

**IN THE COURT OF APPEAL HELD AT LOBATSE**

**CRIMINAL APPEAL NO. 28/94**

**In the matter between:**

**STEPHEN OWUSO AGYEMANG**

**Appellant**

**and**

**THE STATE**

**Respondent**

**Mr. Attorney Fashole-Luke II for the Appellant  
Mr. Attorney K. P. Leinaeng for the Respondent**

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**R U L I N G**  
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**AGUDA JA:**

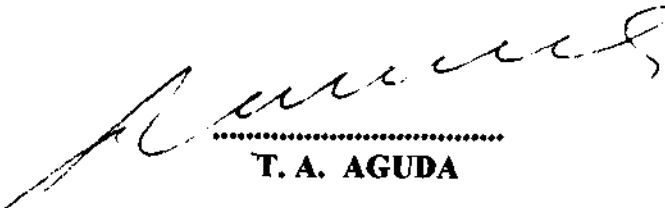
In this case the Appellant was charged with the offence of being found in "possession of a Toyota BD 2712A Cressida, having reasons to believe the same to be stolen outside Botswana." The offence is alleged to be contrary to Section 320 of the Penal Code. The Section says that "Any person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Botswana the person committing it would have been guilty of an offence, receives or has in his possession any property so stolen or obtained outside Botswana or having himself so stolen or obtained such property, brings the same into, or has it in his possession within

Botswana is guilty of an offence and is liable to imprisonment for a term not exceeding seven years."

The Charge Sheet fails to contain important ingredients of the offence as laid down by the Penal Code. Nevertheless he was convicted by the Magistrate Court and sentenced. His appeal to the High Court was dismissed by Barrington-Jones, J.. He was subsequently given leave to appeal to the Court of Appeal. Counsel for the Appellant has filed many grounds of appeal and filed head of arguments.

However the State has in its heads of arguments, submitted that it is unable to support the conviction or the grounds of incurable defect in the charge sheet; and we agree with the State in this regard. It is therefore unnecessary for us to consider the other grounds of appeal which are filed and in respect of which heads of arguments were filed. Therefore the appeal is allowed; both the conviction and sentence are set aside and an order of acquittal and discharge is made on behalf of the Appellant.

DELIVERED IN OPEN COURT THIS *3rd* DAY OF JULY, 1995.

  
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 T. A. AGUDA

I agree

  
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 W. H. R. SCHREINER

I agree

  
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**R. T. HON. LORD WYLIE**

I agree

  
.....  
**P. H. TEBBUTT**

I agree

  
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**LORD W. L. K. COWIE**