

In the Supreme
Court of Nauru

Criminal Case No. 1/2010

Between : XIAN ZHEN

And : THE REPUBLIC

Mr. Rueben Kun for the Appellant
Mr. Wilisoni Kurisquila the Respondent

Date of Bearing : 24th March 2010

JUDGMENT

Appeal from the decision of the Resident Magistrate on an interlocutory point. Mr. Wilisoni Kurisquila for the respondent in his submission argued that there is no appeal from the District Court to the Supreme Court on interlocutory matters. He referred to sections three (3) and eighteen (18) on the Appeals Act, pointing out that those sections do not mention appeals to the Supreme Court on interlocutory matters.

Nor do the sections prohibit appeals. I should be unwilling, in the absence of some compelling rule, to deny any party a right of appeal on any matter. I rejected Mr. Kurisquila's argument and proceeded to hear the appeal.

The question is whether Customs Proclamation No. 2 of 1996 made pursuant to Section 101 of the Customs Ordinance (disobedience of which is alleged in the charge) is impliedly repealed by the Currency (Remittance Charge) Act 1997.

Section 101 of the Customs Ordinance:-

(1) "The administrator may by Proclamation prohibit the exportation of any goods.....

(b) the exportation of which would in his opinion be harmful to the Territory:-

The appellant is alleged to have tried to take out of Nauru, in cash "the sum of AUS102,000.00".

At first I wondered whether money is comprehended within "goods"

The Shorter Oxford English Dictionary definition of "goods":-

Merchandise wares "(now chiefly manufactured articles)."

Goods include all kinds of movable property

That definition, wider than the generally accepted meaning "goods", does include money. The Proclamation is validly made under the Customs Act. The relevant part :-

"NOW THEREFORE, I, L.G.N. Harris, the President, do hereby prohibit the export of Australian Dollars of the sum exceeding One Thousand(A\$1000), unless the written permission of the Bank of Nauru has first been obtained, and a declaration to that effect along with such authorization in original submitted at the time of it's export."

That is it be compared with the relevant section of the Currency(Remittance Charge)Act 1997:-

PERSONS AND BUSINESSES REMITTING MONEYS TO APPLY FOR CERTIFICATE.

"3. Subject to the following provisions of this Act, any person or business seeking in any period of 30 days directly or indirectly to remit or pay out of the Republic in one or more accounts the equivalent of \$1,001 or more in Australian currency, whether by way of notes, coin, bank draft, telegraphic transfer, account agency or swap, or by any other means of any combination of means must before doing so obtain, a certificate of approval."

Craies gives the general rule of construction:-

..... PARLIAMENT, in the exercise of its supreme legislative capacity, can extend, modify, vary, or repeal Acts passed in the same or previous sessions. It is, consequently, a matter of daily business for the courts to consider the exact effect of later upon earlier enactments, in order to see whether they can wholly or in part stand together. The rule of law on the subject was thus stated by North J. in *Re Williams*. 'The provisions of an earlier Act may be revoked or abrogated in particular cases by a subsequent Act, either from the express language used being addressed to the particular point, or from implication or inference from the language used.' (Craies on Statute Law, seventh edition @ P348, chapter 15. Effect of Earlier Enactments").

Under the heading "Implied Repeals":-

Where two Acts are inconsistent or repugnant, the latter will be read as having impliedly repealed the earlier. The court leans against implying a repeal, unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied (@P 366).

I should be slow to find the Proclamation of no effect. The provisions in the Proclamation and Act, are so similar as to be compatible. The Proclamation remained valid after the passing of the Currency (Remittance Charge) Act.

The later Proclamation No. 2 of 1999 merely increased the amount of which permission is to be sought, and does not bring it into conflict with the Currency (Remittance Charge) Act. It also is valid.

The Resident Magistrate came to the correct conclusion even if by another route.

The appeal is dismissed.

Robin Millhouse.

Hon. Robin Millhouse QC
CHIEF JUSTICE

