a **Solomon Islands**

Re Panjuboe's estate

b

High Court
Kabui J
c 5, 12 November 2002

Precedent – Stare decisis – High Court – Judge – Whether bound by his own previous decision – Practice direction – Decisions of High Court to be regarded as persuasive authority – Whether previous decision made per incuriam – Whether binding – Wills, Probate and Administration Act, s 29.

d

The applicant's husband died without having made a will. The applicant sought the grant of letters of administration in respect of the deceased's estate. In October 2002 the judge had dismissed an application by a different party involving a similar issue, ruling that, under the Public Trustee Act, the e Public Trustee had exclusive jurisdiction to deal with all cases of intestacy in such circumstances. In the instant case counsel for the applicant relied on s 29 of the Wills, Probate and Administration Act and reg 3 of the Grants of Probate and Administration (Order of Priority) Regulations, provisions which had not been brought to the attention of the judge in his October 2002 ruling, to support the application. Section 29 provided, inter alia, that 'where the f deceased died wholly intestate, the persons having a beneficial interest in the estate shall be entitled to a grant of administration'. However, a 1981 practice direction provided that the High Court was to regard its own earlier decisions as persuasive authority. The judge had to consider whether he was bound by his decision made as a judge of first instance in October 2002.

g **HELD:** Application granted.
Decisions of an ordinary superior court were persuasive but not binding on that court itself. The effect of the 1981 practice direction was that the High Court could disagree with an earlier decision on the same point in a subsequent and appropriate case. In order to attain justice a judge could h depart on a later date from his or her previous decision for a good reason, such as where that previous decision had been made per incuriam. In the instant case, s 29 of the Wills, Probate and Administration Act was clear on the right of persons having a beneficial interest in the estate of a person who died wholly intestate to apply to the court for administration of the deceased's estate. The letters of administration would therefore be granted to i the applicant (see pp 3–6, below). Dicta of Denning J in *Minister of Pensions v Higham* [1948] 1 All ER 863 at 864 and of Slade J in *Metropolitan Police District Receiver v Croydon Corporation* [1956] 2 All ER 785 at 788 applied. *Practice*

Direction (4 June 1981), Sol Is HC considered. *Re Mungale's application* (17 October 2002, Civil Case No 221/2002, unreported), Sol Is HC, not followed.

Per curiam. A judgment of an individual High Court judge cannot be revisited by the same judge with the view of reversing it on the ground that it was wrongly decided, unless the 'slip rule' applies or it is necessary for the judge to supplement his or her order to accord with the original intention of the order. The proper remedy for error is an appeal (see pp 4–5, below). *Re St Nazaire Co* (1879) 12 Ch D 88 applied.

Cases referred to in judgment

Charles Bright & Co Ltd v Sellar [1904] 1 KB 6, UK CA

Colchester Estates (Cardiff) v Carlton Industries plc [1984] 2 All ER 601, [1986] Ch 80, UK Ch D

Evo v Supa and Returning Officer [1985–86] SILR 1

Gist, Re [1904] 1 Ch 398, UK CA

Hamilton v Martell Ltd [1984] 1 All ER 665, [1984] Ch 266, UK Ch D

Island Tug and Barge Ltd v SS Makedonia (Owners), The Makedonia [1958] 1 All ER 236, [1958] 1 QB 365, UK QBD

McQuade v Bycroft (Civil Case 1/1999, unreported)

Metropolitan Police District Receiver v Croydon Corpn [1956] 2 All ER 785, UK QBD

Minister of Pensions v Higham [1948] 1 All ER 863, UK KBD

Mungale's application, Re (17 October 2002, Civil Case No 221/2002, unreported), Sol Is HC

Practice Direction (4 June 1981), Sol Is HC

St Nazaire Co, Re (1879) 12 Ch D 88, UK CA

Legislation referred to in judgment

Constitution, Sch 3, para 4(2)

Court of Appeal Rules 1983, rr 8(3), 10

Grants of Probate and Administration (Order of Priority) Regulations 1996, reg 3

Public Trustee Act (Cap 31)

Wills, Probate and Administration Act (Cap 33), s 29

Other sources referred to in judgment

Holdsworth 'Case law' (1934) 50 LQR 180

Pollock *A First Book of Jurisprudence* (6th edn, 1929) p 321

Ram 'The Science of Legal Judgment' (1834)

Supreme Court Practice, The (1994), vol 1, Pt 1, p 384

Application

The applicant, Grace Panjuboe, applied to the High Court under s 29 of the Wills, Probate and Administration Act (Cap 33) for the grant of letters of administration in respect of the estate of her deceased husband. The facts are set out in the judgment.

A Radclyffe for the applicant.

12 November 2002. The following judgment was delivered.

KABUI J.

This is an application by the applicant by notice of motion filed on 14 October 2002 for an order that letters of administration be granted to Grace Panjuboe in respect of the estate of Felix Panjuboe (deceased).

Felix Panjuboe died on 24 March 2001 in Kitano Hotel, Apia, in Western Samoa. He was a Solomon Islander who was a visitor to Western Samoa at the time of his death. His wife, the applicant, and eleven children survive him. Felix Panjuboe died without having made a will under the Wills, Probate and Administration Act (Cap 33). This application is being brought under s 29 of the said Act. This section states:

> '(1) Where the deceased died wholly intestate, the persons having a beneficial interest in the estate shall be entitled to a grant of administration in the order of priority that may be prescribed for the purpose by rules.
>
> (2) Notwithstanding the order of priority prescribed by rules made under subsection (1), where it appears to the Court, that by reason of any special circumstance or current customary usage, any estate ought to be administered by some person other those specified in the order of priority, the Court may grant administration to such person ...'

The rules referred to in the above section are the Grants of Probate and Administration (Order of Priority) Regulations 1996. Counsel for Mungale, the applicant for letters of administration in Civil Case No 221 of 2002, did not bring to my attention s 29 above and these regulations at the hearing of the application on 14 October 2002. I delivered my judgment on 17 October 2002, refusing the application on the ground that Judith Mungale had no standing to apply for letters of administration under the Wills Probate and Administration Act in the case of estates in intestacies. See *Re Mungale's application* (17 October 2002, Civil Case No 221/2002, unreported). I was of the view that the Public Trustee had exclusive jurisdiction to deal with all cases of intestacy under the Public Trustee Act (Cap 31). That view is of course at variance with s 29 of the Wills, Probate and Administration Act and reg 3 of the Grants of Probate and Administration (Order of Priority) Regulations cited above. Mr Radclyffe brought to my attention the existence of s 29 above and urged me to grant this application despite my earlier view to the contrary. He referred me to a remark made by Daly CJ in *Evo v Supa and Returning Officer* [1985–86] SILR 1 at 4, where his Lordship cited, in his Lordship's judgment, a practice direction made by his Lordship on 4 June 1981. Paragraph 3 of that practice direction says: 'The High Court shall regard earlier decisions of itself as persuasive authority.' This practice direction is clearly based on para 4(2) of Sch 3 to the Constitution. The effect of this practice direction is, I think, that the High Court may be able to disagree with an earlier decision on the same point in a subsequent and

appropriate case. Inversely, it means that previous decisions do not have a binding effect on the High Court. This practice direction is consistent with the words of Denning J in Minister of *Pensions v Higham* [1948] 1 All ER 863 at 864:

> 'The decisions of the superior courts (the High Court in England, the Court of Sessions in Scotland, the Supreme Court in Northern Ireland) are binding on the pensions appeal tribunals. They are not absolutely binding on the superior court itself or on the courts of co-ordinate jurisdiction, but will be followed in the absence of strong reason to the contrary ...'

The second sentence in this quotation is the relevant one in this case reflecting the modern practice. It represents a principle of practice of antiquity. Denning J also laid another principle. His Lordship said (at 865):

> 'In this respect I follow the general rule that where there are conflicting decisions of course of co-ordinate jurisdiction, the later decision is to be preferred if it is reached after full consideration of the former decision ...'

This principle was applied in *Colchester Estates (Cardiff) v Carlton Industries plc* [1984] 2 All ER 601. The application of this principle was also demonstrated in *Hamilton v Martell Ltd* [1984] 1 All ER 665. The cases cited above were, however, to do with the situation where the court was faced with two existing conflicting decisions and choosing which of them the court should follow the third time the same issue arose for decision. This is, in my view, within the intention of the *Practice Direction* issued in 1981 cited above. Also, the cases were appeals from lower courts. This is not the case here. There are no conflicting decisions to choose from on the same issue. I do not sit as an appeal court either. The question to be asked here is therefore whether or not I am bound by my first decision made on 17 October 2002 as a judge of first instance? In theory, I am bound by my own decision. Do I have the jurisdiction to reverse my first decision? I wish I did. I can find no authority, which permits me to reverse the decision I made on 17 October 2002. I am bound by that decision. It is a different matter if one of my brother judges should consider the same issue at a later date and decides to reach a different conclusion in the light of my ignorance of s 29 of the Wills, Probate and Administration Act. (See *Metropolitan Police District Receiver v Croydon Corporation* [1956] 2 All ER 785, cited in *Island Tug and Barge Ltd v SS Makedonia (Owners), The Makedonia* [1958] 1 All ER 236). I am strengthened in my view by the rule that a judge would have no jurisdiction to alter his or her own judgment unless the 'slip rule' comes into play or there is a need for the judge to supplement his or her order to accord with the intent of the order made in the first place. (See *McQuade v Bycroft* (Civil Case 1/1999, unreported) and the cases cited therein.) To adopt the words of the authors of *The Supreme Court Practice* (1994), vol 1, Pt 1, p 384: '... the Court cannot correct a mistake of its own in law or otherwise, even though apparent on the face of the order.' (See *Charles Bright & Co Ltd v Sellar* [1904] 1 KB 6 and *Re Gist* [1904] 1 Ch 398 at 408). The rule that the court cannot correct its own mistake in

law or otherwise had been earlier discussed and affirmed in *Re St Nazaire Co* (1879) 12 Ch D 88. The headnote thereto states:

> 'Under the system of procedure established by the Judicature Acts no Judge of the High Court has any jurisdiction to rehear an order, whether made by himself or by any other Judge, the power to rehear being part of the appellate jurisdiction which is transferred by the Acts to the Court of Appeal ...'

So, the position, as I understand it, is that a judgment of an individual High Court judge cannot be revisited by the same judge with the view of reversing it on the ground that it was wrongly decided. The proper remedy is an appeal. That is, I cannot reverse my decision made on 17 October 2002. This is, however, not the point here. I am being asked here to decide this application differently now that I have been made aware of s 29 of the Wills, Probate and Administration Act. Can a trial judge of the first instance, as I am, do it? I find great difficulty in deciding this point. The terms of the *Practice Direction* are not clear on this point. My research can only point to the remark made by Sir Frederick Pollock in his work, *A First Book of Jurisprudence* (6th edn, 1929) p 321, cited by Slade J in *Metropolitan Police District Receiver v Croydon Corporation* [1956] 2 All ER 785 at 788. The relevant part of his remark is in these terms:

> '... the decisions of an ordinary superior court are binding on all courts of inferior rank within the same jurisdiction, and, though not absolutely binding on courts of co-ordinate jurisdiction authority nor on that court itself, will be followed in the absence of strong reasons to the contrary ...'

Slade J also cited the same sort of remark from an article entitled 'The Science of Legal Judgment' by James Ram published in 1834, cited by Sir William Holdsworth in 'Case law' (1934) 50 LQR 180. The essence of these remarks is that the decisions of an ordinary superior court are not absolutely binding on that court itself. That is clear. What is not clear from any quarter, however, is the existence of any differentiation between the same judge deciding differently the same issue that he or she had decided previously on a later date and another judge of the same court doing so at a later date. The term 'the court itself' as used by Denning J and cited by Slade J in the cases cited above is an embracive term which, in my view, includes all the judges of a superior court such as the High Court. There appears to be no differentiation in terms of one judge departing from a previous decision of another judge of the same court for good reason or from the sitting judge's own previous decision. It is said that the reason for the practice now in the form of our practice direction is to ensure that there is certainty in the law for litigants. If this is the objective of this practice, then I do not see any reason why a judge of this court should not depart on a later date from his or her previous decision for a good reason such as being ignorant of the correct legal position in a previous decision in order to attain justice. This can only be the exception to the general rule of precedence. There is, however, the argument that the practice direction may be a way of ousting the right to appeal, if any. Normally, this should not happen because the right to appeal, if any, would have expired

when the same issue is again put before the judge at a later time for a decision. This is not the case here. The thirty days time limit under r 10 of the Court of Appeal Rules 1983 has not yet expired. The time limit still runs from 17 October 2002, the date of my judgment. Also, the applicant in Civil Case No 221/2002 can still bring her claim to the court through the Public Trustee. So, the applicant in Civil Case No 221 is not altogether without a remedy. This application comes to this court too soon for that reason. However, it does have merit if the time limit for an appeal has expired without an appeal and the judgment in Civil Case No 221 remains a precedent in this jurisdiction. I am not, however, aware that the applicant in Civil Case No 221 has filed a notice of appeal under r 8(3) of the Court of Appeal Rules. The time limit there is a period of 7 days, which has expired without an extension. The indication is that there is no appeal as yet. The fact that there is no appeal is a good reason for the legal position to be put right for future litigants. I think this is the fundamental point in this case. I will depart from my earlier judgment in Civil Case No 221 and grant this application. Section 29 of the Wills, Probate and Administration Act is clear on the right of persons having beneficial interest in the estate of a person who died wholly intestate to apply to the court for administration of the deceased's estate. On that basis I would grant letters of administration. I do so and order accordingly.