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Stare Decisis: when does it bind?

Stare decisis, defined as "*to stand by things decided*" in the *Oxford Dictionary of Law (5th Ed)*, is a legal doctrine that obligates lower Courts to follow the decision made by a superior Court in similar cases in the interests of finality and certainty in the law.

This legal doctrine is no stranger to legal practitioners, academia or even law students. In fact, the doctrine of stare decisis is the bedrock of Common Law. But what actually binds the lower Courts? An unexplained decision of a superior Court? The commentaries given by a Judge when the Judge refers to a hypothetical situation in delivering a judgment? The reasonings given explaining the rationale of the judgment?

Recently, our Apex Court, speaking through Chief Judge of Sabah and Sarawak, YAA Dato' Abdul Rahman Sebli in **Tetuan Wan Shahrizal, Hari & Co v Pendakwa Raya** (Criminal Appeal No. 05(L)-101-09/2020(C)) had an opportunity to examine this issue.

In this appeal, the Federal Court had to decide whether the Court of Appeal erred in allowing an appeal against the High Court's decision. In examining the merits of the appeal, the Federal Court found that the High Court Judge made his decision by following a decision of the Court of Appeal in another case ("the Decision").

Upon further examination, the Federal Court found that the Decision was not supported by any written Grounds of Judgment from the Court of Appeal. On this issue, the Federal Court had these to say:

> *"[12] Without the benefit of the written grounds, there was no way that the learned judge could have known of the actual reason or reasons why the Court of Appeal decided the way it did in that case. In any case, it was wrong for him to have engaged in guesswork on the basis for the unwritten decision, which undoubtedly had weighed heavily in his mind in deciding whether or not to allow the appellant's claim.*
>
> *[13] What binds the lower courts under the stare decisis doctrine is the ratio decidendi of the case and not mere*

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similarity in the facts or in the law, or in the arguments of counsel, nor the obiter dicta of the case.

[14] A lower court relying on an earlier unwritten decision of an appellate court must not assume that by affirming the decision of the lower court, the appellate court must have affirmed every finding of fact and law that the lower court had decided in favour of the winning party. Experience will tell that it is not uncommon for an appellate court to affirm or reverse the decisions of the lower courts on grounds other than those relied on by the lower courts.

[15] Nor must the court, in the absence of the written grounds, accept the argument that the appellate court in the earlier case decided the way it did because it accepted counsel's argument, even where the earlier case involved the same counsel. Such acceptance of counsel's argument must be reflected in the written grounds of judgment. The role of counsel is to assist and the court to decide.

[16] Ratio decidendi is Latin for "the rationale for the decision". The term refers to a key judicial point or chain of reasoning in a case that drives the final judgment. It is "the principle or rule of law on which a court's decision is founded" (Black's Law Dictionary 11th edition) or "the principle that the case establishes" (Barron's Law Dictionary 2 nd edition).

[17] Obviously therefore, a decision that is delivered without the written grounds does not establish any principle or rule of law on which the decision is founded. The decision is therefore devoid of any ratio decidendi (rationale for the decision). It has no value as precedent. There may be instances where the court, either in its original or appellate jurisdiction, delivers a reasoned oral decision ex tempore but in that situation, the reasons must be reduced into writing in order for the decision to have any binding effect on the lower courts.

[18] We are not aware of any principle of law, nor have we been referred to any authority to say that the lower courts are bound by stare decisis even where the higher courts do not provide written grounds for their decisions. The following explanatory note on the doctrine, which can be found in Black's Law Dictionary, is relevant: "The doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination, or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases."

[19] Thus, where there are no grounds written, there is no point or principle of law that can officially be decided or settled by the ruling of a competent court.

> *The correct position of the law is that an unwritten decision of a higher court, whether sitting in its original or appellate jurisdiction, binds the parties to the action but is not authority for any principle or rule of law and does not bind the lower courts. This is where the learned judge in the present case fell into error when he said that he was bound by stare decisis to follow the unwritten decision of the Court of Appeal in Md. Sukri."*

In short, the Federal Court opined that:

a) the doctrine of stare decisis does not mean that the lower Courts are bound by the mere "decision" of a superior Court.
b) under the doctrine of stare decisis, it is the superior Court's ratio decidendi or rationale behind the decision that binds lower Courts.
c) without written Grounds of Judgment of the superior Court, the superior Court's rationale behind a decision could not be ascertained.
d) without written Grounds of Judgment of the superior Court, the mere "decision" of the superior Court is not binding upon the lower Courts.
e) without written Grounds of Judgment of the superior Court, oral grounds of judgment of the superior Courts will not be sufficient to bind lower Courts.

Clearly, written Grounds of Judgment are the cornerstone of the time-tested doctrine of stare decisis and our Common Law system.

In fact, this is not the first time our judiciary emphasises on the importance of a written Grounds of Judgment in the administration of justice.

In 2019, our sitting Madam Chief Justice YAA Tun Tengku Maimun binti Tuan Mat pointed out that at times, Grounds of Judgment are more significant than the decision itself. Her Ladyship also highlighted that it is important for Judges to write their Grounds of Judgment because Judges speak through their Grounds of Judgment.

Beyond that, in 2018, the Chief Judge of Sabah & Sarawak had also issued a Practice Direction of the Chief Judge of the High Court of Sabah and Sarawak No. 1 of 2018 to lay down that Judges should, at least, provide a summary or brief grounds of decision when a decision is made in respect of an interlocutory application and/or a full trial.

As such, the Federal Court's succinct analyses of the importance of written Grounds of Judgment in **Tetuan Wan Shahrizal** serves as a timeous reminder to litigants that a superior Court's decision made without written Grounds of Judgment does not bind the lower Courts as the fundamental binding element, i.e the *ratio* decidendi, could not be deciphered.

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