. Supreme Court of Kenya at  
Nairobi)

In Her  
Majesty's Court  
of Appeal for  
Eastern Africa  
at Nairobi

No.19

Judgment  
27th March 1954

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KURUMA S/O KANIU ... Appellant

versus

REGINA ... Respondent

The appellant herein was convicted at an Emergency Assize of the Supreme Court of Kenya sitting at Nairobi of the offence of being in unlawful possession of ammunition contrary to

In Her  
Majesty's Court  
of Appeal for  
Eastern Africa  
at Nairobi

No. 19

Judgment  
27th March 1954  
(Continued)

Regulation 8A(1)(b) of the Emergency Regulations 1952 and was sentenced to death. The trial Judge duly certified the case under section 378(1) (b) of the Criminal Procedure Code as one fit for appeal on questions of fact and mixed law and fact and the memorandum of appeal filed by Mr. Amin as advocate for the appellant includes grounds of fact as well as grounds of law. Of the former it is sufficient to say that there is no substance in them and no sufficient reason has been shewn to justify any interference by this Court with the learned Judge's findings of fact. We heard full argument on the questions of law raised, but being of opinion at the conclusion of the discussion that there was no substance in them, we dismissed this appeal, but reserved our reasons for a written judgment, which we now proceed to give.

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The substance of the appellant's objections in law is contained in paragraph 5 of the memorandum of appeal which reads: "That the learned trial Judge erred in law and in fact in allowing the production of exhibits in Court which were found, if at all, as a result of an illegal and irregular search." Subsidiary to this is ground 4 in which it is averred that the learned trial Judge erred in law and in fact in directing his mind wrongly and against the evidence in holding that the search of the appellant was made after his arrest and that section 24 of the Criminal Procedure Code was duly complied with.

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The facts material to an appreciation of these grounds of appeal are that in the particulars annexed to the statement of offence in the information it was alleged that the appellant "at Chania Bridge in Thika in the Central Province, had in his possession ammunition, etc." The evidence led in support of the charge shewed that the appellant was stopped and searched by a police constable as he was passing along the public road at a road block, and two rounds of ammunition were found in a trousers pocket. No precise evidence was given as to the position of this road block, one constable saying merely that it was "at Chania Road, near Thika" and "on the main road to Thika near the road junction near the Blue Posts Hotel", and a Kenya Police Reserve Officer saying that it was on the main Thika-Nyeri Road.

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At the close of the case for the prosecution Mr. Amin, who appeared for the defence, submitted that the search of the appellant was, ab initio, invalid, the police constable having no right to search the appellant, and that therefore nothing found on him as a consequence of that search could be produced in evidence. He referred to Emergency Regulation 29 which confers powers of search upon any police officer of or above the rank of assistant inspector, and to section 25(1)(c) of the Criminal Procedure Code which provides that any police officer may stop, search and detain any person who may be reasonably suspected of having in his possession or having in any manner "anything stolen or unlawfully obtained". The learned trial Judge overruled this objection, holding (a) that the exhibits were discovered after the accused had been arrested without warrant for a cognizable offence, and that they were admissible, and (b) that even if the original search which led to the arrest was unlawful, it was no more than a trespass and did not invalidate the production of the exhibits in Court which were found as a consequence of that irregular search.

Before considering these findings, it is convenient to refer to Mr. Webber's submission that the search of the appellant was perfectly legal. Since the offence was committed in a "special area" gazetted under Emergency Regulation 22(b)(1) the police constable, being an authorized officer for the purposes of that Regulation, was empowered by virtue of sub-Regulation (2) to stop and search any person within that area. He referred us to the Special Areas (No.13) Order 1953, Government Notice No.1283, published in the Official Gazette of the 11th August 1953, and to paragraph (b) of the schedule thereto which declares, inter alia, the administrative districts of Thika and Kiambu to be special areas. In our view, however, in the circumstances of this case it is too late at this stage for the Crown to be allowed to rely on this contention. It is plain that counsel who conducted the prosecution at the trial, even if he was instructed that the offence had occurred within a special area, did not base his arguments upon that fact, and the attention of the learned trial Judge was never called to the relevant Gazette notifications, nor was there any evidence before him as to whether this particular road block was in the administrative district of either Thika or Kiambu. Mr. Webber has informed us that he believes it is

In Her  
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—————  
No. 19

Judgment  
27th March 1954  
(Continued)



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Majesty's Court  
of Appeal for  
Eastern Africa  
at Nairobi

—  
No. 19

Judgment  
27th March 1954  
(Continued)

situated at the Chania River bridge on the borders of these two districts; that may well be, but there is no evidence on the record, and in Criminal Appeal No.196 of 1951, Saleh Mohamed v. Rex, this Court disapproved of a dictum of the Supreme Court of Kenya that a magistrate was entitled to have judicial knowledge of the location of all the towns and villages in Kenya. We think therefore that the point taken by Mr. Webber is not open to the Crown at this stage.

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Returning now to the consideration of the two grounds of appeal set out above, we are of opinion that since the special power of search under Emergency Regulation 22(b) (2) cannot be invoked at this state the initial stopping and searching of the appellant, was unlawful and irregular. It is quite plain from the evidence that he was stopped as a matter of routine in consequence of a general direction to the constables on duty at the road block to stop and search all or as many as they thought fit of the persons passing along the road. As the constable ran his hands over the appellant's person he felt in a trousers pocket "what seemed to be a pocket knife and two rounds of ammunition". From that moment he had a reasonable suspicion of the commission of a cognizable offence, and immediately seized the appellant, called for assistance, and a subsequent further search disclosed the two rounds of ammunition in question. But we agree with the second conclusion of the learned trial Judge that even if the original detention and search which led to the discovery of the ammunition and the arrest were unlawful and amounted to a trespass and an assault, this fact did not invalidate the production in Court of the incriminating articles which were found as a consequence of those irregular acts.

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It is well settled that an unlawful arrest does not affect the jurisdiction of a Court if it is competent otherwise to entertain the charge: see The Queen v. Hughes, (1879) L.R. 4 Q.B.D. 614 (which was a case where the defect lay in an arrest made upon a warrant illegally issued) and Reg. v. Sattler, (1858) 7 C.C.C. 439 (which was a case of unlawful arrest without a warrant). A useful review of other English cases on this point is to be found in the judgment of Scott, C.J. in Emperor v. V.D. Savarkar, 1911, I.L.R. XXXV Bom. 225.

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It seems to us therefore, by parity of reasoning, that if a Court is not precluded, by the fact

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of the accused having been brought unlawfully before it, from adjudicating upon the charge made against him, there can be no good reason for holding that it is not entitled to receive evidence of articles found upon him or discovered in consequence of the search made at the time of that unlawful arrest. There is not much authority on the point, but the matter does seem to us to be concluded by the decision of Horridge J. in Elias and Ors. v. Pasmore, (1934) L.R. 2 K.B. 164, which was relied upon by the learned trial Judge. That was a decision at nisi prius, but it has stood for twenty years and so far as we are aware has never been questioned. In that case, in order to effect the arrest of one Hannington, the defendants, who were police officers, entered the plaintiffs' premises. While there they seized and carried away documents found on the premises, being (a) documents which were afterwards used on the trial of the plaintiff Elias, (b) a document found on Hannington and used on his trial, and (c) documents which did not constitute evidence on these trials. At the conclusion of the trials the documents under (a) and (b) were not returned; those under (c) were returned soon after seizure. The plaintiffs brought the action for damages for trespass to the premises and for the return of the documents used on the trial of the plaintiff Elias, and for damages for their detention. It was held that although the original seizure of the documents was unlawful, this was excused as regards documents under (a) and (b), it being to the interest of the State that material evidence should be preserved. As Horridge J. put it at p.173, "In my opinion the seizure of these exhibits was justified, because they were capable of being and were used as evidence in this trial. If I am right in the above view, the original seizure of these exhibits, though improper at the time would therefore be excused." The learned Judge fortified his opinion by reference to the speeches of Lord Chelmsford and Lord Colonsay in the Scottish case of Pringle v. Bremner and Stirling, 5 M. (H.L.) 55, and we may briefly cite the following from the speech of Lord Chelmsford in that case -

"But supposing that in a search which might have been improper originally, there were matters discovered which shewed the complicity of the pursuer in a crime, then I think the officers, I can hardly say would have been justified, but would have been excused by the result of their search. Then

In Her  
Majesty's Court  
of Appeal for  
Eastern Africa  
at Nairobi

No. 19

Judgment  
27th March 1954  
(Continued)

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In Her  
Majesty's Court  
of Appeal for  
Eastern Africa  
at Nairobi

—  
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27th March 1954  
(Continued)

again, with regard to the arrest and imprisonment of the pursuer, - as to that it is not alleged that there was any warrant at all; but then, it is said, the constable having discovered matters which, in his judgment, brought home to the pursuer complicity in the alleged crime, he was justified in exercising his discretion upon the subject, and in apprehending the pursuer and lodging him in prison. Again, I say, answering in the same way as I answered with regard to the searching for papers, the result will either justify him or will not justify him; if the papers he seized really proved or gave a fair and reasonable ground to believe that the pursuer was implicated in the grave crime which was charged, then, although the officer might have had no warrant for his apprehension (and he had no warrant upon this occasion), yet the event would justify him and he would protect himself by the circumstances afterwards discovered." 10 20

It is scarcely necessary to add that the assumption underlying the speeches of the two noble Lords is that the articles improperly seized could be used in evidence at a subsequent criminal trial; and in fact in Elias's case, as Horridge J. points out, the documents actually were used as evidence at his trial.

There is perhaps one further point to which we should refer, namely to the judgment of Windham J. in Kenya Supreme Court Criminal Case No. 190 of 1951 upon which Mr. Amin sought to rely. We deem it sufficient to say that the case dealt with an entirely different set of circumstances; it has no relevance to the issue before us and it is unnecessary for us to consider the correctness or otherwise of the judgment. 30

J.H.B. NIHILL PRESIDENT  
N.A. WORLEY VICE-PRESIDENT 40  
F.A. BRIGGS JUSTICE OF APPEAL

NAIROBI  
27th March, 1954.

No. 20  
ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO  
APPEAL IN FORMA PAUPERIS

In the Privy  
Council

IN THE PRIVY COUNCIL

AT THE COURT AT ARUNDEL CASTLE

The 30th day of July 1954.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

No. 20

Order in Council  
granting Special  
Leave to Appeal  
in forma  
pauperis  
30th July 1954.

10	Lord President	Mr. Secretary Lennox-Boyd
	Earl Marshal	Mr. Secretary Stuart
	Earl of Rosebery	Mr. Heathcoat-Amory
	Chancellor of the Duchy of Lancaster	Mr. Low

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of July 1954 in the words following viz:-

20 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Kuruma s/o Kaniu in the matter of an Appeal from the Court of Appeal for Eastern Africa at Nairobi between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters): that the Petitioner prays for special leave to appeal in forma pauperis from a Judgment of the Court of Appeal for Eastern Africa at Nairobi given on 30 27th March 1954 dismissing the Petitioner's Appeal against his conviction on 11th February 1954 (the unanimous opinion of the three Assessors being overruled) by the Supreme Court of Kenya (Emergency Assizes) on a charge of unlawful possession of ammunition contrary to Regulation 8A (1) (b) of the Emergency Regulations 1952 whereupon the Petitioner was sentenced to death: that 40 the ammunition alleged to have been found upon the Petitioner was 2 rounds of .303 ammunition which Police Constable Ogwang alleged that he found in the pocket of the Petitioner's shorts on 1st January 1954 when he stopped him at a road block and searched him: that the Emergency Regulations 1952 (number 29) confer a power of search without warrant only upon a police officer of or

In the Privy  
Council

No. 20

Order in Council  
granting Special  
Leave to Appeal  
in forma  
pauperis  
30th July, 1954  
(Continued).

above the rank of assistant inspector; that Police Constable Ogwang had no search warrant and was not empowered by the Emergency Regulations or by any other provision of the law to conduct the said search which was therefore illegal and an assault upon the Petitioner and a trespass; that evidence obtained in the course of such an illegal search ought not to be admitted in support of a criminal charge later preferred against the person searched; that there was no other evidence against the Petitioner who was convicted solely upon the evidence obtained in the course of the illegal search; And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis against the Judgment of the Court of Appeal given on 27th March 1954 and against his conviction for unlawful possession of ammunition in the Supreme Court of Kenya on 11th February 1954 and for such other and further Order as to Your Majesty in Council may seem fit:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal for Eastern Africa at Nairobi dated the 27th day of March 1954:

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"AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal".

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Kenya for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E X H I B I T SExhibits

2.

Statement of  
Accused  
6th January  
19542. - STATEMENT OF ACCUSED

6.1.54 I, Roger Hayward Dracup, a Chief  
12.30 p.m. Inspector of Police attached to the  
Thika C.I.D. at Thika do hereby charge you,  
Kuruma Kaniu, with the offence of  
being in unlawful possession of two rounds of .303  
ammunition at Thika within the Central Province on  
1.1.1954, which is an offence in contravention to  
10 Regulation 8.A.1.B of the Emergency Regulations  
1952, and I do hereby warn you that you may or may  
not make a statement in answer to this charge, as  
you so desire, but that should you elect to do so,  
it will be reduced to writing and may be used in  
evidence against you.

R.H. DRACUP. C.I.

I have had the above charge and caution read  
over to me in Swahili and I understand what has  
been said. In answer to the charge I wish to make  
20 the following statement:

(Thumb print)

"I cannot agree to this charge because I did  
not have any rounds in my pocket. If I had some I  
would agree to it but I cannot agree to something  
about which I know nothing. If I am taken to my  
Chief or Headman they will tell you that I am not  
the sort of man who would carry bullets. I am a  
man of work".

(Thumb print)

30 R.O.C.  
R.H. DRACUP. C.I.

The above statement has been read over to me  
in Swahili and I understand it; it contains a  
true record of what I have said in answer to the  
charge and I have made this statement freely and  
voluntarily and without fear, threat, promise or  
inducement.

(Thumb print)

R.O.C. R.H. DRACUP. C.I.

40 I took the above proceedings in Swahili. I  
have passed the Government Standard Swahili  
Examination.

R.H. DRACUP (C.I.)

IN THE PRIVY COUNCIL

No. 35 of 1954

ON APPEAL FROM HER MAJESTY'S COURT  
OF APPEAL FOR EASTERN AFRICA AT  
NAIROBI

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B E T W E E N :-

KURUMA S/O KANIU ... Appellant

- and -

THE QUEEN ... .. Respondent

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RECORD OF PROCEEDINGS

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GASTER & TURNER,  
81, Chancery Lane,  
London, W.C.2.  
Appellant's Solicitors.

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand, W.C.2.  
Respondent's Solicitors.