

**JOHN EDWARD MCQUADE v. ROBYN BYCROFT**

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

Civil Case No. 041 of 1999

Date of Hearing: 30<sup>th</sup> May 2002

Date of Ruling: 21<sup>st</sup> June 2002

*Mr J. Sullivan for the Applicant/ Defendant*

*Mr C. Ashley for the Respondent/ Plaintiff*

**RULING**

**(Kabui, J):** The Defendants filed a Summons for directions on 14<sup>th</sup> May 2002, which sought a number of orders. The application was heard by the Registrar on 22<sup>nd</sup> May 2002. The Registrar made orders for directions one of which was that the parties shall by 17<sup>th</sup> June 2002 agree whether to bring the issue of the ownership of M.V. Delores by way of a special case under Order 38 rule 2 or Order 58 rule 2 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**". The Registrar in his ruling said that his hands were tied by the order I made to that same effect on 15<sup>th</sup> January 2002. By letter dated 23<sup>rd</sup> May 2002, Mr. McGuire of Sol-Law informed the Registrar that due to practical reasons they were not able to reach agreement with the Plaintiffs as to whether to bring the issue of ownership of MV Delores to the Court by way of special case or by way of Originating Summons. That being the case, Mr. McGuire requested the Registrar to list the matter for a direction hearing before me so that the position could be explained to me as to why the parties have been unable to reach agreement by way of special case stated under the High Court

Rules cited above. The matter was listed before me on 30<sup>th</sup> May 2002. It would appear that no formal orders had been signed by the Registrar although a draft was enclosed with Mr. McGuire's letter on 23<sup>rd</sup> May 2002 for that purpose.

### **The Application**

Counsel for the Defendant/Applicant, Mr. Sullivan, made an oral application to me to vacate the order I made on 15<sup>th</sup> January 2002 and to substitute it with directions by consent on the ground that the parties would not agree on facts. He said the case should proceed to trial. He produced no affidavit evidence. Everything he told me came from the bar table. He said one witness was required to be cross-examined at the trial. He said the Court had inherent jurisdiction to vacate its orders in the interest of justice. Counsel for the Plaintiffs, Mr. Ashley, did not oppose this application.

### **The Practice**

Counsel for the Applicant/Defendant, Mr. Sullivan, did not dispute the practice under Order 38, rule 2 of the High Court Rules. His concern was that I should vacate the order I made on 15<sup>th</sup> January 2002 because the facts could not be agreed. He argued that my order was an interlocutory order and not a final one. My concern however is whether or not I can vacate the order I made under Order 38, rule 2 of the High Court Rules. Do I have the power to do so? Mr. Sullivan told me that I do have the power in terms of exercising the

inherent jurisdiction of the Court. I do know that but the question is are there limits? For example, orders for directions made under Order 32 of the High Court Rules can be revoked or varied under rule 2 (2) of that Order. Similarly, orders made under Order 33, rule 28 of the High Court Rules can be revoked or varied for sufficient cause being shown. The same can also be done under Order 39, rule 7 of the High Court Rules. There is no provision in Order 37 to revoke or vary any order made thereunder. There is therefore the need to venture outside the High Court Rules to find an answer to this application.

### **The Law**

The general rule is that the Court has no jurisdiction to vary its own order after the order has been passed or entered. (See **Liliau v. Trading Company (Solomons) Limited** (No. 2) [1983] S.I.L.R. 40). This general rule also applies to interlocutory orders. (See **Kelsey v. Doune** [1912] 1 K. B. 482). There is of course the slip- rule, which only applies to clerical or accidental errors or omissions. (See **Yee Bing Store Limited v. Yvette Miu Pong Yuen**, (Civil Case No.12 of 1997). This rule does not apply here for obvious reason. The Court however does have inherent jurisdiction to vary its own order in order to supplement a previous one. This means that the Court may, on further evidence, make an additional order to improve its original order so that justice is attained. It does not mean altering the substance of its original order. (See **Yee Bing's case** cited above). Its original order remains in force until it is set aside or reversed by an

appeal. (See **Reef Pacific Trading Ltd. & Joan Marie Meiners v. Price Waterhouse, Richard Anthony Barber & William Douglas McCluskey** (Civil Case No.164 of 1999)).

### **This Case**

In this case, Counsel for the Applicant/Defendant, Mr. Sullivan, did not rest his case on the Court's inherent jurisdiction to make supplemental orders. Even if that were the case, he produced no evidence to support a case for the need to making a supplemental order. He did not say why the order I made on 15<sup>th</sup> January 2002 needed to be supplemented. The fact that he cited the need to cross-examine a certain witness from the bar table is not evidence on oath. Even if that were the case, nothing was said about how that piece of evidence would justify an adjustment to the order I made. On my request that some authority should be cited to support this application, Mr. Sullivan, cited Hayes and **Harlington Urban District Council v. The Trustee in Bankruptcy of Jesse Williams** [1936] 1 Ch. 318. This was a case where the Court made an order for legal charges amounting to £160,000.00. However, further evidence showed that this was an under-valuation of the legal charges. A subsequent order was granted to effect an amendment to the valuation so as to increase it to £200,000.00. This was in effect a supplemental order although it was not so stated by Farwell, J. in his judgment. This case is cited in the footnotes to Order 28, rule 12 of the Rules of the Supreme Court cited by Mr. Sullivan, which he referred to as the White Practice. Mr. Sullivan also cited Order 30,

rule 12 of the High Court Rules which is in exactly the same terms as Order 28, rule 12 cited by Mr. Sullivan. However, Orders 28, rule 12 and Order 30, rule 12 cited above apart from being the same, do speak in terms of error or defect in any proceedings than error or defect in any judgment or order of the Court. I think the Williams' case cited above was cited as a case reflecting the exercise of the Court's power in amending an error or defect in any judgment or order of the Court. Whilst that may be the case, William's case can also be justified as falling within the inherent jurisdiction of the Court to making supplemental orders. However, in any case, William's case cited above is not the case here. The facts are different here. Mr. Sullivan however rested his case on the inherent jurisdiction of the Court to control its own procedure. I do not dispute this but would say that the inherent jurisdiction of the Court to control its own procedure is wide. Its limits cannot be easily defined. Its main purpose however is the enhancement of convenience, expedition and efficiency in the administration of justice (**See Solomon Mutual Insurance Limited v. The Magistrate (Honiara) and Solomon Islands National Provident Fund v. The Magistrate (Honiara)** (Civil Cases 257 and 259 of 2001). In **Re Taylor's Estate** (1881), 22 Ch. D. 495, the Vice-Chancellor made an order that a special case should be stated for the opinion of the Court on the effect of a codicil. This was accordingly done. The special case was heard by the Vice-Chancellor who declared that £7,000 legacy was reduced to £2,000. The Plaintiff appealed and the Court of Appeal reversed the declaration made by the Vice-Chancellor. The Court also ordered an account of sums of money paid by the testator and the amounts paid by the son-in-law to

the testator. It was then discovered that the sum paid by the testator was £1264 and that the son-in-law had repaid £810. 17s.6d. The balance outstanding was £453. 2s.6d. The executors then took out a summons to amend the special case to accord with the correct facts and to have it heard again so that the certificate of registration be varied according to the judgment to be given on the amended case. Kay J. dismissed the summons saying that he had no jurisdiction to make the order sought. The executors appealed. The Court of Appeal again dismissed the appeal. Cotton, L. J. at 504 in agreeing with Jessel, M. R. said, ..."**I am of the same opinion, and should not add anything were it not that the question as to the effect of a decision on a special case is important. It was directed that a question of law arising in the action should be decided by means of a special case. If after a decision on the special case it is made to appear to the Court that it has been given on an erroneous statement of facts, I agree with the Master of the Rolls that the Court is not bound by the decision, but can put the matter in course of trial**". In that statement is the principal that the Court may intervene in a special case, if asked to do so, where the decision of the Court was based on an erroneous statement of facts. In **The Immacolata Concezione** (1883) 9 P. D. 37 the registrar caused a special case to be stated for the opinion of the Court on the question of the priorities of several claimants. Butt, J. having discovered that certain facts had not been stated in the case accepted them as amendments at the hearing of the special case. These two cases I have cited do not assist Mr Sullivan because this case is premised on the need to vacate the order I made on 15<sup>th</sup> January 2001. I am

prepared to adjust my order if I am satisfied that there is a good reason to do so. I do not think telling me that there is a need to cross-examine someone at the trial can be said to be a good reason. When I say there must be good reason, I mean showing me evidence that tells me that I need to adjust my order to meet the call for justice. Telling me that I might have been wrong in making that order and so must vacate it is not the correct way of vacating my order. Indeed, I might have been wrong but I cannot change my mind just like that for the sake of the convenience of the parties. Let the Court of Appeal correct me on the point. Vacating or discharging my order as being requested and varying it for a good reason are two different things. I do not think I have the jurisdiction on the facts of this case to vacate or discharge the order I made and then replace it with directions by consent. It is still my opinion that there is sufficient material in the file to construct a case for my opinion on the question of the ownership of the MV Delores under Order 37 (2) of the High Court Rules. I would dismiss this application. Costs will be in the cause.

**F. O. Kabui**

**Judge**