IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

OWUSU (MS.) JSC

AMADU JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CRIMINAL APPEAL

NO. J3/04/2022

31ST MAY, 2023

EDMUND ADDO …… ACCUSED/APPELLANT/APPELLANT

VS

THE REPUBLIC …… RESPONDENT/RESPONDENT

JUDGMENT

ASIEDU JSC:-

INTRODUCTION:

My Lords, we are confronted with one main issue in this appeal and, that is, whether an accused person standing trial for a criminal offence ought automatically to be discharged and the charge struck out once the offence creating section of the Act under which he was charged is repealed by an Act of Parliament.

FACTS:

The facts of the case are that in the year 2015 or thereabout, the appellant, who shall henceforth be referred to as the accused person, met the victim, then a 14-year-old student in secondary school, at a party. Sometime after, the accused invited the victim to meet him. The accused took the young girl to watch a movie at the West Hills Mall, Accra on Valentine's Day, 14th February 2015. The accused proposed love to the victim who also accepted. In the early part of March 2015, the accused person took the young girl to a Guest House at East Legon where the accused demanded to have sex with her but the young girl refused with the explanation that she had never had sex. The accused then taught the young girl how to have oral sex after which he demanded to have anal sex which was turned down by the young and innocent secondary school student.

After this encounter, the accused then began sending pornographic videos depicting anal sexual activities to the young female student. Later, the accused succeeded in convincing the young girl to come to his house at Tse Addo, a suburb of La, Accra, where he managed to have both oral and anal sex with the young innocent girl. Thereafter, the accused had series of sexual encounters with the victim whereat they engaged in both oral and anal sex. All the sexual activities were recorded by the accused person against protestations of the young girl.

At other times, the accused requested the young girl to send videos and pictures of her genitalia to him. When the young girl, subsequently, refused to heed the invitations of

the accused for more sexual encounters and also refused to send any more videos and pictures of her genitals to him, the accused threatened to publish nude photographs of the young girl.

In the month of May 2016, the young girl saw her photographs depicting her engaged in various oral and anal sexual activities without the face of the accused person showing. By the 28th May 2016, the photographs and videos have been viewed for not less than 360,000 times.

The young female victim then reported to her mother who checked on Facebook and traced the videos to a website called empressleaks.com. The mother of the young girl lodged a report with the Ghana Police. Investigations led to the arrest of the accused person. He was charged and arraigned before the High Court, Accra for prosecution for the Offences of Defilement, contrary to section 101(2) of the Criminal Offences Act, 1960, Act 29. The accused person was also charged with three counts of Child Pornography contrary to section 136(b) of the Electronic Transactions Act, 2008, Act 772.

Whiles the trial was on-going, the Cybersecurity Act, 2020, Act 1038 was passed. Section 98 of Act 1038 repealed sections 118 and 136 of the Electronic Transactions Act, 2008, Act 772 in the following words:

> *Repeals and savings*
>
> *98. (1) Sections 118 and 136 of the Electronic Transactions Act, 2008 (Act 772) are repealed.*
>
> *(2) Despite the repeal of sections 118 and 136, any notices, orders, directions, appointments or instruments issued or made under the repealed provisions shall continue in force until reviewed, cancelled or terminated.*

As a result, the accused person filed a motion before the trial High Court for an order to strike out counts 2, 3 and 4 of the charge sheet which had preferred charges of Child Pornography contrary to section 136(b) of the Electronic Transactions Act, 2008, Act 772 against the accused. The reasons behind the application, as deposed to in paragraphs 7 and 8 of the accompanying affidavit, which can be found on page 77 of the record of appeal (ROA), states as follows:

> *"7. That I am advised by counsel and I verily believe the same to be true that section 136 of the Electronic Transactions Act having been so repealed, the said counts 2, 3 and 4 have no basis in law and are, therefore, void.*
>
> *8. That I am further advised by my counsel and I verily believe the same to be true that section 136 of the Electronic Transactions Act having been so repealed, makes the continuous prosecution or investigation in respect of the said counts 2, 3 and 4 a violation of my fundamental human rights under the Constitution."*

The Republic opposed the application by stating in its affidavit in opposition that the repeal of section 136 of Act 772 does not mean that the charges against the accused ought to be dropped and that it also does not affect the offence committed by the accused prior to the repeal and, finally, that, the repeal does also not affect legal proceedings already commenced to determine the criminal liability under the repealed law.

RULING BY THE HIGH COURT:

In dismissing the application, the High Court held, among others, at page 121 and 122 of the record that:

> *"It is my view that although section 136 of Act 772 has been repealed, the continuous prosecution of the accused person in this case is not a violation of his fundamental human rights. This is because where rights have accrued or legal proceedings have commenced under the repealed enactment, such acts, till their completion, would be deemed to be*

continued under the new Act… It is therefore my view that a continued prosecution of the Applicant herein will be and is consistent with article 19(11) of the 1992 Constitution"

Aggrieved by the decision of the High Court, the accused appealed to the Court of Appeal on various grounds.

DECISION OF THE COURT OF APPEAL:

After considering the appeal, the Court of Appeal came to the conclusion, in a judgment delivered on 17th February 2022, which can be found on page 164 of the record that:

> "Where an enactment is repealed, it will not affect an offence committed against the enactment that is repealed or revoked or a penalty or a forfeiture or punishment incurred in respect of that offence. That being the case, it is clear that section 34(1)(d) of Act 792 saves offences committed before the repeal of an enactment. Therefore, it means that in the instant case, though section 136 of the Electronic Transactions Act, 2008, (Act 772) has been repealed, offences committed against the said section 136 of Act 772 before it was repealed should be in accordance with the repealed law. It is noteworthy that C.A.4 did not save an 'offence committed'. In the light of the above, the appellant having committed offences under section 136 of Act 772 for which he is standing trial, even though the Cybersecurity Act, 2020, Act 1038 has repealed section 136 of Act 772, section 34(1)(d) of Act 792 saves the offence. That is the law upon which the appellant will continue to stand trial and not the new Cybersecurity Act as applying that will lead to applying the law retrospectively and hence violate article 19(5) of the 1992 Constitution."

APPEAL TO THE SUPREME COURT:

Claiming to be aggrieved by the judgment of the Court of Appeal, the accused person filed a further appeal to this court on the 1st day of March 2022 against the judgment on the grounds that:

(a). That the honourable Court of Appeal erred in law in holding that a person may be convicted on a criminal offence which has been repealed, which holding has occasioned a miscarriage of justice.

(b) That the honourable Court of Appeal erred in law in holding that the appellant can be convicted on the repealed section 136(b) of the Electronic Transactions Act, 2008, Act 772, which holding has occasioned a miscarriage of justice.

(c). That the decision is unreasonable or cannot be supported having regard to the evidence.

With the leave of the court, granted on the 9th June 2022, the accused person filed the following additional grounds of appeal on the 14th June 2022:

(d). That the Court of Appeal erred in law when it held that judge-made law is 'written law' within the intendment of article 19(11) of the 1992 Constitution.

(e). That the Court of Appeal erred in law when it applied the Interpretation Act, 2009, Act 792 to interpret article 19(11) of the 1992 Constitution.

(f). That the Court of Appeal erred in law in applying the Interpretation Act, 2009, Act 792, when no contrary intention appears in the primary legislation – the Cybersecurity Act, 2020, Act 1038.

(g). That the Court of Appeal erred in law when it failed to distinguish between the effect of a repeal on criminal matters from the effect of a repeal on civil cases.

THE ISSUE FOR DETERMINATION:

My Lords, as already pointed out, notwithstanding the numerous grounds of appeal stated by the accused person/appellant on the Notice of Appeal which have been quoted above, this court has only one main issue to determine in this appeal and, that is: whether the repeal of a crime creating enactment under our laws, means that an accused person can no longer be prosecuted for the offence which he had, allegedly, committed and was being prosecuted for, before a court of competent jurisdiction? Does the repeal of an offence creating enactment, automatically bring to an end, the prosecution of an accused person for an offence which he had, allegedly, committed before the repeal of the enactment under which he was being prosecuted? My Lords, this is the most important question which this court is called upon to determine and which will dispose of this appeal.

SUBMISSIONS BY ACCUSED:

Counsel for the accused referred to article 19(11) of the 1992 Constitution and submitted that a person can only be convicted for a crime if at the time of the conviction, the offence for which he was tried was in a written statute. Counsel says that if a law is repealed, the effect is as if the law has never existed and it will no longer be on the statute books and, hence, cannot be said to be in writing. That a crime-creating law is saved *"only and only if it is saved expressly and not impliedly or by construction."* According to counsel, a law can only be said to be in writing if it is so clearly stated in the statute books and not derived by judicial interpretation. Counsel submitted that *"a crime-creating law cannot be saved by interpretation, by implication or by construction".*

Counsel referred to section 2(1) of Act 792 and section 98(1) of Act 1038 and further submitted, on behalf of the accused person, that *"the Cybersecurity Act, 2020, Act 1038 was emphatic in repealing section 136 of the Electronic Transactions Act, 2008, Act 772."* Therefore, Counsel argues, *"where there is no contrary intention in the primary enactment, where the primary enactment is unambiguous, and where the primary enactment has spoken in clear terms,*

the Interpretation Act is inapplicable." Thus, the matters which the law maker saved were stated in section 98(2) of Act 1038. Counsel argues that *"there is absolutely no ambiguity in the Cybersecurity Act which may warrant the Court of Appeal to resort to the Interpretation Act in the first place"*.

Counsel also made peripheral arguments to the effect that the Court of Appeal erred in applying the Interpretation Act to Article 19(11) of the Constitution, 1992 and also that the Court of Appeal failed to distinguish between the effect of a repeal on criminal cases and that of civil cases.

SUBMISSIONS BY THE REPUBLIC:

In response, Counsel for the Republic referred to the case of the **Republic vs High Court (Commercial Division) Accra; Ex parte Environ Solutions & 3 Others (Dannex Limited & 5 Others – Interested parties) [2019-2020] 1 SCLRG 1**, among others, and submitted that *"the argument that once a repealed law has not been expressly saved completely extinguishes every activity under it is no longer good law so long as savings have been provided for it under the Interpretation Act."*

It was submitted further that *"the argument that the appellant could not continue standing trial because there is no written law proscribing his conduct is also untenable. By section 34(1)(d) [of Act 792] the offence for which the appellant is standing trial is clearly saved; likewise, the punishment that would be meted out to him should the prosecution succeed is also saved under subsection (e)".*

Counsel referred to section 136(1)(b) of Act 772 and section 62 (1) and (4) of Act 1038 and submitted that the requirement of writing as stated under article 19(5) and (11) of the Constitution 1992 is satisfied by the re-enactment of the repealed provisions of Act 772 by section 62 of Act 1038.

Counsel also submitted that the fact that a statute had been repealed does not mean that it had lost all of its force simply because a new statute had been enacted.

It was also argued on behalf of the Republic that the provisions of Act 792 are applicable to both civil and criminal cases and that the principles espoused in the Environ Solution case applied to both civil and criminal cases. Counsel submitted further that section 34(1) of Act 792 is applicable to repeals in civil cases just as it does to criminal cases unlike its predecessor Act, the Interpretation Act, CA. 4 which had been repealed. Counsel finally invited this court to dismiss the appeal.

CONSIDERATION OF THE APPEAL:

As already pointed out the main issue concerns the repeal of section 136 of the Electronic Transactions Act, 2008, Act 772 by section 98 of the Cybersecurity Act, 2020, Act 1038 and whether by the said repeal, the trial of the accused person under section 136 of Act 772 automatically comes to a halt. Section 136 of Act 772 provided that:

> *"136. Child pornography*
>
> *(1) A person who intentionally does any of the following acts—*
>
> *(a) publishes child pornography through a computer;*
>
> *(b) produces or procures child pornography for the purpose of its publication through a computer system; or*
>
> *(c) possesses child pornography in a computer system or on a computer or electronic record storage medium*
>
> *commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or a term of imprisonment of not more than ten years or to both."*

And as stated above, section 98 (1) of the Cybersecurity Act simply states that *"sections 118 and 136 of the Electronic Transactions Act, 2008 (Act 772) are repealed."* To *'repeal'* an Act, in the words of Francis Benion, *"is to cause it to cease to be part of the corpus juris or body of law"*. To *'repeal'* an enactment *"is to cause it to cease to be in law a part of the Act containing it"*. See page 300 of Benion on Statutory Interpretation (5th ed.) authored by Francis Benion (2008).

In relation to section 136 therefore, what it implies is that, with the enactment of section 98(1) of the Cybersecurity Act, the said section 136 of Act 772 has, generally speaking, ceased to be part of Act 772.

The effect of a repeal of an enactment at common law, has been stated on page 301 by Francis Benion (supra), where the learned author states that: *"at common law the repeal of an Act makes it as if it had never been, except as to matters past and closed"*. See **Eton College vs Minister of Agriculture [1964] Ch. 274.** This position of the law was re-affirmed in Republic vs High Court (Commercial Division) Accra; Ex parte Environ Solutions & 3 Others (Dannex Limited & 5 Others – Interested parties) (supra), where at page 40 of the report, Dotse JSC stated that *"the effect of a repeal is that the enactment repealed is completely obliterated as if it had never been enacted"*. Section 32 of the Interpretation Act, 2009. Act 792 also provides that:

> *"32. Cessation of operation of enactments*
>
> *Where in an enactment it is declared that the whole or a part of any other enactment is to cease to have effect, that other enactment shall be deemed to have been repealed to the extent to which it is so declared to cease to have effect."*

As pointed out in the Ex parte Environ Solution case, the above statement of the law as to the effect of a repeal of an enactment is not absolute. It is subject to exceptions created

by the Interpretation Act, 2008, Act 792. Thus section 34 of Act 792 provides in emphatic terms that:

"34. Effect of repeal

(1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

(a) revive an enactment or a thing not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of the enactment that is repealed or revoked, or anything duly done or suffered under the enactment;

(c) affect a right, a privilege, an obligation or a liability acquired, accrued or incurred under the enactment that is repealed or revoked;

(d) affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or

(e) affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment;

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

(2) Subsection (1) does not authorise the continuance in force after the repeal or revocation of an enactment or of an instrument made under that enactment.

(3) Where an enactment expires, lapses or otherwise ceases to have effect, this section shall apply as if that enactment had then been repealed or revoked.

(4) The inclusion in the repealing provisions of an enactment of an express saving with respect to the repeals affected by the inclusion does not prejudice the operation of this section with respect to the effect of those repeals."

Section 34(1) of Act 792 mirrors, almost, word for word, section 16(1) of the United Kingdom Interpretation Act, 1978. In explaining the effect of the provisions in the Interpretation Act, Benion (supra) states on page 308 that:

"The main effect is to modify the common law doctrine that at repeal the 'floodlight' is switched off, plunging everything illuminated by it into immediate darkness. ***The general savings reproduced here enable matters which are in progress at the time of repeal to be concluded****."*

In respect of section 34 (1)(a) of Act 792 which is in pari materia with section 16(1)(a) of the United Kingdom Interpretation Act, 1978, the learned author, Francis Benion explains that:

"it operates to prevent the repeal of a repealing enactment from reviving enactments that enactment had repealed. In the same way the repeal of an enactment does not revive anything else which that enactment had rendered illegal or otherwise put an end to".

By section 34(1)(b) of Act 792 is meant that all lawful acts carried out or executed under the repealed enactment shall not be affected by the fact that the enactment under which the acts were done had been repealed. That is to say that, the validity of lawful acts done under repealed enactments shall be preserved notwithstanding the repeal of the enactments which authorised the acts. As explained by Benion: *"'anything duly done' avoids the need for procedural matters, such as the giving of notices, to be done over again."*

To enable section 34(1)(c) to have effect, the right or privilege *"must have become in some way vested by the date of repeal. The provisions in section 34(1)(c) and (d) apply equally to civil and criminal matters".*

Section 34(1)(e) of Act 792 is clear. That, notwithstanding the repeal of an enactment, any investigation or legal proceedings began under the repealed enactment shall not be affected or halted by the repeal of the enactment under which the investigation and legal proceedings had begun. Benion explains further at page 310 of his aforementioned book that: *"at common law, there could not be a conviction of an offence against a repealed enactment once the repeal had taken effect. This applied even though proceedings had been commenced previously."* Section 34(1)(e) enables a prosecution which had begun before the repeal took effect to be completed.

It has been submitted on behalf of the accused person that *"the Interpretation Act is only applicable where a contrary intention appears in the primary legislation"*. Counsel refers to section 2(1) of the Interpretation Act in support of his contention. The said section states that:

> *"2. Application of this Act*
>
> *(1) This Act applies to an enactment whether enacted before or after the coming into force of this Act, to a legislative measure continued in force by the Constitution, and an instrument made directly or indirectly under an enactment unless a contrary intention appears in that enactment, measure or instrument."*

Clearly, the meaning of section 2(1) of Act 792, as captured in the statement of case filed by learned counsel for the accused person was completely lost on him. Section 2(1) quoted above provides three instances where the Interpretation Act applies:

> *(a). First, the Interpretation Act applies to an enactment; whether that enactment was made or passed by Parliament before or after the coming into force of the Interpretation Act unless a contrary intention appears under the enactment.*
>
> *(b) Secondly, the Interpretation Act applies to a legislative measure continued in force by the 1992 Constitution unless a contrary intention appears under the legislative measure.*

(c). Thirdly, the Interpretation Act applies to an instrument made directly or indirectly under an enactment unless a contrary intention appears under the instrument.

What the above provision means is that until one is able to identify under an enactment, a legislative measure continued in force by the 1992 Constitution or an instrument made under an enactment, a provision excluding the application of the Interpretation Act, 2008, Act 792, the Interpretation Act shall apply in the interpretation of that enactment, legislative measure or the instrument. In other words, to oust the application of the Interpretation Act, there must be a specific provision in an enactment, legislative measure or an instrument which actually prohibits the application of the Interpretation Act, 2008, Act 792.

Counsel in his submission, failed to point to any provision in either the repealed section 136 of Act 772 or the repealing Cybersecurity Act, 2020, Act 1038 which proscribes the application of the Interpretation Act. Thus, as stated in section 2 of Act 792, the provisions of the Interpretation Act apply to the provisions in Act 772 and Act 1038.

Counsel also referred to article 19(11) of the Constitution, 1992 and submitted that with the repeal of section 136 of Act 772, there is no written law under which the accused can be prosecuted and convicted for the offence of Child Pornography leveled against the accused under counts 2, 3 and 4 of the charge sheet. Indeed, article 19(11) of the Constitution, 1992 provides that:

"19(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law."

The simple answer to Counsel's submission is that the written law, that is, section 136 of the Electronic Transactions Act, 2008, Act 772 under which the accused person was charged and under which he is being tried by the High Court, is not obliterated by the repeal of that section by section 98 of the Cybersecurity Act, 2020, Act 1038 in view of the

saving provision in section 34(1) of the Interpretation Act, 2008, Act 792. Thus, section 136 of Act 772, was the written law for the purposes of the prosecution of the accused person who, allegedly, committed the offence for which he is being tried whiles section 136 of Act 772 was in force. That provision continues in force until the trial of the accused is completed.

At the risk of sounding repeatitive, section 34(1)(d) and (e) of Act 792 provides as follows:

> *"34(1). Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,*
>
> *(d) affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or*
>
> *(e) affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment;*
>
> *and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked."*

Thus, as far as the prosecution of the accused person is concerned, the law regards section 136 of Act 772 as not repealed and it continues to serve the purpose of the law under which the accused is charged notwithstanding the repeal. In short, by virtue of section 34(1)(d) and (e) of the Interpretation Act, 2008, Act 792, the written law, that is, section 136 of the Electronic Transactions Act, 2008, Act 772 under which the accused was charged and his prosecution began, shall continue to be the written law under which the accused shall continue to be prosecuted and if convicted punished. There is no missing link here and article 19(11) of the 1992 Constitution is thereby observed.

Counsel seems to have placed much reliance on just a portion of the decision of this court in **British Airways & Another vs Attorney General [1997-1998] 1 GLR 55** without adequate consideration of the entire case. At page 5 of his statement of case, counsel referred to page 63 of the report where the Court, through Bamford Addo JSC, said that:

> *"Even before 7 January 1993 when the Constitution, 1992 became effective, section 8 of the Criminal Code, 1960 (Act 29) provided that: "8. No person shall be liable to punishment by the common law for any act." The exception to this rule is in the case of contempt. It means that criminal offences must be so designated in a written law."*

And, after making references to a few cases, counsel submitted that:

> *"The decision of the Court of Appeal in the face of the above argument, however, is that the crime-creating law in question – section 136 of the Electronic Transactions Act, 2008, Act 772 – is saved by section 34(1)(d) of the Interpretation Act, 2008, Act 792. In other words, the Court of Appeal has held contrary to your Lordships' reasoning in British Airways, that a law which is the product of interpretation or construction – a judge-made law, a common law, a law which is not on the statute book – is 'written law' and, thus, may create a crime in Ghana. Accordingly, we pray your Lordships, respectfully, to adjudge and hold that the honourable Court of Appeal erred in this regard".*

This argument by Counsel is fundamentally flawed in one major respect, in that, in the British Airways case the accused person was being tried for an offence committed under the External Companies and Diplomatic Missions (Acquisition or Rental of Immovable Property) Law, 1986 (PNDCL150) which was subsequently repealed by the Statute Law Revision Act, 1996, Act 516. The then Interpretation Act, CA 4, unlike the Interpretation Act, 2008, Act 792, did not have a saving clause like section 34 of Act 792. The Court then reasoned thus, on page 70 of the report that:

"Under section 8(1)(e) of CA 4, once an individual has committed an offence under a law, the subsequent repeal of that law would not bar investigation and prosecution of the offence under that repealed law. But then the repealing law may either repeal entirely the law creating the offence together with the punishment, or the repealing law itself or any other enactment may save the offence and the punishment. The former situation will result in leaving no existing law to support the offence and the punishment. Whereas the latter situation will result in saving the enactment constituting the law, to justify continued investigation and prosecution of the offence. In other words, in the latter situation, the saving law will be a written law within the context of the article 19(11) formulation to satisfy the requirement in that formulation. Whereas the former situation is caught by the prohibition in the article 19(11) formulation since there is no saving law to justify the continued investigation and prosecution of the offence. For the article 19 (11) formulation in effect requires that at every stage of the investigation and prosecution of an offence, there must be a written law creating the offence and prescribing the punishment for it.

Now, for a fuller appreciation of the import of the article 19(11) formulation, I will once more quote the article: "(11) No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law." (The emphasis is mine.) Note that the verb used is, is and not was. If it had been was, the formulation would have referred to the past and not the present. The use of "is" clearly shows that the formulation looks beyond the time of the commission of the offence to ensure the legality of what happens thereafter. If at any stage before the conviction, the law creating the offence and the punishment is totally repealed without any saving, the investigation and proceedings cannot be continued.

Now, article 19(5) and (11) by virtue of article 1(2) of the same Constitution, 1992, overrides section 8 (1)(e) of CA 4 in respect of criminal investigations and trials. The two formulations, therefore represent the current legal position, and article 19(11) of the

Constitution, 1992 applies to the pending criminal trial of the plaintiffs at the Circuit Tribunal, Accra.

There is no doubt that this criminal trial had not concluded. And Act 516 which is stated to be "an Act to repeal certain statutes that are no longer applicable or have become spent" repealed the entire PNDCL 150, ***without saving either the offence nor the punishment for it. Neither is there any other legislation re-enacting the offence and punishment in PNDCL 150.*** *The position, therefore, is that as from 13 September 1996 when Act 516 received Gazette notification, the offence the plaintiffs were facing at the Circuit Tribunal, Accra ceased to be defined and the punishment thereof equally ceased to be prescribed in any written law. The continued prosecution of the plaintiffs for the said offence will therefore be inconsistent with article 19(11) of the Constitution, 1992 and same can therefore not be legally permitted."*

Thus, as clearly explained in the British Airways case quoted above, if at the time of the repeal of PNDCL 150 by Act 516, there was in existence, an enactment which had preserved or saved the law under which the accused was being tried, this court would not have declared the trial an illegality. It is incorrect for counsel to say that by holding that the prosecution of the accused person in the instant matter can continue by virtue of section 34(1)(d) of Act 792, the Court of Appeal had thereby stated that the written law is the common law.

It is the Courts that give flesh to statute law and without the interpretation and application of the law by the Court, no legally cognizable meaning and effect may attach to any statute however plain the language of a statute may seem to be.

The position of the current state of the law, as stated in the British Airways case, has recently been endorsed by this court in the Ex parte Environ Solution case where the court, speaking again, through Dotse JSC at page 45 of the report stated that:

"It must also be emphasised that from the principles of interpretation of statutes dealt with in this opinion, as well as the case law, it is apparent that a repealed statute does not lose all of its effect and operating provisions simply because a new statute had been enacted. General principles of interpretation as well as the effect of the relevant provisions of the Interpretation Act must all be considered and read together, in order to ascertain the effect of the repeal."

CONCLUSION:

We wish to state in conclusion that it is very correct that section 98 of the Cyber security Act, 2020, Act 1038 had repealed section 136 of the Electronic Transactions Act, 2008, Act 772. It is also correct that the accused person who is the appellant in this matter is alleged to have committed the offence of Child Pornography as a result of which he was charged and is being prosecuted under section 136 of the Electronic Transactions Act, 2008, Act 772. We hold that notwithstanding the repeal of section 136 of Act 772 under which the accused is being prosecuted, section 34(1)(d) and (e) of the Interpretation Act, 2008, Act 792 had saved section 136 of the Electronic Transactions Act, 2008, Act 772. Consequently, the prosecution of the accused person is not contrary to Article 19(11) of the 1992 Constitution or any provision of the Constitution. Flowing from the above, the existing law, that is, section 136 of the Electronic Transactions Act, 2008, Act 772 allows the prosecution of the accused person as charged. We therefore find no merit in the appeal lodged by the accused person. The appeal is, therefore, dismissed.

Consequently, we hereby order that the learned trial Judge shall continue with the trial of the accused person according to law.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

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