

IN THE SUPREME COURT OF NAURU

CRIMINAL APPEALS

Director of Public Prosecutions v Akibwib Akibwib	Appellant Respondent	Criminal Appeal No.4/2005
Director of Public Prosecutions v Timothy Brechtefeld	Appellant Respondent	Criminal Appeal No.5/2005
Director of Public Prosecutions v Johnny Aliklik	Appellant Respondent	Criminal Appeal No.6/2005

Before Connell C.J.
30 September 2005

Inspector Dabwido
(With leave of Court) for Director of Public Prosecutions.

Pres Nimes Ekwona for Respondent in Criminal Appeal No.6/2005

Akibwib and Brechtefeld appeared in person

DECISION


1. All these appeals raised the same short point of law and the Court heard the appeals together. These appeals were brought by the Director of Public Prosecutions pursuant to Section 3 Sub Section 2 of the Appeals Act 1972 -76.
2. In the District Court, a panel of Lay Magistrates discharged each of the accused before hearing the matter on the ground that the accused had each been charged under the Dangerous Drugs Act 1952 – 1968 which had been repealed by the Illicit Drug Control Act 2004 (See Section 50).

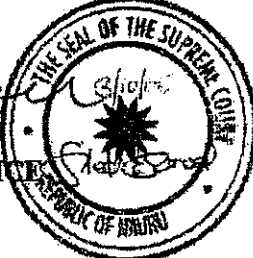
3. The facts were that each had been charged with the offence of possession of a prohibited import under section 10 of the Dangerous Drugs Act at various times during 2002. The charges were laid in the case of Criminal Appeal No.4/2005 on 20 August 2003, Criminal Appeal No.5/2005 on 7 May 2003, and Criminal Appeal No.6/2005 on 7 May 2003. In each case, the alleged offence took place and the charge laid prior to the passing of the Illicit Drug Control Act 2004 and its entry into force on 6 September 2004.
4. The learned Lay Magistrates took the common law point that a liability to punishment for contravention of a penal statute did not continue after the repeal of the enactment which imposed it. (Victorian Stevedoring and General Contracting Co. Pty. Ltd v Dignan; Meakes v Dignan 46 CLR 73 per Dixon J at pp 105-6, Byrne v Garrison (1965) V.R. 523)
5. However, in Nauru there is a general provision contained in the Interpretation Act 1971, the effect of which preserves liability to prosecution and punishment for breaching of a repealed Act. This reverses the common law position.
6. For the purposes of these Appeals, the operative words of Section 14 of the Interpretation Act 1971 affecting the position are as follows:-
 14. (1) Where any written law repeals or has repealed a former written law or any provision or words thereof, or where any written law expires or has expired, then, unless the contrary intention appears, such repeal or expiry shall not - ...
 - (e) subject to the provisions of the Criminal Code, or any other written law affect any penalty, forfeiture or punishment incurred or imposed or liable to be incurred or imposed, prior to such repeal or expiry; or
 - (f) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty, forfeiture or punishment as aforesaid.
 - (2) Any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if the repealing law had not been made or as if the expired law had not expired

(3) ...

7. This is a common provision found in many common law countries to avoid the simple common law rule described above. A similar provision to that of Nauru was considered by the Victorian Supreme Court in Byrne v Garrison (above cited). In that case, the person committed an alleged offence in 1961. The Act under which he was charged was repealed in 1962. The information was laid against him in 1964. Gowans J. found that the repeal of the Act did not affect any right privilege obligation or liability accrued or incurred under any enactment so repealed, any liability incurred under the earlier Act while it was in force still continued, and the information was validly laid by virtue of Section 7(1) of the Interpretation Act 1958 (Victoria). This comprehensive judgment is undoubtedly correct and similar conclusions may be found in the cases cited by Pearce and Geddes in Statutory Interpretation in Australia 3rd Edition 1988 p.114. I would be prepared to grant the appeal on that point but there is another consideration.
8. Apart from the submission with respect to the Interpretation Act 1971, the Appellant also submits that the savings clause section 51 of the Illicit Drug Control Act 2004 would also allow charges to proceed under the earlier and now repealed Act.
9. Section 51 reads as follows:-
 51. Notwithstanding the provisions of section 50, every order of a court lawfully made, and every summon(s), warrant and other process of any court lawfully issued, in Nauru, in exercise of such Courts Criminal Jurisdiction before the commencement of this Act shall continue to have full force and effect as though the written law under which it was made or issued were still in force in Nauru.
10. It is my view that this section not only operates as a continuity section for orders, decisions, and penalties previously made before the repealing Act came into force, but also allows every summons, warrant or other lawfully issued process issued before the commencement of the repealing Act to have full force. In these instant cases, the important and material factors involved occurred before the repealing Act came into force. Both the alleged offence and the charging of the offence occurred before 6 September 2004, the date of entry into force of the repealing Act. On that account, the Magistrates have jurisdiction to hear the case in accordance with the provisions of the repealed Act, the Dangerous Drugs Act 1952 – 1968.

11. The Court notes that the savings clause in the repealing Act, Section 51 of the Illicit Drugs Control Act 2005, is not drawn as widely as section 14 of the Interpretation Act 1971, and would not appear to allow an investigation followed by charges being laid post the repealing Act where the events in question occurred prior to the repealing Act. It is, therefore, administratively not as useful.
12. However, the question arises, when Parliament inserts a savings clause, whether such clause is exhaustive, alternative, displays a contrary intention, so that the Interpretation Act provision has no room to operate. (See Heublein Incorporated v Continental Liqueurs Pty. Ltd. 109 CLR 153, O'Brien v Fagg, ex parte O'Brien 1972 Qld R 559). It is not necessary for me, in this case, to determine that matter as the cases in question fall within both the savings section 51 of the repealing Act, and Section 14 of the Interpretation Act 1971. However, the insertion of section 51 into the Illicit Drugs Control Act 2004 would indicate a contrary intention as found by the Full Court of Queensland in O'Brien's case above cited. On that basis, it may leave no room for section 14 of the Interpretation Act to operate.
13. In any event, the Appeal of the Director of Public Prosecutions is allowed in each of the Appeals, No. 4, 5 and 6 of 2005.
14. The cases of Akibwib, Brechtefeld and Aliklik are remitted to the District Court to be heard in accordance with the applicable provisions of the Dangerous Drugs Act 1952-1968


Barry Connell
CHIEF JUSTICE



Dated 30.9.05