

plaintiff would be deprived of the equal protection of the laws. To hold otherwise would be to condone the maintenance of two classes of persons, one of which would be able to obtain a divorce almost immediately after grounds therefor had arisen while the other class, with equally meritorious grounds, would be required to reside in the jurisdiction until two years of residency had been completed.

[3] Since Section 7 of the Bill of Rights clearly grants plaintiff the right to the equal protection of the laws and since Title 39, T.T.C., Section 202, would deny her that right, this Court must, and does, hold that Title 39, T.T.C., Section 202, is invalid and that jurisdiction to hear this case on its merits lies with this Court.

EBON KABAUWI, Plaintiff

v.

EDDIE L. BALANCE, Defendant

Civil Action No. 395

Trial Division of the High Court

Marshall Islands District

September 1, 1971

Action to recover money. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that plaintiffs could not recover a sum of money from defendants where the defendants had applied the sum to a debt incurred by the plaintiffs.

Payment—Generally

Where the money sought by plaintiffs from defendants was applied by defendants on a debt incurred by plaintiffs, plaintiffs were not entitled to recover such sum from the defendants.

KABAUWI v. BALANCE

Assessor: LINO KORABB, *Associate Judge,*
District Court
Interpreter: MICHAEL CAPELLE
Counsel for Plaintiff: JAMES MILNE
Counsel for Defendant: PRO SE

TURNER, *Associate Justice*

FINDINGS OF FACT

1. The Ebon Kabauwi, whose membership is composed of persons on Ebeye whose home island is Ebon, was organized prior to the events out of which this action arose for the purpose of helping, when appropriate, the people of Ebon.

2. When a Japanese fishing vessel was abandoned on the Ebon reef, the Ebon Kabauwi undertook to raise funds to pay the cost of having it refloated.

3. James Milne, counsel for the plaintiff group, was chairman and organized the recovery efforts which included arranging with Global Associates, the logistics support contractor for the U.S. Army Kwajalein Missile Range, to send a tugboat to Ebon to refloat the fishing vessel and tow it to Kwajalein. Accordingly, a contract was entered into and it was orally agreed that Ebon Kabauwi would deposit three thousand five hundred dollars (\$3,500.00) with Global to secure the costs of the salvage operation.

4. At the time the tug was ready to leave Kwajalein, only a few hundred dollars had been collected from the members of the Ebon Kabauwi and the Chairman Milne was not on island, having previously left for Saipan.

5. The defendant Balance undertook to raise the necessary security deposit and finally did so when one of the money collectors for the group, Kabwij Bobo, borrowed \$3,200.00 from a friend, Abe, and paid the \$300.00 balance from cash on hand held by him.

6. The \$3,500.00 was deposited with Global and subsequently credited by Global against the final bill of \$5,808.70.

7. Because of dissatisfaction with handling of finances and management of the plaintiff group, the defendant and others of the plaintiff group formed a second group and raised among themselves the \$2,308.70 required to pay the balance of the Global bill. This second group, whose membership was entirely from Ebon Kabauwi, called itself the Ebon Ibben Dron Corporation.

8. The \$3,200.00 loan from Abe was repaid by Milne who then reimbursed himself by a "loan" of \$2,225.00 from Ebon Kabauwi funds.

9. The record is not clear, Milne did not testify, whether he has been repaid the balance of his payment to Abe for the \$3,200.00 loan. The Global bill and the operating expenses for the boat have been paid by funds raised by both Ebon Kabauwi and Ebon Ibben Dron Corporation. What, if any, unpaid bills remain is unclear. The plaintiff group did not keep books and its statement of collections was not accurate. No witnesses for the plaintiff's group were able to say what amounts, if any, were owed and no one, with the exception of the defendant, knew whether the Global bill had been paid and whether the \$3,500.00 remained on deposit or had been withdrawn. In short, the plaintiff group's witnesses had no understanding of the financial picture and brought this suit against the defendant, Balance, for the sum of \$3,500.00 without knowing whether Balance or anyone else owed them that amount of money.

OPINION

As has been indicated in the findings of fact, this lawsuit arose primarily because of an utter failure to keep books of account, together with dissatisfaction by some

of the Ebon group with the leadership of the Ebon Kabauwi.

We do not believe the plaintiff group attempted to recover money from the defendant and his splinter group with knowledge that the sum was used to pay bills incurred by the plaintiff group. A financial statement understood by all Ebon members and an agreement on the future program for the boat reached at a meeting presided over by someone not identified with either the Milne or Balance leadership would have avoided the resort to the court.

The evidence is clear that the plaintiff group is not entitled to recover from either Balance or his group since the money sought was applied on the debt incurred by the plaintiff group. This does not mean, however, that all issues are settled in the matter of the salvaged boat.

The first step in solving the problems will be the establishment of books of account showing the amounts contributed by members of both groups, plus a compilation, if possible, of bills paid and payable. Future plans including operation of the boat and repayment of membership contributions, if possible, should then be agreed to.

All of these matters, however, are beyond the scope of this judgment. All we are called upon to do at this time is to decide whether the plaintiff group is entitled to any recovery from the individual defendant. We hold they are not.

Ordered, adjudged, and decreed, that the plaintiff take nothing by its complaint.

No costs are allowed.