

MWAMBA v THE PEOPLE (1974) ZR 187 (SC)

SUPREME COURT

DOYLE CJ, BARON DCJ AND GARDNER JS

6th AUGUST 1974

SCZ Judgement No. 32 of 1974

Flynote

Criminal law - Having in possession 5 property reasonably suspected of having been stolen or unlawfully obtained - Goods having left possession when found - Whether section 319 of the Penal Code applicable.

Headnote

The appellant was convicted on two charges of having in his possession property reasonably suspected of having been stolen or unlawfully 10 obtained, contrary to s. 319 of the Penal Code. The facts alleged and accepted by the magistrate were that he had sold this property to people who did not suspect that it was stolen. Subsequently, after the goods had passed out of the appellant's possession, the police found them in the 15 possession of the purchasers. The police at this stage had reason to suspect that the goods had been stolen.
Held:

- (i) Section 319 of the Penal Code cannot be invoked in relation to goods which at some time have been in a person's possession but 20 in respect of which the suspicion only arises after they have left that possession. The suspicion must arise at a time when the person is found still in possession of the goods. The offence is having in his possession such goods and not having had in his possession such goods. 25

Legislation referred to:

Penal Code, Cap. 146, s. 319.

Appellant in person

C Kawamba, Senior State Advocate, for the respondent.

Judgment

Doyle CJ: delivered the judgment of the court: The appellant 30 was convicted of two charges of having in his possession property reasonably suspected to have been stolen or unlawfully obtained, contrary to section 319 of the Penal Code. The facts alleged and accepted by the magistrate were that he had sold this property to people who did not suspect that it was stolen. Subsequently, after the goods had passed out 35 of the appellant's possession the police found them in the possession of the purchasers. The police at this stage had reason to suspect that the goods had been stolen.

In our opinion this section cannot be invoked in relation to such facts. It does not relate to goods which at some time have been in a person's 40 possession but in respect of which the suspicion only arises after they have

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left that possession. The suspicion must arise at, a time when the person is found still in possession of the goods. One cannot go tracing goods back through half a dozen hands for the purpose of showing each person is guilty of an offence unless he can account satisfactorily for this possession. 5 The offence is having in his possession such goods not having had in his possession such goods. We allow the appeal and quash the conviction and sentence.

Appeal allowed