ROP v. Airai State Pub. Lands Auth., 10 ROP 35 (2002)

REPUBLIC OF PALAU,
Appellant,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY,
CHARLES OBICHANG, DONALD HARUO,
and JOHN K. RECHUCHER,
Appellees.

CIVIL APPEAL NO. 01-43
Civil Action Nos. 99-186 & 99-209

Supreme Court, Appellate Division
Republic of Palau

Decided: December 4, 2002

Counsel for ROP: Everett Watson

Counsel for ASPLA: Oldiais Ngiraikelau

Counsel for Obichang: Yukiwo Dengokl

Counsel for Haruo: J. Roman Bedor, T.C.

Counsel for Rechucher: Pro Se

BEFORE: KATHLEEN M. SALII, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

This case is before the Court upon Appellees' November 5, 2002 motion to "set aside" the Court's September 16, 2002 decision, which reversed the trial court's grant of summary judgment and remanded for further proceedings. Appellees base their motion on the fact that two of the three judges who decided the appeal were Land Court judges rather than justices of this Court. Appellees have also requested that a new panel be appointed to decide the motion, claiming that an appearance of impropriety would arise if two of the undersigned, who are Land Court judges, were to pass judgment on their own ability to sit pro tem on this Court.

Our Rules of Appellate Procedure do not allow motions to "set aside" appellate decisions,

or provide a means for the Court to do so. Had Appellees sought to set our decision aside in a Rule 40 petition for rehearing, we would deny the petition as untimely. *See* ROP R. App. Pro. 40(a) (requiring petitions for rehearing to be filed within 14 days of opinion unless shortened or extended by court). Instead, Appellees assert, ⊥36 in their untimely reply brief, that their motion is properly before the Court under Rule 2 and Rule 27. We cannot agree. Rule 2 permits this Court to suspend the requirements of any other rule for good cause,[1] while Rule 27 merely sets forth the procedure for filing motions; neither provides a mechanism for this Court to determine the validity of a decision that it has already issued.

The Rules of Appellate Procedure aside, it is true that United States appellate courts, by way of analogy, have been held to have an inherent power to recall their decisions. But in light of the profound interest in repose attaching to an appellate court mandate, the power can be exercised only in extraordinary circumstances, and is one of last resort, to be held in reserve against grave, unforeseen contingencies. *See Calderon v. Thompson*, 118 S.Ct. 1489, 1498 (1998). Even if we were endowed with similar power, we could not exercise it under the circumstances presented here: it is hardly extraordinary for Land Court judges to sit on panels of this Court, and the composition of the panel was not a "grave, unforeseen contingency" but rather a fact well known to both the Court and the parties long before our decision issued. In short, this appeal is over. If Appellees believe that our decision is invalid, they should raise the matter with the trial court on remand.

Since Appellees' motion is not properly before us, it does not present any of the undersigned with the opportunity to rule upon our eligibility to sit on panels of this Court. Accordingly, Appellees' motion to assign a new panel is also denied.

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[1]We add, in passing, that Appellees' excuse for the delay in bringing their motion–that it did not occur to their counsel to do so any sooner–is not good cause. *See A.J.J. Enter. v. Renguul*, 2 ROP Intrm. 117, 119 (1990) (holding that good cause shall not be deemed to exist unless movant avers something more than normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in practice of law).