

EAST AFR PROT

28482

28482

21 JUN 15

Governor 412

Belfield

1915

18th May

Last previous paper.

Sur
11008TRIAL OF GOVIND WASUDEO THATTE
MURDERER OF MR J.O. HUGHES

States question of hearing of appeal has not
been overlooked. Encloses copies of letters from the
Attorney General and Chief Justice Hamilton showing
delay to be unavoidable.

Mr. Ridley

Party?

G. J. R.

22/6/15

Sir G. Diller

I think they did not look and the
complaints that they are able to do
necessity of having a second appeal
spending. The fact that the 24th
called attention to the matter will
help to keep them up to the
mark?

at once
D. J. R.
22/6/15

183

28482
HOUSE 21 1115

BRITISH EAST AFRICA

1915

In your despatch No. 190 of the
 1st inst. you have the honor to inform me that
 the Government of the Cape Colony have
 appealed to the High Court of South Africa
 against the decision of the High Court of
 the Cape Colony in the case of the
 Cape Colony v. the Government of the Cape Colony
 and that the High Court of the Cape Colony
 has refused to grant a writ of habeas corpus
 in favor of the Cape Colony.

2. The Government of the Cape Colony
 will be glad to receive a copy of the
 decision of the High Court of the Cape Colony
 in the case of the Cape Colony v. the Government of the Cape Colony.

LEGATION F. C., 22, RUE DE
 LA PAIX, PARIS
 LE 10 JANVIER 1915
 LONDRES, 10 JANVIER 1915

ENCLOSURE

109

In Despatch No. 43 of D. S. 1915

20182
21 JUN 15

May 4th 1915.

The Hon: Chief Secretary,

Reference No. S. 2154/02. Your Memo of the 26th
ultimo.

Re Delay in the Trial of Govind Wasudes Thatta

1. With reference to the remarks of the Secretary of State contained in his No. 190 of the 26th March, ^{last} on the delay occurring between the trial and the hearing of Thatta's appeal I am able to say that the principle that a criminal appeal, and especially an appeal from a sentence of death, should be heard as speedily as possible has always been recognised in the Protectorate and in so far as the difficulties inseparably connected with the formation of an Appeal Court at short notice permit such principles have always been put into practice.

2. The Courts the Judges of which form the Appeal Court have the following judicial staff:-

East Africa	three Judges
Uganda	two Judges.
Nyasaland	one Judge.
Zanzibar	two Judges.

3.

to have been held. The case cannot sit on
 necessary is an appeal from
 to bring one judge
 from the court and
 necessary
 also done by the
 of 1907.
 The Justice
 of was ATTRAC
 the High
 into
 on
 appeal court.
 to
 appeal
 the Chief
 1907
 On
 War had started and the
 any
 Justice
 The Acting
 available
 to military
 with the
 Chief Justice of the Province as an Acting Judge.

It was in my opinion not desirable that the appeal should be heard in Kampala with an Acting Judge. The meeting set out in my Minute of the 30th September 1924.

4. There are obvious objections to the creation of Acting Judges whether of a High Court or for the purposes of the Appeal Court and the practice has very rarely been resorted to either in East Africa or Uganda.

5. The ordinary sessions of the Court of Appeal which under the Rules of Court should be held as soon after the 1st November as convenient were not in fact held until January 1918 owing to the delay, due to the interference with shipping caused by the war, in the return from leave of the Chief Justice of East Africa. By January communications with Kampala had to some extent been restored and it was possible for a Judge to come from that Protectorate for the purposes of the Appeal Court.

6. The enclosed copies of the correspondence might be sent to the Secretary of State to show that various steps were made to procure an early sitting of the Court.

7. The difficulties I have dealt with herein would to a great extent disappear if the East Africa bench were strengthened by an additional Judge.

S. J. W. BARTH

ATTORNEY GENERAL.

B.

SEPTEMBER 22nd, 1924.

Sir,

Although I have received no direct communication from the Court I am informed by the Secretariat that Mr. Mughna's murderer Mr. Govind Vasudev Thalte has appealed from the sentence imposed by the High Court.

2. The Registrar has sent me an intimation that the next Court of Appeal will sit on 2nd December.

3. His Excellency would be glad if it can be arranged that Mr. Govind Vasudev Thalte's appeal be heard before December. Unless an earlier date is fixed it means an interval of over four months between sentence and the hearing of the appeal.

4. I am well aware of the great difficulties which exist for the rapid formation of a Court and which I have pointed out to His Excellency but I have been asked to approach you with a view to the possibility of forming a Court earlier than December and to kind to know if in your opinion it can be done.

I have the honour to be,

Sir,

Your obedient servant,

(84) J. V. Barth.

ATTORNEY GENERAL.

P.

High Court,

COCHIN

5. The two Zanzibar Judges will sit with an Acting Judge at Zanzibar.

I do not discuss the possibility of myself and one Zanzibar Judge going to Uganda.

In all cases the Court will have to be convened by the Chief Justice of Uganda and in my opinion the Acting Judge should be appointed by the Secretary of State. This could be done by cable.

I am of opinion that the Zanzibar Judges would make very strong objections either one or two sitting here.

There appear to me to be very great objections to my leaving the Protectorate. I have arranged to take the next circuit taking all October.

I am most anxious to meet His Excellency's wishes and am willing to waive my objections to the Court sitting at Zanzibar and will go when I can myself if His Excellency considers it desirable.

I do not wish to go into my reasons at length as they are all given to you but I consider my first three propositions impracticable.

My 4th and 5th are dictatorial to me. Should the fifth be adopted I think that a Member of the Bar of the East Africa Protectorate should be selected as the Acting Judge and I should suggest Mr. Harrison or Mr. Atkinson. Mr. Donald is not qualified and I do not suppose that Mr. Fishwang or Mr. Sheridan can be spared.

In my own opinion the difficulties are so great and

(3)

the questions involved important that the formation of a Court before Chief Justice Hamilton's return is impracticable.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd) A. T. B. Carter

ACTING CHIEF JUSTICE,

High Court,

N. A. P.

NO. 73
U.S. HIGH COURT
NINETEENTH, U.W. &
SOUTH AVENUE

With reference to your telegram re special sitting of court of appeal and my reply thereto I have to inform you that I am afraid it will not be possible for a Judge to leave Uganda at present and return before November.

8. If you consider it urgent that there should be a special sitting, we could hold one here if a Judge comes from East Africa and if the Registrar is prepared to act as judge.

9. If you do not consider that possible the only course would appear to be for you to arrange a session at which the Judges will all come from East Africa in Zanzibar, and this letter may be taken as an authority for all necessary arrangements in that connection.

10. It would seem that if it is decided to hold a special sitting, that the same should be held in Zanzibar.

11. It is necessary to give the Registrar authority to act as judge in the absence of the Judges of the Court of Appeal.

Yours faithfully,
Sd/-
Chief Justice

RECEIVED
JULY 1951

N. 296/14.

September 18th, 1914.

Hon: Ag: Chief Secretary,

Reference No. 34. Your Minute of the 21st Inst.
HEARING OF APPEAL FROM MR. HUGHES' ORDER.

I enclose the Acting Chief Justice's reply to my letter suggesting that the hearing of the appeal filed by Mr. Hughes' orderer, Seyind Masauze Thete, should be expedited if possible.

2. It will be seen that in AUGUST His Honour approached the Chief Justice of Uganda with a view to a special sittings of the Appeal Court.
3. The Acting Chief Justice has discounted all the possible combinations whereby a Court could be formed and I agree with his conclusions.
4. There is the 1st. Planning objection to the Court sitting at Zanzibar, an objection which resulted in the removal of the Court from Zanzibar to East Africa, that is that advocates would either have to go to Zanzibar or else ~~of some~~ one else there who could not have the advantage of consulting the lay client. In the present uncertainty of communications it is impracticable that Judges or Advocates should either go to or come from Zanzibar.

(Sd) S. W. Carter,
 ATTORNEY GENERAL.

Triplicate

HIGH COURT,

NAIROBI,

11th May 1916.

No. 45A
15
The Honourable,

The Chief Secretary,

NAIROBI.

~~UNRECORDED COPY SENT BY AIR MAIL 1916.~~

I regret that owing to my being on circuit the above had to be sent after me which has caused delay in my answering it.

2. The delay in the hearing of the appeal in question is much to be regretted and the copies of the correspondence enclosed show the efforts that were made to convene a Court, and I am sure that the Chief Justice of Uganda, on whom the duty of convening the Court devolved in my absence, would have convened a Court sooner had it been conveniently possible.

3. The final delay was caused by the extended leave granted to Mr. Justice King-Farlow and the fact that I was directed to return via the Cape, so that instead of arriving in Mombasa early in December I did not arrive till the first week in January.

4. Owing to the absence of Judges on leave from time to time and the fact that the trying Judge is debarred from sitting on the appeal great difficulty is frequently experienced in convening a Court whether for an ordinary or a special session.

No. 181.

YOUR COPY OF THE TELEGRAM.

20. 8. 14.

To

Chief Justice Mutesha Uganda.

Three murder appeals and one habeas corpus (stop)

is there any possibility of special sitting court of
Appeal at early date.

Yours
BUTLER-CARTER.

COPY

no. 773/14.

H. M. HIGH COURT OF UGANDA.

KYESSA, UGANDA.

30th August 1914.

SIR, .

With reference to your telegram re special sitting of court of Appeal and my reply thereto I have the Honour to inform you that I am afraid it will not be possible for a Judge to leave Uganda at present and probably not before November.

1. If you consider it urgent that there should be a special sitting, we could hold one here if a Judge could come from East Africa and if one of our Magistrates were appointed an acting judge.

2. If you ~~would~~ do not consider that possible the only course would appear to be for you to arrange a session at which the Judges will all come from East Africa or Hansibar, and this letter may be taken as an authority for all necessary arrangements in that connection.

3. It would seem that if there is urgent need for a special sitting, that the second course suggested would be the better.

4. If it is necessary for me to sign any directions or notices in connection with the convening of the Court I will do so.

I have the honour to be,
sir,
Your obedient servant,

(Sgd) H. MORTIS-CARTER
CHIEF JUSTICE.

HIS HONOUR,
The Chief Justice,
KAMPALA.

APPELLATE COURT
S A I A
WRITING OFFICE
September 1934

SIR,

ALTHOUGH I have received no direct communication from the Court I am informed by the Secretariat that Mr. Justice GORTON Mr. Justice WATSON has appealed from the sentence imposed by the High Court.

2. The Registrar has sent by the notification that the next Court of Appeal will sit on 2nd September.

3. His Excellency would be glad if it can be arranged that Mr. Justice WATSON should appear before the Court on 2nd September. Unless an earlier date is fixed it would be an interval of over four months between the date of the appeal and the hearing of the appeal.

4. I am well aware of the great difficulties which exist for the rapid formation of a Court and which I have pointed out to His Excellency but I have been asked to approach you with a view to the possibility of forming a Court earlier than the date mentioned above. It is your opinion it can be done.

Yours faithfully,
SIR,
Assistant Secretary

W. J. GORTON
W. J. WATSON

THE ACTING CHIEF JUSTICE,
HIGH COURT

SECRET

Copy

H. H. COURT OF APPEAL FOR EASTERN AFRICA,
N O M B A A,

28th September 1914.

SIR,

In answer to your 14/9/14 dated September 22nd.

There are two harder appeals now before the Court of Appeal for Eastern Africa and I agree that it is desirable that a COURT should be formed before December 1914 if possible.

On August 29th I telegraphed to the CHIEF JUSTICE of Uganda asking if he could arrange an earlier sitting and I enclose his reply.

There are however difficulties which are so serious that I should like you to consider their importance as weighed against the question of a postponement.

Mr. Justice Bernard is unavailable as he tries the two cases.

I can suggest only the following expedients:-

1. Two Judges to come from Zanzibar and sit with me at Mombasa.
2. One Judge to come from Zanzibar and sit with me at Mombasa with an ACTING JUDGE.
3. Myself to go to Uganda and sit with the CHIEF JUSTICE and an ACTING JUDGE.
4. Myself to go to Zanzibar and sit with the two Zanzibar Judges.
5. The two Zanzibar Judges to sit with an ACTING JUDGE at Zanzibar.

I do not discuss the possibility of myself and one Zanzibar Judge going to Uganda.

Honourable,
The Attorney General,
N A I R O B I.

Yours