

MINISTRY OF CULTURE AND TOURISM

ANUHA TOURIST RESORT PROJECT

HIGH COURT RULING ON JOHN SMITH'S
CLAIM OF ATTORNEY OVER ANUHA

We print here the 1999 High Court Ruling on Claims of Attorney over Anuha by an individual named Mr. John Smith,

This ruling provides the legal context to my Ministry's decision to reopen Anuha and our disregard for claims that have consistently prevented past Governments from venturing into this project.

IN THE HIGH COURT OF SOLOMON ISLANDS

(D.R. Chetwynd, Registrar)
Civil Case No. 161 or 1999

In the matter of Wills Probate and Administration Act Cap 33
and
In the matter of the Estate of Father Robert T Pule (Deceased)

Date of Hearing: 20 August 1999
Date of Order: 22 October 1999

P. Tegavota for the Applicant

(REGISTRAR CHETWYND): This is an application by one John Meint Smith for a grant of Letters of Administration in respect of the estate of the late Father Pule. There is a affidavit lodged by the Applicant on 4th May 1999. I have to say that the affidavit is a rambling document that has very little to do with the application before me.

The affidavit does not depose anywhere to the death of the late Father Pule. However, it is within my knowledge that Father Pule has indeed died.

The affidavit also states that Mr Smith is a "reputable and respected" businessman. However, Mr Smith is also in contempt of this Court. He has not purged that contempt. I have some doubts whether or not someone in contempt of Court can actually seek the Court's aid in a different matter. Happily, I do not have to delve into that issue.

The main fact is that Mr Smith hangs his whole application on the Power of Attorney given to him when Father Pule was alive. I need make no comments as to whether that grant was valid or whether the formalities were complied with. All I need to know is that Father Pule has died. Quite simply the Power of Attorney dies with him.

I have not been given a copy of the Power of Attorney relied on, strangely it, was not exhibited to Mr Smith's affidavit. However, at the first hearing in May I was able to peruse a copy of the document. Mr Tegavota confirmed that the copy document given to me to look at by the Public Trustee was the document that Mr Smith relied on.

It was a bare grant of a Power of Attorney. I say this because in certain circumstances a Power of Attorney can survive the death of the donee of the power.

The relevant law is to be found in the Law of Property Act 1925. That is an English Act of Parliament. Whilst much of its provisions have been superseded by various acts of Solomon Islands, parts of it still do apply here. In particular (and in respect of this case) sections 126 and 127 remain good law in Solomon Islands. Those sections make it quite clear that a Power of Attorney is revoked on death and is not irrevocable unless the power is granted in the circumstances set out in S. 128 of Law of Property Act 1925. There is no evidence or indeed any suggestion by the applicant that the Power of Attorney he relies upon was granted in any of the circumstances set out in those sections. *

I have to say that Mr Smith has confused himself. He is of the opinion that he has control over the late Father Pule's estate. He does not. He had not established that he should have any say in the late Father Pule's affairs. He no longer holds a Power of Attorney, that power died with the late Father Pule. The applicant has not shown any other ground on which he can claim to have the right to a Grant of Letters of Administration.

As the late Father Pule dies without a will then his estate will devolve in accordance with the rules on intestacy. There is nothing in those rules to say Mr Smith will in any way be beneficially entitled to the deceased's estate.

I therefore will dismiss the application

I direct that the Public Trustee should be granted Letter of Administration the estate of the Late Father Pule.

I order the applicant to pay the costs of the Public Trustee, and those costs to be taxed if not agreed.

Order

1. The application for a Grant of Letter of Administration is the estate of Father Robert T Pule deceased by John Meint Smith is dismissed.
2. Letters of Administration in the estate of Father Robert T Pule deceased be granted to the Public Trustee.
3. The applicant John Meint Smith to pay the costs of the Public Trustee in this application, and such costs to be taxed if not agreed.

Dated this 22nd day of October 1999
In the High Court
Honiara

D. R. Chetwynd
Registrar of the High Court

Mr. Luke Eta
Permanent Secretary
Minister of culture and Tourism

* incorrect information
- refer to attached
Law of Property Act
extract.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act, and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

Payment
by attorney
under power
without
notice of
death, &c.

124.—(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

(3) This section does not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(4) This section applies to payments and acts made and done before or after the commencement of this Act, and in this section "power of attorney" includes a power of attorney implied by statute.

Powers of
attorney
relating to

125.—(1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a

certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to the statutory enactment in that behalf, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction:

Provided that, if the instrument relates to land or a charge registered under the Land Registration Act, 1925, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Central Office and an office copy shall be filed at the Land Registry.

(2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof or of the material portions thereof delivered to him free of expense.

(3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

126.—(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,

Effect of
irrevocable
power of
attorney
for value

(i) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability or bankruptcy of the donor of the power; and

(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability or bankruptcy of the donor of the power, had not been done or happened; and

*Registered Office
Court
Can not
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