IN THE ESTATE OF FELIX PANJUBOE

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 241 of 2002

Hearing: 5th November 2002.
Judgment: 12th November 2002.

Mr A. Radclyffe for the Applicant

JUDGMENT

Kabui, J. This is an application by the applicant by Notice of Motion filed on 14th October 2002 for an order that Letters Administration be granted to Grace Panjuboe in respect of the estate of Felix Panjuboe (deceased).

Felix Panjuboe died on 24th 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 11 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 section 29 of the said Wills, Probate and Administration 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 section 29 above and these Regulations at the hearing of the application on 14th October 2002. I delivered my judgment on 17th October 2002 refusing the application on the ground that Judith Mungale had no standing to apply for Letters of Administration under the Wills, and Probate and Administration in the case of estates in intestacies. (See **IN THE MATTER of an application by Judith Mungale**, Civil Case No. 221 of 2002). 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 section 29 of the Wills, Probate and Administration Act and regulation 3 of the Grants of Probate and Administration (Order of Priority) Regulations cited above. Mr. Radclyffe brought to my attention the existence of section 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, C.J. in **Evo v. Supa and Returning Officer** 1985/86 S. I.L.R. 1 at 4 where His Lordship cited in His Lordship's judgment, a Practice Direction made by His Lordship on 4th 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 paragraph 4 (2) of Schedule 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 A.E.L.R. 863. At page 864, His Lordship said,

..."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. At page 865, His Lordship said,

..."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] 3 W.L.R. 693. The application of this principle was also demonstrated in **Hamilton v. Martell** Ltd. [1984] 2 W.L.R. 699. 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 Iam bound by my first decision made on 17th October 2002 as a judge of first instance? . In theory, Iam 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 17th October 2002. Iam 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 section 29 of the Wills, Probate and Administration Act. (See **Metropolitan Police District Reciever v. Croydon Corporation and Another** [1956] 2 A.E.L.R.785 cited in **Island Tug & Barge, Ltd v. Owners of the S.S. Makedonia** [1958] 1 A.E.L.R.236). Iam strengthened in my view by the rule that a the 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 **(John Edward McQuade v. Robyn Bycroft,** Civil Case No. 041 of 1999 and the cases cited therein). To adopt the words of the authors of The Supreme Court Practice, Volume 1,Part, 1,1994 at page 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., Limited v. Seller** [1904] 1 K. B. 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 **In re ST. Nazaire Company** (1879-80) 12 Ch.D. 88. The head-note 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 17th 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 section 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 is 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 Edition at 321, cited by Slade, J. at 788 **in Metropolitan Police District Receiver v. Croydon Corporation and Another** cited above. 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 at 180 in **Law Quarterly Review** Volume 50. 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 embrassive terms 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 rule 10 of the Court of Appeal Rules 1983 has not yet expired. The time limit still runs from 17th October 2002, the date of my judgment. Also, the applicant in Civil Case No. 221 of 2002 can still bring her claim to the Court through the Public Trustee. So, the applicant in Civil Case No. 221 cited above 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 cited above remains a precedent in this jurisdiction. Iam not however aware that the applicant in Civil Case No. 221 cited above has filed a notice of appeal under rule 8(3) of the Court of Appeal Rules cited above. 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 cited above 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.

F. O. Kabui
Judge