

29, 1960

IN THE PRIVY COUNCIL

NO. 26 OF 1960

ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N:

PETER HAROLD RICHARD POOLE (Accused)	<u>Appellant</u>
- and -	
THE QUEEN (Prosecutrix) ..	<u>Respondent</u>

SUPPLEMENTARY RECORD OF PROCEEDINGS

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Solicitors for the Respondent.

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
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B E T W E E N:

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(Accused) Appellant

- and -

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IN THE PRIVY COUNCIL

NO. 26 OF 1960

ON APPEAL
FROM THE COURT OF APPEAL FOR EASTERN AFRICA
AT NAIROBI

B E T W E E N:

PETER HAROLD RICHARD POOLE
(Accused) Appellant

- and -

THE QUEEN (Prosecutrix) .. Respondent

SUPPLEMENTARY RECORD OF PROCEEDINGS

No. 1

INFORMATION

COLONY AND PROTECTORATE OF KENYA
I N F O R M A T I O N
IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI

The 30th day of November 1959

Criminal Case No.242 of 1959

In the Supreme
Court of Kenya
at Nairobi

No. 1

Information,
18th November
1959.

At the Sessions holden at Nairobi on the 30th
day of November, 1959, the Court is informed by
the Attorney-General on behalf of Our Lady the
Queen that PETER HAROLD RICHARD POOLE is charged
with the following offence:-

STATEMENT OF OFFENCE

MURDER contrary to section 199 of the Penal Code.

PARTICULARS OF OFFENCE

PETER HAROLD RICHARD POOLE on or about the 12th day of
October, 1959, at Nairobi, in the Nairobi Extra
Provincial District, MURDERED KAMAWE S/O MUSUNGE.

Dated at Nairobi this 18th day of November, 1959.

Sd. J.P. Webber,
Deputy Public Prosecutor
for Attorney-General

* * * * *

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In the Supreme Court of Kenya at Nairobi

No. 1

Information, 18th November 1959 - continued.

Criminal Case No.242 of 1959.

To PETER HAROLD RICHARD POOLE, R.M. NAIROBI CR.C.2357/59 Kilimani CDA487/59 (CA.340/59) c/o H.M. Prison, Nairobi.

TAKE NOTICE that you will be tried on the above information at the Sessions of the Supreme Court of Kenya to be holden at Nairobi on the 30th day of November 1959, at 10.00 o'clock in the forenoon.

Sd. P. HEIM, Deputy Registrar, Supreme Court of Kenya.

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19th day of November, 1959.

For List of Prosecution Witnesses see Reverse.

LIST OF PROSECUTION WITNESSES:

- 1. I/P: CYRIL ARTHUR HEWLETT
2. DR. MAURICE GERALD ROGOFF
3. JOHN DAVID CLARK
4. VENA ANNE HOOK
5. FREDERICK AISTEN HOPPER
6. BRIAN EDWARD CLARK
7. TIRORO S/O SABAI
8. MARJORIE DOWNS
9. DR. JOHN DERMOT McCALDIN
10. I/P: PETER BERWICK LAURENCE
11. ELLEN ANNIE PEREZ
12. NO.2937 KARIUKI S/O NJENGI
13. I/P: ROBERT JOHN WHITFORD
14. SNR. SUPDT. JOHN HARRY BAKER
15. GOVT. ANALYST: N.KIRBY (NO.1.146)

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Witness summonses will be served by -

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No. 2

Judges Notes of Proceedings, 30th November 1959.

No. 2

JUDGES NOTES OF PROCEEDINGS

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI CRIMINAL CASE NO.242 OF 1959 (FROM ORIGINAL CRIMINAL CASE NO.2357 OF 1959 of Resident Magistrate's Court at Nairobi)

REGINA PROSECUTRIX
versus
PETER HAROLD RICHARD POOLE ACCUSED

30.11.59 at 10 a.m.

Brookes for Crown

Sirley for Accused

Accused arraigned

Plea: Not Guilty.

Jury panel enter and roll called. Jurors chosen:-

1. W.M. Hinchcliffe
2. W.L. Titman
3. A.F.M. Thomas
4. J.L. Brierley
5. A.E. Ironmonger
6. J. Patterson (Challenged - stood down)
7. B.A. Gent (Challenged - stood down)
8. J.A. Davies
9. E.A. Roberts
10. H.G. Dobson (Challenged - stood down)
11. S.W. Holloway
12. V.G. Braun

Accused warned as to challenges.

Sirley:

Two peremptory challenges:

1. H.G. Dobson
2. J. Patterson

Brookes:

I have one peremptory challenge:

B.A. Gent.

Court:

Dobson, Patterson and Gent stood down and following chosen:-

1. G.A. Longfellow
2. D. Danskin
3. J. Nyhuus

Foreman D. Danskin.

Accused given in charge.

Brookes opens for Crown:-

Story comes from 3 sources - a nursing sister, an African and the Accused. Discrepancies in un-essentials.

Brookes calls:

At this stage Juror W.M. Hinchcliffe states that he

In the Supreme
Court of Kenya
at Nairobi

No. 2

Judges Notes
of Proceedings,

30th November
1959 -
continued.

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In the Supreme Court of Kenya at Nairobi

No. 2

Judges Notes of Proceedings,

30th November 1959 - continued.

has a conscientious objection to giving a verdict of guilty in this case on a religious objection.

R.O. Sinclair
C.J.

Court resumes after a short adjournment.

Sirley:

Statement does not incapacitate Juror in question, from sitting on Jury and proceeding with trial. If Court holds he is incapacitated then trial should proceed with 11 Jurors.

10

Brookes:

Ask for adjournment until 2.15 p.m. to consider position.

Court:

Adjourned to 2.15 p.m.

R.O. Sinclair
C.J.
11.20 a.m.

Resumed at 2.30 p.m.

Brookes:

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Submit no power to discharge Juror as he is not incapable. Court may have inherent power to discharge Jury. Think it is safer to enter a nolle prosequi and do so now.

Sirley:

10 Halsbury 3rd edition pp. 398, 399.

Submit no inherent power to discharge the Jury in these circumstances.

This is not one of the cases in which a nolle prosequi can be entered.

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Court:

In view of the entry of a nolle prosequi, the Accused is discharged in respect of the charge for which the nolle prosequi is entered.

R.O. Sinclair
C.J.

No. 3

REGISTRAR'S WARRANT

COLONY AND PROTECTORATE OF KENYA

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
Criminal Case No.242 of 1959.

In the Supreme
Court of Kenya
at Nairobi

No. 3

Registrar's
Warrant,

30th November
1959.

WHEREAS PETER HAROLD RICHARD POOLE has this day been charged with Murder contra section 199 of the Penal Code and has been remanded till the 7th day of December, 1959

10 This is to authorize and command you to receive him into your custody and to produce him in this Court at 9.30 a.m. on the day named.

Dated this 30th day of November 1959.

Sgd. P. HEIM
DEPUTY REGISTRAR,

The Officer-in-Charge, SUPREME COURT OF KENYA.
H.M. Prison, Nairobi.

Bail may be accepted, accused in his own bond in Sh.....with surety/sureties in Sh.....
20 or, at accused's option, Sh.....cash.

Resident Magistrate, Nairobi.

Further remanded until 8.12.59.

Date 7.12.59. (Signature) Sd. P. HEIM
DEPUTY REGISTRAR.

Further remanded until 9.12.59.

Date 8.12.59. (Signature) Sd. P. HEIM
DEPUTY REGISTRAR.

Further remanded until 10.12.59

Date 9.12.59. (Signature) Sd. P. HEIM
DEPUTY REGISTRAR.

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In the Court of
Appeal for
Eastern Africa
at Nairobi

No. 4

MEMORANDUM OF APPEAL

No. 4

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

Memorandum of
Appeal,

CRIMINAL APPEAL NO.217 of 1959

22nd December
1959.

(Appeal from a Conviction of the Supreme Court of
Kenya at Nairobi CHIEF JUSTICE SIR RONALD SINCLAIR
sitting with a Jury)

Dated the 10th day of December 1959

in

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Criminal Case No.242 of 1959

B E T W E E N

REGINA

PROSECUTRIX

AND

PETER HAROLD RICHARD POOLE

ACCUSED

PETER HAROLD RICHARD POOLE

APPELLANT

AND

REGINA

RESPONDENT

MEMORANDUM OF APPEAL.

PETER HAROLD RICHARD POOLE the Appellant above
named appeals to Her Majesty's Court of Appeal for
Eastern Africa against the conviction above-men-
tioned whereby the Appellant was convicted of
Murder and sentenced to death on the following
grounds:-

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1. THAT the learned Judge erred in law in ruling
that under the provisions of Section 82(1) of
the Criminal Procedure Code the entering of
the nolle prosequi did not constitute a bar
to the filing of a fresh information in res-
pect of the same charge.
2. THAT there was a miscarriage of justice in
that the learned Judge interfered unduly with
the cross-examination by the Advocate for the
Appellant of two prosecution witnesses namely:

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P.W.5 - TITORO s/o SABAI

P.W.6 - VENA ANNE HOOK

In the Court of
Appeal for
Eastern Africa
at Nairobi

No. 4

Memorandum of
Appeal,

22nd December
1959 -
continued.

3. THAT the learned Judge failed to record the answers given by P.W.6 in answer to the questions put in cross-examination by the Advocate for the Appellant but recorded only modified answers given as a result of numerous supplementary questions put to the said witness by the learned Judge and that as a result the cross-examination of the witness lost its impact on the Jury.
- 10 4. THAT the learned Judge in taking the part which he took in the cross-examination of the said P.W.5 and P.W.6 "entered into the arena" nullified the effect of and interfered with the tactics of the cross-examination of the Advocate for the Appellant causing serious prejudice to the conduct of the Appellant's case.
- 20 5. THAT the learned Judge erred in not withdrawing the Charge of Murder from the Jury and in not ruling that there was insufficient evidence to go to the Jury on a charge of Murder.
6. THAT the learned Judge failed to put before the Jury the case of the prosecution and of the defence.
7. THAT the learned Judge failed to direct the Jury that a tortious act would amount to sufficient provocation in law.
- 30 8. THAT the learned Judge in view of the discrepancies in the prosecution's evidence failed to direct the Jury adequately as to the legal consequences depending on which facts they accepted or rejected.
9. THAT the learned Judge failed to direct the Jury as to the legal consequences depending on whether they believed the Appellant's statement or part thereof or not.
- 40 10. THAT the learned Judge failed to direct the Jury on the legal consequence of a belief on the part of the Appellant that he was entitled to arrest the deceased as distinct from the question whether the Appellant was in fact and law entitled to arrest the deceased.

In the Court of
Appeal for
Eastern Africa
at Nairobi

No. 4

Memorandum of
Appeal,

22nd December
1959 -
continued.

11. THAT the learned Judge mis-directed the Jury in referring to the issues of self-defence and provocation as defences.
12. THAT the learned Judge failed to give the Jury adequate guidance on how the fact whether or not the accused was acting lawfully in attempting to arrest the deceased would affect the issues of self-defence and provocation.
13. THAT the learned Judge failed to direct the Jury on the intrinsic improbability of the evidence of P.W.5 and P.W.6 as a result of certain evidence given by these witnesses having been proved to be untrue and failed to direct the Jury that they must carefully scrutinise the evidence of these witnesses. 10
14. THAT the learned Judge erred in directing the Jury that in the absence of evidence to the contrary they could infer malice as a result of the shooting of the deceased in the way that he was shot by the Appellant. 20
15. THAT the verdict of the Jury was perverse and unreasonable and cannot be supported having regard to the evidence.

DATED this 22nd day of December, 1959.

(Sgd.) B. Sirley.

SIRLEY & KEAN

ADVOCATES FOR THE APPELLANT.

The address for service of the Appellant is c/o Sirley & Kean, Advocates, Princes' House, Government Road, Nairobi. 30

FILED this 22nd day of December 1959, at Nairobi.

Sgd. P. HEIM.
Dy. Registrar.

No. 5

SUPPLEMENTARY MEMORANDUM OF APPEAL

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

CRIMINAL APPEAL NO.217 OF 1959.

(Appeal from a conviction of the Supreme Court of Kenya at Nairobi, the Honourable the Chief Justice, dated 10th December 1959)

in

Criminal Case No.242 of 1959

Between

REGINA

PROSECUTRIX

And

PETER HAROLD RICHARD POOLE

ACCUSED

PETER HAROLD RICHARD POOLE

APPELLANT

And

REGINA

RESPONDENT

SUPPLEMENTARY MEMORANDUM OF APPEAL

PETER HAROLD RICHARD POOLE the Appellant above named appeals to Her Majesty's Court of Appeal for Eastern Africa against the decision above-mentioned whereby the Appellant was convicted of Murder and sentenced to death on the following grounds in addition to the grounds set out in the Memorandum of Appeal dated the 22nd December 1959.

(1) That whilst the prosecution witness number 5, namely TITORO s/o SABAI was giving evidence the Learned Judge permitted the said witness to answer questions which he put to him and to demonstrate places and distances outside the Court in presence of the Jury but in the absence of the Accused. The said evidence and demonstration lasted approximately 40 minutes. The absence of the Accused was such a departure from the essential principles of justice that the verdict cannot be allowed to stand, and it was not remedied by the learned Judge allowing to repeat the questioning and demonstration in the presence of the Accused after he had become aware that the Accused had been absent. The allowed repetition occupied only a fraction of the time which

In the Court of
Appeal for
Eastern Africa
at Nairobi

No. 5

Supplementary
Memorandum of
Appeal,

2nd January
1960.

In the Court of
Appeal for
Eastern Africa
at Nairobi

—————
No. 5

Supplementary
Memorandum of
Appeal,

2nd January
1960 -
continued.

the first questioning and demonstration had occupied.

(2) That the learned Judge did not deal properly with the Accused's absence from the witness box and that the Judge having made some comment on the matter ought at least to have pointed out to the Jury that the Accused was not bound to give evidence and that it was for the prosecution to make out the case beyond reasonable doubt.

DATED this 2nd day of January 1960.

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Sgd. L. Kean

SIRLEY & KEAN

(Advocates for the Appellant)

The address for service of the Appellant is care of Sirley & Kean, Princes' House, Government Road, Nairobi.

Filed the 2nd day of January 1960, at Nairobi.

(Sgd.) R.M. Patel
for Ag. Registrar.
