

R. v. MUTOTOLE GLASS.

CRIMINAL REVIEW CASE No. 165 OF 1939.

Rogue and vagabond—definition of suspected person—judgment and sentence should be written at the conclusion of the evidence.

The facts and the law appear in the judgment hereunder.

For further cases in which are considered the ingredients of a charge under section 158 (3) of the Penal Code see *R. v. Kasonde Mulenga* and *R. v. Musule Kombe* 4 N.R.L.R. 51, and *R. v. Mwape Edward Chisando* 4 N.R.L.R. 252.

Robinson, A.C.J.: This case was sent to me for approval of a recommendation for deportation. As the offence of which the accused was convicted was a misdemeanour only, the recommendation cannot be approved.

The offence was *contra* section 158 (3) Penal Code in that the person was a suspected person who had no visible means of subsistence and could not give a good account of himself.

To be deemed to be a rogue and vagabond under section 158 (3), the Crown has to show that the person charged is a well-known suspected person or reputed thief. A suspected person or reputed thief is a person who, apart from the particular occasion and antecedently thereto, has become the object of suspicion. *Ledwith v. Roberts* (1936) 3 A.E.R. 570 and in the *Law Times*, Vol. 182, p. 348. A "suspected person" or a "reputed thief" are two classes of persons. The former expression is suitable only to describe persons who have become the object of suspicion, just as a "reputed thief" is a person who already has the reputation of a thief.

The evidence here is that a suitcase was left in the presence of the accused on an open verandah at an hour not stated, and at 5 p.m. which was probably some hours later, the suitcase had disappeared. He was suspected of having stolen it, his hut was searched and it was not there. I may say that is a generous filling in of the story. The evidence as recorded is by no means so clear. But the story set out like that is not enough. The House of Lords in *Ledwith v. Roberts* disapproved the reasoning of AVORY, J. in *Hartley v. Ellnor* 81 J.P. 201 (1917) when he held accused to be suspected person from the fact that for forty minutes immediately prior to his arrest he had been tapping the pockets of passengers alighting from or boarding tramcars.

It follows, therefore, that the evidence is not sufficient to support a conviction *contra* section 158 (3) Penal Code and the conviction must be quashed.

I would be grateful if the Magistrate would write his judgment and sentence at the proper place, i.e., at the conclusion of all the evidence. The record is then in logical sequence. This case file, and others which I have seen, is the absolute reverse. The plea was "Not Guilty" and the next thing apparently recorded is that the accused is guilty and sentenced, and over the page there is some evidence left in the air.