

COURT OF APPEAL FOR EASTERN AFRICA

Before SIR JOSEPH SHERIDAN, C.J. (Kenya), SIR NORMAN WHITLEY, C.J. (Uganda),
and SIR G. GRAHAM PAUL, C.J. (Tanganyika)

REX, *Respondent (Original Prosecutor)*

v.

SAWEDI MUKASA s/o ABDULLA ALIGWAISA, *Appellant*
(*Original Accused*)

Criminal Appeal No. 182 of 1945

(Appeal from decision of H.M. High Court of Zanzibar)

Criminal Law—Charges of burglary and theft—Concurrent sentences—Practice.

The appellant, a person with a long list of previous convictions, was convicted of burglary and theft and sentenced to consecutive sentences of seven years on each charge. He appealed.

Held (22-1-46).—The practice where a person commits more than one offence at the same time and in the same transaction is, save in very exceptional circumstances, to impose concurrent sentences.

Appeal allowed. Sentence on count of burglary increased to 10 years and ordered to run concurrently with sentence on other count.

Accused present, unrepresented.

Lowe, Crown Counsel (Kenya), for the Crown.

JUDGMENT (delivered by SIR JOSEPH SHERIDAN, C.J.).—The practice in cases where a person has been charged with and convicted on two counts involving the same transaction, one for burglary or housebreaking and one for stealing has been to direct the sentences to run concurrently. In the present case the accused, a person with a long list of previous convictions, was found guilty on two counts, one for burglary and one for stealing, and sentenced to consecutive sentences of 7 years on each count. While we recognize that the accused is a hardened criminal deserving of a severe sentence, our view is that where, as here, both offences have been committed at the same time and in the same transaction, the practice referred to should be adhered to save in very exceptional circumstances, where, for instance, a person breaks and enters a house and commits the felony of rape therein where an order that the sentences on both counts might be directed to run consecutively. In this case we increase the sentence on the charge of burglary to 10 years, allow the sentence for theft 7 years to stand, and direct that the sentences shall run concurrently.