**Uganda v Edirisa**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 17 July 1974

**Case Number:** 137/1974 (29/75)

**Before:** Wambuzi CJ

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*[1] Criminal Practice and Procedure – Costs – Accused discharged not acquitted – No costs may be awarded – Magistrates’ Courts Acts s.* 207 (*U*.).

*[2] Criminal Practice and Procedure – Compensation – Private prosecution withdrawn not dismissed –*

*No compensation may be awarded – Magistrates’ Courts’ Act s.* 208 (*U*.).

**JUDGMENT**

**Wambuzi CJ:** The accused was charged with theft contrary to s. 252 of the Penal Code. It appears that the accused appeared before a magistrate grade II on 12 July 1973 when he pleaded not guilty to the charge. He again appeared before the magistrate on the 7 September 1973 when the complainant applied to withdraw the charge. The record shows that the charge was withdrawn under s. 119 (*a*) of the

Magistrates’ Courts Act and the accused was discharged. The record then shows the following orders to have been made:

“As to costs (s. 207, M.C.A.), the complainant is to pay Shs. 150/- for the advocate’s mileage (150 miles @

1/-). Accused’s attendance from Mbirizi: Shs. 20/-. Advocate’s attendance thrice: Shs. 150/-.

For compensation: the court observes on the record that accused was detained for one day. Having regard to his business, and public respect attached to it, the court shall award a gross sum of Shs. 330/-; for caning his body unlawfully, accused will recover Shs. 100/-. Thus a total of Shs. 820/- shall be payable to the accused by complainant.”

It would appear that the accused was caned on the directions of a Gombolola Chief.

S. 207 (1) (*b*) of the Magistrates’ Courts Act provides:

“Any court may order the payment of costs in any of the following circumstances:

(*a*) . . .

(*b*) to any person acquitted of any offence by such court, by the prosecutor, whether public or private, if the court considers that the prosecutor had no reasonable grounds for prosecuting such person . . .”

S. 119 (*a*) under which the trial magistrate quite rightly acted provides that if the withdrawal is made before the accused is called upon to make his defence the accused person “shall be discharged”. The accused in this case was in fact discharged and not acquitted as required by s. 207 (1) (*b*) in order to attract any order for costs. I cannot see therefore that s. 207 applied to this case.

Similarly s. 208 of the Magistrates’ Courts Act provides:

“208. If on the dismissal of any private prosecution by a magistrates court, the court shall be of opinion that the charge was frivolous or vexatious, such court may order the private prosecutor to pay to the accused person, in addition to his costs, a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge.”

There is nothing in s. 119 (*a*) which says that if a charge is withdrawn, it is thereby dismissed.

Accordingly I cannot say that s. 208 is relevant to this case. What is disturbing is that in this case the accused was represented by counsel and the orders made by the court were made upon counsel’s application. I am not in any way exonerating the trial court, presided over by a lay magistrate, from making illegal orders but it defeats me that counsel in this case should have failed to see any difference between acquittal, discharge and dismissal. I regret to say that his part in this case was to misguide the court instead of guiding it in the administration of justice.

The orders for costs and compensation made by the trial magistrate are set aside and it is directed that if any costs or compensation has been paid the same shall be refunded.

*Order accordingly.*

No appearance for the parties