COURT OF APPEAL FOR EASTERN AFRICA.

Before SIR JOSEPH SHERIDAN, C.J. (Kenya); LAW, C.J. (Zanzibar); and LUCIE-SMITH, J. (Kenya).

REX *Respondent*

v.

YOKANA KAFERO S/O SAMVILL LETAKUBULIDE

Appellant (Original Accused).

Cr.A. 78/1936.

Criminal Law—Manslaughter—Negligence—Plea.

The accused was charged with manslaughter by negligence in the driving of a motor vehicle. On being arraigned he said, "I was driving carefully," and a plea of "Not guilty" was entered. Later he asked leave to withdraw his plea and said, "The case is against me; it is true I was not driving sufficiently carefully". A plea of "Guilty" was then recorded.

Held (8-8-36).—That this should not have been regarded as an unequivocal admission of criminal negligence as explained in *R. v. Bateman* (19 *Cr. App. R.* 8).

Appellant absent unrepresented.

Wallace, Crown Counsel, for the Crown.

JUDGMENT (delivered by Lucie-Smith, J.).—This is an appeal against sentence imposed on a conviction before the High Court of Uganda.

The appellant was charged with manslaughter and it is to be noted that the information is purely formal and does not disclose that the death was caused by the alleged criminal negligence of the appellant in his handling of a motor vehicle.

On appellant being charged according to the information, he replied, "I was driving carefully," and a plea of not guilty was entered. After recording the plea, the case stood over till later in the Sessions. On its resumption the Attorney General opened the case for the Crown and was about to call witnesses when the accused asked leave to withdraw his plea of not guilty and stated, "The case is against me; it is true that I was not driving sufficiently carefully". This was taken presumably as an unequivocal plea of guilty and such a plea was then recorded.

It appears to us that the phrase "not driving sufficiently carefully" may easily have meant "sufficiently carefully to avoid the accident", and cannot be considered as an admission of criminal negligence as explained in *Rex v. Bateman* (19 Cr. App. R. 8). After the allocutus the Attorney General outlined the facts from

the committal proceedings and stated there were previous convictions against the appellant who then stated, "I admit the first conviction at Lira but cannot remember the other two convictions at Masindi. I agree with what has been said". It has been argued by the Crown that this last sentence strengthens the plea as finally entered. With this contention we are unable to agree. To our minds that last sentence can at the most only show that he agrees with the facts as outlined but does not in any way show that he agrees that those facts disclose criminal negligence.

In passing sentence the learned Judge said that the accused admitted his negligence; that is true but he did not admit such gross negligence as is required by law to amount to criminal negligence.

It appears to us that in a highly technical case such as this and when dealing with a native the Court should be very chary in entering a plea of guilty and should in most cases hear and consider the evidence and so satisfy itself that the Crown have discharged the burden of proof which is laid upon the prosecution.

In cases where an appeal is against sentence only, we are very loath to interfere with the conviction and it is only in a case such as this where the record itself discloses very grave doubts as to the correctness of the plea entered that this Court will interfere. As there remain two other informations on the record, we do not think that any useful purpose can be served by ordering a new trial.

The appeal is allowed the conviction quashed and the appellant discharged.