**IN THE COURT OF APPEAL**
**ENUGU JUDICIAL DIVISION**
**HOLDEN AT ENUGU**

**ON WEDNESDAY, THE 20TH DAY OF DECEMBER, 2017**

**BEFORE THEIR LORDSHIPS**

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| **IGNATIUS IGWE AGUBE** | - | **JUSTICE, COURT OF APPEAL** |
| **JOSEPH TINE TUR** | - | **JUSTICE, COURT OF APPEAL** |
| **MISITURA OMODERE BOLAJI-YUSUFF** | - | **JUSTICE, COURT OF APPEAL** |

**APPEAL NO.CA/E/59C/2016**

**BETWEEN:**

| | | |
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| **FEDERAL REPUBLIC OF NIGERIA** | - | **APPELLANT** |
| **AND** | | |
| **MR. EDWIN OFFOR NWATALARI** | - | **RESPONDENT** |

**DECISION**
**(DELIVERED BY JOSEPH TINE TUR, JCA)**

This appeal was heard on 9th October, 2017 and a decision reserved to be rendered in accordance with the provisions of Section 294(2)-(3) and 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 as altered. The provisions are couched in the following manner:

> *"(2) Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion:*
> *Provided that it shall not be necessary for the Justices who heard a cause or matter to be present when judgment is to be delivered and the opinion of a Justice may be pronounced or*

*read by any other Justice whether or not he was present at the hearing.*

*(3) A decision of a Court consisting of more than one Judge shall be determined by the opinion of the majority of its members.*

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*318(1) In this Constitution unless it is otherwise expressly provided or the context otherwise requires:*

*"Decision" means, in the relation to a Court, any determination of that Court and includes judgment; decree, order, conviction, sentence or recommendation."*

The intention of the legislature is that the determination of any dispute in the Supreme Court or the Court of Appeal from 29th May, 1999 when the Constitution of the Federal Republic of Nigeria, 1999 as altered came into effect is to be headed or known as a ***"decision"*** or an ***"opinion"***. I have tagged this determination a ***"decision"***. I could have headed same as an ***"opinion".*** Whether it is headed an ***"opinion"*** or a ***"decision"*** it is to conform with the provisions of Section 294(2)-(3) and 318(1) of the Constitution. It is interesting to note the way and manner the legislature has couched Section 294(1) of the Constitution to wit:

*"294(1) Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof."*

The provision of Section 294(1) of the Constitution that the Court should render a ***"decision"*** upon the conclusion of hearing evidence and

submission of final addresses within ninety days and to furnish the parties with authenticated copies within seven days is omitted in appeals heard in the Supreme Court or the Court of Appeal. Appeals are heard in the two appellate Courts on written briefs of argument under Order 19 rule 9(1) of the Court of Appeal Rules, 2016 which reads as follows:

> ***"9. ORAL ARGUMENTS:***
>
> ***(1) Oral argument will be allowed at the hearing of appeal to emphasize and clarify the written argument appearing in the briefs already filed in Court."***

To hold otherwise will require a constitutional amendment to the provisions of Section 294(2)-(3) of the Constitution.

The practice of re-opening an appeal after the period of ninety days, prescribed for delivery of a ***"decision"*** rather than a ***"judgment"*** or ***"ruling"*** – ***"final"*** or ***"interlocutory"*** for re-hearing has neither any constitutional or statutory support. The practice merely prolongs further the time and cost of making known the ***"decision"*** or ***"opinion"*** of the Court of Appeal or the Supreme Court. In the case of decisions of Courts that conduct proceedings under Section 36(1)-(2) and 294(1) of the Constitution the expiry of the ninety days for delivery of a decision is curable by the provisions of Section 294(5)-(6) of the Constitution to wit:

> ***"(5) The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section unless the court***

*exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.*

*(6) As soon as possible after hearing and deciding any case in which it has been determined or observed that there was non-compliance with the provisions of subsection (1) of this section, the person presiding at the sitting of the court shall send a report on the case to the Chairman of the National Judicial Council who shall keep the Council informed of such action as the Council may deem fit."*

I shall consider this appeal under Section 294(3) of the Constitution to wit:

*"(3) A decision of a Court consisting of more than one Judge shall be determined by the opinion of the majority of its members."*

Page (i)-(ii) of the Certified True Copy of the Record of proceedings received from the Registry of the High Court of Justice of Enugu State of Nigeria, holden at Enugu, on 19th August, 2016 contains the following entries:

*"The prosecution/appellant filed information against the Accused/Respondent for an offence contrary to the Corrupt Practices and Other Related offences Act, 2000 and plea was taken before his Lordship the Chief Judge of Enugu State I.A. Umezulike, OFR, FCIArb on the 17th day of July, 2007.*

*The Accused/Respondent pleaded not guilty in all four count charges. The Prosecution/Appellant called three witnesses and closed his case. The Accused/Respondent Counsel initially filed a no case submission which he withdrew later and made an oral application submitting that the accused had*

*been charged/arraigned under a non existing law land urged the Court to discharge the Accused/Respondent.*

*The Prosecution/Appellant opposed the Accused/Respondent Counsel application, submitting that Corrupt Practices and other Related Offences Act, 2000 under which the accused was charge has not been amended/repealed and is still the extant law.*

*On the 8th day of February, 2016 the Honourable Court delivered its ruling, holding that the accused had been charged under a non existing law as argued by the accused/respondent and the accused/respondent discharged.*

*Dissatisfied with the ruling of the Court, the prosecution/appellant hereby appeal to the Court of Appeal upon the following grounds. The learned Chief Judge erred in law when he held that the Corrupt Practices and Other Related Offences Act, 2000 has been repealed by Section 55 of the Corrupt Practice and Other Related Offences Act Cap.31 Laws of the Federation, 2004.*

*The learned Chief Judge misdirected himself in law when in his judgment stated that the accused made a no case submission."*

.The decision of the learned Chief Judge is at pages 124-125 of the printed record as follows:

*"This is a Ruling on a no case submission entered for the accused by his learned Counsel. The accused Edwin Offor Nwatalari charged with a 4-count charges under an information of the Attorney-General of the Federation on behalf of the Federal Republic of Nigeria. The accused pleaded not guilty to all the counts. At the conclusion of the case of the prosecution, the learned defence Counsel set forth a no case submission and urged the Court to discharge the accused*

*person. Counsel for the accused argued that the arraignment and the trial proceedings were a complete nullity because the information and trial were conducted under a law that did not exist. He stated that the four-count charge was brought under the Corrupt Practices and Other Related Offences Act, 2000. He referred to Section 55 of Cap C3 2004; Olabode George vs. FRN (2014) 5 NWLR (Pt.1399) 9. Counsel contended that the Act of 2000 no longer existed.*

*The prosecution opposed the submission. The prosecution argued that the ICPC Act, 2000 was an existing Act; that it was the same as Cap 3 LFN, 2004; that the Act of 2000 has not been repealed. He referred to A-G Federation vs. Anyim Pius Anyim FHC/ABJ/CS/225/2012. H concluded that the application lacked merit and should be dismissed and the accused called upon to enter his defence.*

*In his further argument on point of law, Counsel for the accused stated confidently that the ICPC Act, 2000 has been repealed by Section 55 of the Corrupt Practices and Other Related Offences Act Cap C31, 2004; that the accused should be discharged.*

*Quite frankly I do not see how the prosecution can dance away from the submission that the Corrupt Practices and Other Related Offences Act, 2000 upon which the 4-count charge against the accused was predicated has been has been repealed by the Act of 2003. Candour as minister in the temple of justice required that the prosecution ought to have pleaded mea-culpa and sought the leave of Court to amend the charge or information.*

*Clearly under the Corrupt Practices and Other Related Offences Act, 2003 it is enacted as follows:*

> *"Corrupt Practices and Other Related Offences Act, 2000 is repealed."*

*Unless words have lost their relevance and meaning I do not appreciate how the Act 2000 would in the perception of the prosecution remain an existing Act after it has been clearly repealed as stated and shown above. If I requested the accused to proceed to mount his defence to the information, the question would be upon what statute? Would it be upon the information mounted upon Corrupt Practices and Other Related Offences Act, 2000 which has been clearly repealed by the Corrupt Practices and Other Related Offences Act, 20003.*

*I am not entitled as an umpire to descend into the arena to repair the case of the prosecution. For the reasons set forth above I accede to the contentions of the defence that the information ought to be struck out and the accused discharge; and I so order."*

The Notice of Appeal by the Federal Republic of Nigeria and the grounds of appeal are at pages 126-128 of the printed record as follows:

*"GROUND OF APPEAL:*

1. *ERROR OF LAW: The learned Chief Judge erred in law when he held that the Independent Corrupt Practices and Other Related Offences Act, 2000 has been repealed by Cap.31, Laws of the Federation, 2004.*

   *PARTICULARS OF ERROR:*

   *(a) The Corrupt Practices and Other Related Offences Act, 2000 is an existing law and has not been repealed by any law.*

2. *ERROR OF LAW: The learned Chief Judge misdirected himself in law when in his judgment stated that the accused made a no case submission.*

   *PARTICULARS OF ERROR:*

   *(a) The Defence has earlier withdrawn his no case submission in open Court before he made an oral*

*application to the Court to dismiss the charges because the Independent Corrupt Practices and Other Related Offences Act, 2000 had been repealed.*

*(b) The Court wrongly relied on or took into consideration a document that was not before it.*

*(c) That the issue of no case submission could not have arisen, made or succeeded because the prosecution had adduced overwhelming evidence which was not rebutted in any way by the defence.*

*Further grounds of appeal will be when we received the record of proceedings.*

*RELIEF SOUGHT FROM THE COURT OF APPEAL:*

*To set aside the judgment of the trial Court in its entirety."*

The appellant's brief of argument was settled by **U.A. Udonsi, Esq.** of the Independent Corrupt Practices and other Related Offences Commission, Abuja on 10th October, 2016. **C. Chuma Oguejiofor, Esq.** settled the respondent's brief on 16th January, 2017. The learned Counsel adopted their respective briefs when the appeal was heard on 9th October, 2017. This appeal emanates from the exercise of the criminal jurisdiction of the High Court of Justice of Enugu State under Section 272(1)-(2) of the Constitution of the Federal Republic of Nigeria, 1999 as altered as follows:

*"(1) Subject to the provisions of Section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or*

*relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.*

*(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction."*

The criminal offences alleged to have been committed by the respondent in the charge sheet are at pages 1-5 of the printed record to wit:

*"COUNT ONE:*

*STATEMENT OF OFFENCE:*

*Using office or position to confer unfair advantage on himself contrary to and punishable under Section 19 of the Corrupt Practices and Other Related Offences Act, 2000.*

*PARTICULARS OF OFFENCE:*

*Mr. Edwin Offor Nwatalari (M) on or about February, 2005 at Ezeagu North-East Local Government Development Council, Enugu State, as the Chairman of the said Council did confer unfair advantage on himself by diverting the sum of ₦1,09,350.00 (One Million, One Hundred and Nine Thousand, Three Hundred and Fifty Naira) belonging to the said Local Government Council to his personal purpose, which amount was part of the sum of ₦1,597,670.00 (One Million, Five Hundred and Ninety Seven Thousand, Six Hundred and Seventy Naira) he received for repairs and hiring of vehicles for the Local Government Development Council.*

*COUNT TWO:*

*STATEMENT OF OFFENCE:*

*Making false statement or return contrary to and punishable under Section 16 of the Corrupt Practices and Other Related Offences Act, 2000.*

*PARTICULARS OF OFFENCE:*

*Mr. Edwin Offor Nwatalari (M) in or about May, 2006 at Ezeagu North-East Local Government Development Council, Enugu State did give to Mr. Mike Nwankwo, the treasurer of the said Local Government Development Council, a forged receipt of the sum of ₦780,000.00 (Seven Hundred and Eighty Thousand Naira) for filing in order to account for part of the sum of ₦1,597,670.00 (One Million, Five Hundred and Ninety Seven Thousand, Six Hundred and Seventy Naira) which he received from the coffers of the Local Government Council in 2005 as then the Chairman of the Council for the purpose of repairs and hiring of vehicles, purporting the said receipt to have been issued by Abah First Investment in respect of a complete 406 engine allegedly sold to the Local Government Development Council.*

*COUNT THREE:*

*STATEMENT OF OFFENCE:*

*Making false statement or return contrary to and punishable under section 16 of the Corrupt Practices and Other Related Offences Act, 2000.*

*PARTICULARS OF OFFENCE:*

*Mr. Edwin Offor Nwatalari (M) in or about May, 2006, at Ezeagu North-East Local Government Development Council, Enugu State did give to Mr. Mike Nwankwo, the treasurer of the said Local Government Development Council, a forged receipt of the sum of ₦149,350.00 (One Hundred and Forty Nine Thousand, Three Hundred and Fifty Naira) for filing in order to account for part of the sum of ₦1,597,670.00 (One Million, Five Hundred and Ninety Seven Thousand, Six Hundred and*

*Seventy Naira) which he received from the coffers of the Local Government Council in 2005 as then the Chairman of the Council for the purpose of repairs and hiring of vehicles, purporting the said receipt to have been issued by Kenneth C. Jideofor Motors Nig.*

*COUNT FOUR:*

*STATEMENT OF OFFENCE:*

*Making false statement or return contrary to and punishable under Section 16 of the Corrupt Practices and Other Related Offences Act, 2000.*

*PARTICULARS OF OFFENCE:*

*Mr. Edwin Offor Nwatalari (M) in or about May, 2006, at Ezeagu North-East Local Government Development Council, Enugu State did give to Mr. Mike Nwankwo, the treasurer of the said Local Government Development Council, a forged receipt of the sum of N180,000.00 (One Hundred and Eighty Thousand Naira) for filing in order to account for part of the sum of N1,597,670.00 (One Million, Five Hundred and Ninety Seven Thousand, Six Hundred and Seventy Naira) which he received from the coffers of the Local Government Council in 2005 as then the Chairman of the Council for the purpose of repairs and hiring of vehicles, purporting the said receipt to have been issued by Otiekwe Onyioha."*

Order 17 rules 1-26 of the Court of Appeal Rules, 2016 applies to *"appeals to the Court from any Court or tribunal acting either in its original or in its appellate jurisdiction in criminal cases, other than a Court-Martial, and to matters related thereto."* See Order 17 rule 1 of the Rules (supra). Provision for argument of the appeal in civil or criminal appeals is 19 rule 1 of the Rules (supra):

*"1. This order shall apply to all appeals coming from any Court or tribunal from which an appeal lies to this Court."*

Order 19 rule 2 to 3(3)-(5) of the Rules provides as follows:

*"2. FILING OF APPELLANT'S BRIEF:*

*The appellant shall within forty-five days of the receipt of the Record of Appeal from the Court below file in the Court a written brief, being a succinct statement of his argument in the appeal.*

*3. FORMS AND CONTENTS OF A BRIEF:*

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*(3) The parties shall assume that briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the Court below, and, wherever necessary, reference shall also be made to all relevant documents or exhibits on which they propose to rely in argument.*

*(4) All briefs shall be concluded with a numbered summary of the points to raise and the reasons upon which the argument is founded.*

*(5) Except to such extent as may be necessary to the development of the argument, briefs need not set out or summarize judgments of the lower Court, nor set out statutory provisions, nor contain an account of the proceedings below nor of the facts of the case."*

The appellant formulated issues for determination at page 8 paragraph 2.2 of the appellant's brief as follows:

*"1. Whether the Corrupt Practices and Other Related Offences Act, 2000 has been repealed by the Corrupt Practices and Other Related Offences Act, 2003, in which case the trial of the respondent under the 2000 Act would be a nullity.*

2. ***Whether the trial Court was correct in making reference to no case submission in his ruling when the defence had already withdrawn the application orally."***

Where there is no cross-appeal nor a Respondent's Notice that the decision should be varied or affirmed on other grounds, Order 19 rule 4(1)-(2) of the Court of Appeal Rules, 2016 provides as follows:

> ***"4(1) The respondent shall also within thirty days of the service of the brief for the appellant on him file the respondent's brief which shall be duly endorsed with an address or addresses for service.***
>
> ***(2) The respondent's brief shall answer all material points of substance contained in the appellant's brief and contain all points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed. It shall mutatis mutandis; also conform to Rule 3 (1), (2), (3), (4), (5) and (6) of this Order."***

The duty of the respondent is to answer all the relevant questions or issues contained in the appellant's brief and to further show why the appeal is to be dismissed. The respondent does not need to formulate independent issues for determination. I shall determine this appeal on the issues formulated by the appellant for determination. The parties should assume I have read the briefs and considered the authorities in order to render this decision. Order 4 rule 9(1)-(5) of the Court of Appeal Rules, 2016 comes under the ***"Powers of the Court"***. The powers of the Court of Appeal to interfere with the decision or verdict in a civil or criminal

proceedings is to be exercised if the appellant is able to show that any substantial wrong or a miscarriage of justice was occasioned by the learned trial Judge that needs to be rectified else, the decision of the Court below ought to be affirmed, and the appeal dismissed. The appellant arraigned the respondent under Section 19 (Count One); Section 16 (Count Two-Four) of the Corrupt Practices and other Related Offences Act, 2000 as the current Act in charge No.E/10C/2007 on 18th April, 2007. Section 36(8) of the Constitution of the Federal Republic of Nigeria, 1999 as altered provides as follows:

> *"(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed."*

The counts alleged that the respondent committed these offences ***"...on or about February, 2005 at Ezeagu North-East Local Government Development Council, Enugu State as the Chairman of the said Council..."*** (See Count One at page 2 of the printed record). In Counts Two-Four on the charge sheet the offences were allegedly committed ***"...in or about May, 2006 at Ezeagu North-East Local Government Development Council, Enugu State..."*** The answer to the questions for determination is to consider whether the Corrupt Practices and Other Related Offences Act, 2000 was in force ***"...on or about***

***February, 2005"*** when the respondent is said to have committed the offence in Count One for which the appellant arraigned him to stand trial in the Court below. It is not the date of the arraignment that matters as time for prosecuting criminals does not run against the State. What is of considerable importance is whether ***"...on or about February, 2005"*** when the respondent is said to have committed the offence in Count One, Section 19 of the Corrupt Practices and Other Related Offences Act, 2000 was in existence; whether it was an offence to commit the offence the respondent stood trial in the Court below under the Act (supra). The second question to determine is whether the Corrupt Practices and other Related Offences Act, 2000 was operational when the offences in Counts Two to Four were committed ***"...in or about May, 2006, at Ezeagu North-East Local Government Council, Enugu State..."*** The argument by the appellant in the brief is to be garnered at pages 9 to 11 as follows:

> ***"It will be pertinent here to give a brief history of the unsuccessful attempt by the National Assembly in 2003 to repeal the Corrupt Practices and Other Related Offences Act, 2000. In 2003 there was a purported amendment of the Act, 2000 by the National Assembly of the Federal Republic of Nigeria. The said amendment however, did not receive the assent of the President of the Federal Republic of Nigeria as required under Section 58 of the 1999 Constitution of Nigeria (as amended). The President withheld his assent because there was a valid Court order restraining all parties from taking***

*any further steps in the amendment process pending the determination of the matter before the Court. The National Assembly in disobedience of the Court order attempted to override and veto the powers of the President. This futile and unlawful attempt by the National Assembly to override the powers of the President resulted in some members of the National Assembly instituting an action against the National Assembly in the case of Hon. Bala Kaoje & 5 Ors. vs. The National Assembly of the Federal Republic of Nigeria & 13 Ors. (Suit NO.FHC/ABJ/CS/93/2003) before the Federal High Court, Abuja. In the instant case, the Court declared the Corrupt Practices and Other Related Offences Act, 2003 purportedly passed by the National Assembly in violation of a subsisting order of the Court as null and void and of no effect and validated the Corrupt Practices and Other Related Offences Act, 2000 which the National Assembly sought to repeal. At page 21 of the ruling, the Court stated thus:*

> *"...but the Act passed by the National Assembly in violation of a valid order of this Court is hereby declared null and void and of no effect. Consequently, the Corrupt Practices and other Related Offences Act, 2000 which came into effect on the 13th June, 2000 and was sanctioned by the Supreme Court of Nigeria in Attorney-General of Ondo State vs. Attorney-General of the Federation & 35 Ors. in a judgment dated 7th June, 2002 shall continue to operate in this country until amended or voided by a valid law made through due process of law by the National Assembly."*

*It is worthy of note that the ruling of the Court in this case was never appealed against. The Supreme Court judgment referred to in that case and reported in Attorney-General of Ondo State*

*vs. Attorney-General of the Federation & 35 Ors. (2002) 9 NWLR (Pt.772) also has not been overruled by the Apex Court. The Court of Appeal, Makurdi Division in the case of Ayuba Bitrus Bakkat vs. Federal Republic of Nigeria No.2 (2014) 2 ICPCLR 455 at 472, paragraphs "A"-"D" held thus:*

> *"Now the bone of contention in this issue is whether or not the Corrupt Practices and Other Related Offences Act, 2000 has been repealed. The answer to this poser is so very simple and straight forward and it is that the Corrupt Practices and Other Related Offences Act, 2000 is solidly in existence, it is yet to be repealed. Lending credence to the said existence of the Act, 2000 is the decision of the Court of Appeal in the case of Wabara vs. FRN cited above by the respondent's Counsel."*

*In a recent decision of the Court of Appeal, Benin Division in the Temple Nwankwoala (DSP) vs. Federal Republic of Nigeria (CA/B/106C/2012) unreported, the Court per Hamma Akawy Barka, JCA held that the Corrupt Practices and Other Related Offences Act, 2000 is an existing Act and has not been repealed.*

*In the case of FRN vs. Dr. Okechukwu Odunze & 7 Ors. (2014) Vol.2 ICPCLR 278 at 303, the Chief Judge of Anambra State, Justice Peter, N.C. Umeadi held thus:*

> *"The preliminary objection of the 1st, 3rd and 5th defendants/applicants lacks merit and is dismissed. I hereby make the following orders:*
>
> *(1) The CPC Act No.5 of 2000 is the valid and subsisting legislation on the matter and ought to be included in the compiled Laws of the Federation of Nigeria.*

(2) *The ICPC Act No.6 of 2003 is null, void and of no effect and ought to be expunged from the compiled Laws of the Federation.*

(3) *Pursuant to the meaning at Section 318 of the Constitution of Nigeria, 1999 (as amended). I hereby make a recommendation that the Honourable Attorney-General and Minister for Justice of Nigeria to (i) include the ICPC Act No.5 of 2000 in the compiled Laws of the Federation of Nigeria forthwith and (ii) expunge the ICPC Act No.6 of 2003 from the compiled Laws of the Federation."*

*On the inadvertent omission of the Corrupt Practices and Other Related Offences Act, 2000 in the compilation of the Laws of the Federation his Lordship stated:-*

*"I agree with Dr. Layonu SAN that the mere fact of such omission does of amount to a repeal of the omitted enactment. It is a cardinal principle of law that statutes are not repealed by inference or implication but by direct provision of law..."*

*The ICPC being concerned about the omission of the Corrupt Practices and Other Related Offences Act, 2000 in the compilation of the 2004 edition of the Laws of the Federation and the inclusion of the purported 2003 Act wrote to the Office of the Attorney-General of Federation. The A-G Federation responded and promised to prevail on the publishers of Laws of the Federation to include the 2000 Act and expunge the 2003 Act. The said letter from the Office of the Attorney-General is hereby annexed as "ABI.""*

The respondent contended at page 3 paragraph 3.00 to page 10 paragraph 5.00 of the brief as follows:

*"I submit with respect my lords that the learned trial court had rightly found that the Corrupt Practices And Other Related Offences Act 2000 is no longer an existing law and had been repealed by the Corrupt Practices And Other Related Offences Act Cap. 31 LFN 2004.*

*Section 55 of the Corrupt Practices And Other Related Offences Act CAP. C. 31 LFN 2004 provides as follows "The Corrupt Practices And Other Related Offences Act 2000 is repealed", I do not know of any other means by which an Act of the National Assembly may be repealed other than as set out in the aforementioned section 55 of the Corrupt Practices And Other Related Offences Act 2004 supra.*

*The offences alleged against the Respondent had all been allegedly committed between the years 2005 and 2006 long after the corrupt practices and other Related Offences Act, 2000 had been repealed and so the prosecution had wrongly charged the Respondent under the same Act of 2000 that had been repealed and was not existing any more. (See pages 1-5 of the record).*

*Learned Counsel for the appellant had at page 10 of his Appellant's brief of argument cited an excerpt from the judgement of the Chief Judge of Anambra State, JUSTICE Peter N.C. Umeadi in the case of FRN VS. DR. OKECHUKWU ODUNZE AND 7 ORS supra where the learned judge had found as follows "...(1) The ICPC Act No. 5 of 2000 is the valid and subsisting legislation on the matter and ought to be included in the complied laws of the Federation of Nigeria. (2) The ICPC Act No. 6 of 2003 is null and void and of no effect and ought to be expunged from the compiled laws of the Federation. (3) Pursuant to the meaning at section 318 of the Constitution of Nigeria 1999 (As amended), I hereby make a recommendation that the Honourable Attorney General and Minister of Justice of Nigerian to (i) Include the ICPC Act No. 5 2000 in the compiled*

*laws of the Federation of Nigeria forthwith and (ii) To expunge the ICPC Act No. 6 of 2003 from the compiled laws of the Federation", submit with respect that the Hon. Justice P.N.C. Umeadi occupies a court of coordinate jurisdiction with that occupied by the learned trial judge who had delivered or rendered the judgment/decision subject of the present appeal, his decision is not therefore binding on the learned trial judge.*

*Even as I make this argument, the fact on the ground is that the Corrupt Practices And Other Related Offences Act CAP C. 31, LFN 2004 provides in section 55 thereof that the Corrupt Practices And Other Related Offences Act of 2000 has been repealed and it is not tidy that a citizen of the land or counsel for a party charged under the 2000 Act would first start looking through unreported decision of courts of the land to determine if the 2000 Act still exists, on the other land, it is the statute that provides a guide to the legal practitioner or citizens of the land as to what laws of the country are valid or have been repealed.*

*In the case of OLABODE GEORGE VS FRN, 2014, 5 NWLR PT 1399 PAGE 1 at Page 9 ratio 5, the apex court had held "By virtue of section 36(12) of the constitution of the Federal Republic of Nigeria, 1999, subject as otherwise provided by the constitution, a person shall not be convicted of a criminal offence unless the offence is defined and the penalty therefore is prescribed in a written Law; and in the subsection, a written Law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provision of the law."*

*In the Laws of the Federation of Nigeria, 2004 at CAP. 31 thereof, it is provided in section 55 that the Corrupt Practices And Other Related Offences Act 2000 has been repealed and that remains the position in the statute enacted by the National Assembly till date and to worsen matters the Judgment of the Federal High*

*the office of the Attorney General of the Federation. The AG Federation responded and promised to prevail on the publishers of the laws of the Federation to include the 2000 Act and expunge the 2003 Act"- learned counsel however failed to state that till date the 2003 Act remains in the published laws of the Federation 2004 as valid and the 2000 Act as a repealed or invalid legislation.*

*I repeat again and say that I have never heard in my few years of practice that when a citizen wishes to find out if a certain legislation has been repealed, that what he does is to start searching through the records of all the courts in Nigeria to see if any of the courts has declare the law invalid. What I rather know is that he goes to look up the law in the laws of the Federation, in the present case, Chapter 31 of LFN 2004 which in section 55 declares in black and white that the Corrupt Practices and Other Related Offences Act 2000 has been repealed. The learned trial Chief judge was therefore right when he found as he did that "Clearly under the Corrupt Practice and other Related Offences Act 2003 it is enacted as follows "Corrupt Practices and Other Related Offences Act 2000 is repealed".*

*Before I conclude my argument on this point, let me commend to my lords the provisions of 60, 61 and 62 of the Evidence Act LFN 2011. Section 60(1) States:- "A final Judgment, order or decree of a competent court, in the exercise of probate, Matrimonial, Admiralty or insolvency Jurisdiction, which confers upon, or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specific person but absolutely, is admissible when the existence of any such legal character, or the title of any such legl persons to anything, is relevant", section 60(2) states "Such judgment, order or decree is conclusive proof (a) that any*

*which does not exist, "Ipso facto" then no evidence could be said to have been led to prove essential ingredients of the offence charged. It is also not in doubt that the Respondent had made the "No case Submission" at the point where the prosecution had already closed its case, and not before that, with the greatest, that a no case submission was properly made by the learned counsel for the Respondent and the learned trial Judge had alo acted properly in upholding the same.*

*<u>CONCLUSION</u> – The learned trial Judge had acted rightly when he found that the Corrupt Practices and Other Related Offences Act 2000 had been repealed by the Corrupt Practice And Other Related Offences Act 2003 for clearly, it had been declared in Section 55 of the 2003 Act that the 2000 Act had been repealed.*

*The learned counsel for the Appellant should have brought forward before the trial court the Judgment of the Federal High Court by which he had stated that the 2003 Act had been declared illegal and a nullity. The learned trial Judge is not the Almighty God as to have known that the said judgment of the Federal High Court exists, he therefore had acted rightly by relying on Section 55 of the 2003 Act to hold that the 2000 Act had been repealed.*

*A combined reading of Section 59-64 of the Evidence Act 2011 leads to just one conclusion and that is that the law requires the Appellant's counsel to have made available to the court and counsel for the Respondent the Judgment of the Federal High Court Abuja by which the 2003 Corrupt Practices And Other Related Offences Act was purportedly declared incompetent and invalid. The imperativeness of producing the said judgment in court is underscored by the fact that the learned counsel for the Respondent could upon examining the Judgment raise the point that it is vitiated on any of the grounds set out in Section 64 of the Evidence Act supra. Section 61 of the same Evidence*

*Act 2011 even declares that the judgment is not conclusive proof of that which it states that is if it is even admitted in evidence at all.*

*All in all therefore a mere mention of the aforesaid judgments of the Federal High Court without making the same available to the trial court and the counsel for the Respondent had taken the wind off of the sail of the Appellant's argument that the Corrupt Practices And Other Related Offences Act of 2000 supra is still a valid legislation. Surely that judgment was not and still is not the trump card the Appellant did imagine it to be in deciding the case at the trial court. I urge my lord respectfully to dismiss the Appeal in its entirety."*

I shall commence an answer to these questions with reference to **Attorney-General of the Federation vs. Attorney-General of Abia State & 35 Ors. (2002) FWLR (Pt.102) 1 where Uwais, C.J.N.** held at page 159 paragraph "H" to page 160 paragraphs "A" to "C":

*"Perhaps I should point out that the Northern Region, Western Region and Eastern Region (Definition of Boundaries) Proclamation, 1954 made under the Nigeria (Constitution) Orders-in-Council, 1954 to 1958, is not contained in any volume of the Laws of the Federation of Nigeria, 1990. The omission is due to the provisions of the Revised Edition (Authorized Omissions) Order, 1990, Section 14 of 1990, which is contained in the Index Volume of the 1990 Laws of the Federation of Nigeria at page xxvii. By Section 3 subsection (1) of the Revised Edition (Laws of the Federation of Nigeria) Act, 1990, No.21 of 1990, the Attorney-General of the Federation may by order specify a Schedule of enactments which shall not be necessary for the Law Revision Committee to include in the Revised Edition. This power was exercised by the*

*Attorney-General under the Revised Edition (Authorized Omissions) Order, 1990 Sections 14 of 1990, and the 1954 Proclamation is listed under paragraph (a) of Part III of the Schedule to the 1990 Order.*

*However, the omission does not render the 1954 Proclamation as repealed, obsolete or spent; it remains valid, extant and in operation by virtue of the provisions of subsection 2 of Section 3 of The Revised Edition (Laws of the Federation of Nigeria) Act, 1990 NO.21 of 1990 which provides:-*

*"2. Enactments, omitted in accordance with subsection (1) of this section, shall have the same force and validity as if they had not been omitted in the revised edition."*

The dictum of **Uwais, C.J.N.** I have referred to is a complete answer and knocks the bottom out of the argument of the learned Counsel to the respondent. There is no challenge to the argument of the appellant that the Corrupt Practices and Other Related Offences Act, 2000 was in operation when the respondent was arraigned in the Court below on Counts one to four for the offences committed on or between February, 2005 to May, 2006 when the respondent was the Chairman of Ezeagu North-East Local Government Development Council Enugu, Enugu State. The commencement date of the Corrupt Practices And other Related Offences Act, 2000 No.5 is 13th June, 2000. Section 61-62 of the Act provides thus:

*"61(1) Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General.*

(2) *Without prejudice to any other laws prohibiting bribery, corruption, fraud or any other related offences by public officers or other persons, a public officer or any other person may be prosecuted by the appropriate authority for an offence of bribery, corruption, fraud or any other related offences committed by such public officer or other person contrary to any laws in force before or after the coming into effect of this Act and nothing in this Acts shall be construed to derogate from or undermine the right or authority of any persons or authority to prosecute offenders under any other laws.*

(3) *The Chief Judge of a State or the Federal Capital Territory, Abuja shall, by order under his hand, designate a Court or Judge or such number of Courts or Judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or other related offences arising under this Act, or any other laws prohibiting fraud, bribery or corruption; a Court or Judge so designated shall not, while being so designated, hear or determine any other cases provided that all cases of fraud, bribery, or corruption pending in any Court before the coming into effect of this Act shall continue to be heard and determined by that Court.*

62. *Notwithstanding the provisions of any other Act or law where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time."*

In **Attorney-General of Ondo State vs. Attorney-General of the Federation & 35 Ors. (2002) 9 NWLR (Pt.772) 222** the question to be determined were set out by **Uwais, C.J.N.** at page 284 paragraph "B" to page 285 paragraphs "A"-"B" as follows:

"1. *A determination of the question whether or not the Corrupt Practices and Other Related Offences Act, 2000 is invalid and as a law enacted by the National Assembly and in force in every State of the Federal Republic of Nigeria (including Ondo State).*

2. *A determination of the question whether or not the Attorney-General of the Federation (1st defendant) or any person authorized by him can lawfully initiate legal proceedings in any Court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.*

3. *A declaration that the Corrupt Practices and Other Related Offences Act, 2000 is not in force as law in Ondo State.*

4. *A declaration that it is not lawful for the Attorney-General of the Federation (1st defendant) or any person authorized by him to initiate legal proceedings in any Court of law in Ondo State in respect of the criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act, 2000.*

5. *An order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Independent Corrupt Practices and Other Related Offences Commission) or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act, 2000 in Ondo State whether by interfering with the activities of any person in Ondo State (including any public officer or functionary or officer or servant of the Government of Ondo State) in exercise of powers purported to be conferred by or under the provisions of the said Act or otherwise howsoever.*

6. *An order of perpetual injunction restraining the Attorney-General of the Federation including his officers, servants and*

*agents whomsoever or howsoever from exercising any of the powers vested in him by the Constitution of the Federal Republic of Nigeria, 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained in the Corrupt Practices and Other Related Offences Act, 2000."*

**Uwais, C.J.N.** held argument from prominent jurists or legal luminaries in Nigeria before holding at page 303 paragraph "F" to page 311 paragraph "A" as follows:

*"Now section 4 subsection (2) of the Constitution provides that the National Assembly has the power to make laws for the peace order and good government of the Federation with respect to any matter included in the Exclusive List. This means that the National Assembly is empowered to legislate under item 60(a) for the purpose of establishing and regulating the ICPC for the Federation. This the National Assembly has done by enacting the Act.*

*The ICPC is, by the provisions of item 60(a), to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy as contained under Chapter II of the Constitution. The question is: how can the ICPC enforce the observance? Is it to use force? Is it to legislate or what? The ICPC cannot do either of these because the use of force or coercion in enforcing the observance will require legislation. The ICPC has no power to legislate. Only the National Assembly can legislate. The Constitution of India has similar provisions to ours on Directive principles of State Policy in Part IV thereof. In the Indian case of Mangru v. Commissioners of Budge Budee Municipality (1951)87 CLJ 369, it was held that the Directive Principles require to be*

*implemented by legislation, and so long as there is no law carrying out the policy laid down in a Directive neither the State nor an individual can violate any existing law or legal right under colour of following a Directive. See also the Shorter Constitution of India 12th Edition by Dr. D.D. Basu at pages 296-297.*

*Since the subject of promoting and enforcing the observance comes under the Exclusive Legislative List it seems to me that the provisions of item 68 of the Exclusive Legislative List come into play. Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the Fundamental Objectives and Directive Principles of State Policy. Hence the enactment of the Act which contains provisions in respect of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provisions of section 15 subsection (5) of the Constitution. To hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the Constitution. Paragraph 2 (a) of Part III of the Second Schedule to the Constitution, which provides that reference to incidental and supplementary matters in the Constitution (and therefore item 60 (a) of the Exclusive Legislative List) includes reference to offences, I think strengthens the view which hold.*

*It has been argued that the Fundamental Objectives and the Directive Principles of State Policy are meant for authorities that exercise legislative, executive and judicial powers only and therefore any enactment to enforce their observance can apply only to such persons in authority and should not be extended to private persons, companies or private organisations. This may well be so, if narrow interpretation is*

*to be given to the provisions, but it must be remembered that we are here concerned not with the interpretation of a statute but the Constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the Constitution. See Nafiu Rabiu v. Kano State (1980)8-II SC 130; (1980)2 NCLR 117; Aqua Ltd. v. Ondo State Sports Council (1985)4 NWLR (Part 91)622; Tukur v. Government of Gongola State (1989)4 NWLR (Pt.. 117) 517 and Ishola v. Ajiboye (1994)6 NWLR (Pt. 352) 506. Corruption is not a disease which afflicts public officers alone but society as a whole. If it is therefore to be eradicated effectively, the solution to it must be pervasive to cover every segment of the society.*

*It is submitted that "corruption" is not a subject under either the Exclusive or the Concurrent Legislative Lists and therefore being a residual matter, the National Assembly has' no power to legislate upon it. This submission overlooks the provisions of section 4 subsection (4) (b) of the Constitution which provide that the National Assembly has the power to legislate on any matter with respect to which it is empowered to make law in accordance with the provisions of the constitution. Section 15 subsection (5) directs the National Assembly to abolish all corrupt practices and abuse of power. The question is how can the National Assembly exercise such powers? It can only effectively by legislation. Item 67 under the Exclusive Legislative List read together with the provisions of section 4, subsection (2) provide that the National Assembly is empowered to make law for the peace, order and good government of the Federation and any part thereof. It follows, therefore, that the National Assembly has the power to legislate against corruption and abuse of office even as it applies to persons not in authority under public or government*

*office. For the aim of making law is to achieve the common good. The power of the National Assembly is not therefore residual under the Constitution but might be concurrent with the powers of State House of Assembly and Local government Council, depending on the interpretation given to the word "State" in section 15 subsection (5) of the Constitution, which I will deal with anon.*

*It has been argued by the plaintiff that the reference to "State" in section 15 (5) can be ascertained by reference to the definition in section 318 subsection (1) of the constitution. The latter section provides that the word "when used other than in relation to one of the component parts of the Federation, includes government." The same section of the Constitution has defined "government" to include the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf." Going by these definitions the directive under section 15 subsection (5) of the constitution will apply to all the three tiers of government, namely the Federal Government, State Government and Local Government. In the case the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the Federal and State governments by virtue of the provisions of section 4 subsections (2), (4) (b), and (7) (c) of the Constitution. It is doubtful however if the third tier, viz the Local Governments can legislate on the subject since there is no provision under section 7 and the Fourth Schedule to the Constitution that empowers them to do so.*

*Although the power to legislate on the subject is given to the National Assembly and State House of Assembly, when both exercise the power, the legislation by the National Assembly*

*will prevail by virtue of section 4 subsection (5) of the Constitution which provides:-*

*"(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency by void."*

*See the case of the Military Governor, Ondo State v. Adewumi, (1988)3 NWLR (Pt. 82) 280 at page 283 and A.G. of Ogun State v. Aberuagba (supra).*

*It has been argued also that the word "State" in section 15 subsection (5) means the Federal government alone, because if the whole of the provisions of Chapter II of the constitution on Fundamental Objectives and Directive Principles of State Policy are read together, it will be seen that only the Federal Government is in a position to carry out the principles and objectives. With respect, I do not accept this argument, because the provisions of section 13 thereof apply to "all organs of government, and all authorities and persons exercising legislative, executive or judicial powers." The provisions do not distinguish between Federal, State or Local Governments. Again the provisions of section 14 subsection (4) specifically apply to the "Government of a State, a local government council or any agencies of such Government or Council, and the conduct of the affairs of the Government or Council or such agencies."*

*It has been pointed out that the provisions of the Act impinge on the cardinal principle of federalism, namely, the requirement of equality and autonomy of the State government and non-interference with the functions of State government. This is true, but as seen above, both the Federal and State governments share the power to legislate in order to abolish*

*corruption and abuse of office. If this is a breach of the principles of federalism, then, I am afraid, it is the Constitution that makes provisions that have facilitated breach of the principles. As far as the aberration is supported by the provisions of the Constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the Constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation.*

*In the light of the foregoing, I will answer both the plaintiff's issues for determination Nos. (i) and (ii) in the affirmative.*

*The next point is whether the Attorney-General of the Federation or any person authorized by the ICPC can lawfully initiate or authorize the initiation of criminal proceedings in any Court in Ondo State in respect of offences created by the Act. The plaintiff's contention is that the answer is in the negative if the answers to issues Nos. (i) and (ii) have been answered in the negative. But I have held otherwise and so that opposite is the case. I, therefore, hold that the criminal proceedings can be initiated in the court in Ondo State in accordance with the provisions of section 286 subsection (1) (b) of the constitution, which provides-*

*(a) where by the Law of a State jurisdiction is conferred upon any court for the investigation; inquiry into, or trial of persons accused of offences against the Laws of the State and with respect to the hearing and determination of appeals arising out of any such trial or out of any proceedings connected therewith, the court shall have like jurisdiction with respect to the investigation, inquiry into, or trial of persons for federal offences and hearing and determination of appeal arising out of the trial or proceedings."*

*"Federal offence" is defined in subsection (3) thereof to mean "an offence contrary to the provisions of an Act of the National Assembly or any law having effect as if so enacted.*

*The plaintiff contended that not all the powers conferred upon the ICPC or other functionaries and agencies of the Federal government are exercisable in Ondo State in relation to the activities of persons in that State including any public officer or functionary of the Government of Ondo State. He submitted that Sections 6 (a), 26(3), 28, 29, 35 and 37 of the Act are unconstitutional and invalid. The sections provide as follows:*

*6(a). Imposes on the ICPC the power to receive, investigate and prosecute any person for offences under the Act.*

*26(3). The prosecution of an offence shall be concluded and judgment delivered within 90 working days of commencement of the prosecution except tahat the jurisdiction of the Court will not be affected if good grounds exist for delay.*

*28. Gives the ICPC wide power when investigating the commission of an offence to summon any person, order him to produce any book or document or require him to make written statement under oath or affirmation etc*

*29. Empowers the ICPC to issue summons to a person complained against for the purpose of being examined.*

*35. Gives the ICPC the power to arrest and detain any person, who failed to obey a summons directed to him, until the person complies with the summons.*

*37. Empowers the ICPC to seize any moveable or immoveable property on suspicion that the property is the subject matter of an offence or evidence relating to the offence.*

*In considering whether the provisions of these sections of the Act violate the provisions of the 1999 Constitution, I will answer issue no (iv) as follows-*

*Section 6(a)- this power is exercisable in Ondo State in view of the provisions of section 4 subsections (2) and (3) of the constitution.*

*Section 26(3)- the provisions therein infringe on the principle of separation of powers and the subsection is unconstitutional, null and void – See Unongo v. Aku (1983) 2 SCNLR 332 and A.G. Abia State v. A.G. of the Federation & Ors. (2002)6 NWLR (Pt. 763) 264 at p. 397.*

*Section 28- the power of the ICPC are co-extensive with those of the police under the Police Act, Cap 359 and do not usurp the police power under section 214 of the Constitution. The power is exercisable on a person not exercising government function. The National Assembly has the power to so enact.*

*Section 29- The power is not unconstitutional by reason of its being exercisable on persons not exercising government function. The National Assembly has the power to so enact.*

*Section 35- the power of the ICPC to arrest and detain persons indefinitely, that is, until the person complies with the summons violates the provisions of section 35 of the constitution which guarantees the fundamental right to personal liberty. The provision is therefore unconstitutional, null and void.*

*Section 37- the power of the ICPC is constitutional. The National Assembly, as shown earlier, has the right under the Constitution to create the offence.*

*Applying the blue pencil rule, sections 26 subsection (3) and 35 will be struck down. When this is done the rest of the Act is not affected. So that the good can be severed from the bad. There is no reason therefore to justify the whole of the Act being invalidated as sought by the plaintiff. See Doherty v. Balewa*

*(1963)2 SCNLR 256; (1963)1 WLR 949 and A-G. of Abia State & 36 Ors. v. A-G. of the Federation (2002)6 NWLR (Part 763)264 at p. 436; (2002) 3 SC 106 at pp. 199 – 200 per Ogundare, JSC.*

*On the whole the plaintiff's action succeeds only in part. I make the following order:*

*(1) Section 26 subsection (3) of the Act is unconstitutional and therefore it is hereby declared null and void.*

*(2) Section 35 of the Act is unconstitutional and therefore it is hereby declared null and void.*

*(3) I make no order as to costs. Each party shall bear its costs.*

*Finally, I wish to thank all the counsel in the case and in particular the amicus curiae for the tremendous assistance which they have rendered to the court in their briefs of argument and oral addresses."*

Wali, JSC held at page 311 paragraph "B" to page 313 paragraphs "A"-"C" as follows:

*"I have had the privilege of reading in advance the lead judgment of my learned brother Uwais, CJN, with which I entirely agree and adopt same as mine.*

*The power to legislate for the Federal Republic of Nigeria by virtue of Section 4(1) of the 1999 Constitution is vested in the National Assembly to wit: the Senate and the House of Representatives. Subsection (2) of Section 4 empowers the National Assembly to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List which is set out in Part 1 of Second Schedule of this Constitution.*

*In Chapter II – Fundamental Objectives and Directive Principles of State Policy, Section 15(5) thereof provides as follows:-*

*"The State shall abolish all corrupt practices and abuse of power."*

*To enable the State carry out the directive contained in Section 15(5) (supra), item 60(a) of the Second Schedule – Part 1, the Constitution empowers it to establish and regulate authorities for the Federation or any part thereof. Subsections (1), (2), (3) and (4) of Section 4; subsection (5) of Section 15 items 60(a), 67 and 68 of the Second Schedule – Part 1 of the 1999 Constitution provide as follows:-*

*"4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.*

*(2) That National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.*

*(3) The power of the National Assembly to make laws for the peace, Order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.*

*(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say-*

*(a) any matter in the Concurrent Legislative List set out in the first column of part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto: and*

(b) *Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*

15(5) *The State shall abolish all corrupt practices and abuse of power.*

2. *The establishment and regulation of authorities for the Federation or any part thereof-*

(a) *To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution,*

67. *Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution.*

68. *Any matter incidental or supplementary to any matter mentioned elsewhere in this list.*

*Reading these provisions of the 1999 Constitution together and construed liberally and broadly, it can easily be seen that the National Assembly possess the power both "incidental" and "implied" to promulgate the Corrupt Practices and Other Related Offences Act, 2000 to enable the State, which for this purpose means the Federal Republic of Nigeria, to implement the provision of Section 15(5) of the Constitution. This is in consonance with the Fundamental Objectives and Directive Principles of State Policy. Under the provision of Section 3 of the Act, the Independent Corrupt Practices and Other Related Offences Commission is established with the powers to implement the provisions of the Act, both penal and otherwise. What the National Assembly did by the promulgation of the Act was aimed at abolishing corruption and corrupt practices in all their facets throughout Nigeria. It is an effort aimed at promoting and enforcing the observance of the provision of Section 15(5) of the Constitution.*

*Since the Act is to operate throughout the Federation the Attorney-General of the Federation has power, conferred on him by Section 174(1)(a) of the 1999 Constitution, to institute criminal proceedings against any person before any Court in Nigeria, other than a Court-martial, in respect of any of the offences created by the said Act. Save for the provisions of Section 26(3) and 35 of the Act, which are ultra vires the 1999 Constitution and are hereby struck out, the remaining provisions are constitutional and therefore valid.*

*The plaintiff's action partially succeeds, and I make no order as to costs."*

**Ogwuegbu, JSC** (pp.313-344); **Mohammed, JSC** (pp.345-350); **Katsina-Alu, JSC** ((as he then was) at pp.351-365); **Uwaifo, JSC** (pp.365 to 421) and **Ejiwunmi, JSC** (pp.421-474) were unanimous that as on Friday, 7th June, 2002 when the Supreme Court rendered the decision in Attorney-General of Ondo State vs. Attorney-General of the Federation & 35 Ors. (supra) the Corrupt Practices and Other Related Offences Act No.4 of 2000 was operational throughout the Federation of Nigeria hence, the onus is on the respondents in this appeal to show how and when the Act was repealed by an Act of the National Assembly or through judicial precedent. The following passage appears in **Maxwell On the Interpretation of Statutes, 12th edition by P. St. J. Langan pages 16 to 17** to wit:

*"A law is not repealed by becoming obsolete: there is no doctrine of desuetude in English law. So until 1844 it was an*

*indictable offence to sell corn in the sheaf before it had been thrashed out and measured, and as late as 1836 insolvents in Scotland were bound to wear a coat and cap half yellow and half brown. The Profane Oaths Act 1745, which punished profane cursing and swearing by fines graded to the social degree of the offender, was still in force in 1966, as were the canonical requirements as to the colour and material of night-caps worn in bed by clergy of the Church of England.*

*The common law rule was that if an Act expired or was repealed it was regarded, in the absence of provision to the contrary, as having never existed, except as to matters and transactions past and closed. Where, therefore, a penal law was broken, the offender could not be punished under it if it expired before he was convicted, although the prosecution began while the Act was still in force.*

*Thus, a statute of the reign of William III, which made larceny of above 5 shillings a capital offence, having been repealed on July 20, 1820, by the Stealing in Shops Act, 1820, an offence against the earlier Act committed on July 11 could not be punished in the following September. Nor could the offence be dealt with under the later Act, for it was not in force when the theft was committed. And where an Act which authorized the laying of rails on a road was repealed, it was doubted whether the rails could lawfully remain.*

*The effect of repealing Acts passed after August 30, 1889, is now dealt with by Section 38(2) of the Interpretation Act. Such repealing Acts are, unless the contrary intention appears, not to "(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or (d) affect any penalty, forfeiture, or*

*punishment incurred in respect of any offence committed against any enactment so repealed; or (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid."*

There is merit in this appeal. The appeal is allowed. The decision of the learned Chief Judge of Enugu State rendered on 8th February, 2016 against the appellant is hereby set aside.

The learned Chief Judge of the High Court of Justice, Enugu State may hear the case against the respondent or assign it to another Judge of the State High Court for prosecution, taking into consideration the fact that the respondent was arraigned in the Court below since 19th April, 2007. The trial should be given accelerated hearing.

**JOSEPH TINE TUR**
JUSTICE, COURT OF APPEAL

**COUNSEL APPEARANCE**:

**U.A. Udonsi** (Asst. Commissioner) with **D.N. Okoro** (Superintendent) ICPC – For the Appellant.

**C.I. Orji-Obusi, Esq**. – For the Respondent.

**CA/E/59$^{C}$/2016**

**(IGNATIUS IGWE AGUBE, JCA)**

Having read the Lead Judgment of my Learned brother J. T. TUR , JCA in advance, I agree that this Appeal is meritorious and same is accordingly allowed. I abide by the consequential orders of my Lord that the case be reheard on the merits by the present Chief Judge or same may be re-assigned to another Judge of the Enugu State High Court for accelerated hearing in view of the age of the case.

IGNATIUS IGWE AGUBE

JUSTICE, COURT OF APPEAL.

I agree.

**MISITURA OMODERE BOLAJI-YUSUFF**
**JUSTICE, COURT OF APPEAL**