

JESUS A. SONODA, Petitioner

v.

TRIAL DIVISION OF THE HIGH COURT, MARIANA ISLANDS DISTRICT, Respondent

and

ROBERT HEFNER, Real Party in Interest

Civil Appeal No. 128

Appellate Division of the High Court

Mariana Islands District

June 11, 1975

Petition for writ of prohibition. The Appellate Division of the High Court, Duenas, Appellate Division Temporary Judge, held that the petition would be dismissed on respondent's motion where the act in question had already been done.

1. Courts—Power To Issue Writs

The Appellate Division of the High Court has the power to issue a writ of prohibition.

2. Prohibition—Generally

Prohibition is to be used with great caution and forbearance, for the furtherance of justice and to secure order and regularity in judicial proceedings, and should be issued only in cases of extreme necessity.

3. Prohibition—Prerequisites for Writ

As a rule, a writ of prohibition will not issue where the act in question has already been done; thus, it will not lie to restrain an inferior court after the judgment has been given and fully executed, unless it appears on the face of the proceedings that the court has no jurisdiction.

4. Prohibition—Generally

The purpose of a writ of prohibition is to restrain or prevent; it is not to be used for the purpose of reviewing and correcting errors and irregularities of a lower court.

5. Prohibition—Particular Cases

Where judge which petition for writ of prohibition sought to keep from sitting in a particular case had already heard the case and dismissed the complaint, and could not be prohibited from proceeding, since there was nothing more for him to do in the case, and petitioner was not challenging the jurisdiction of the lower court, but rather, the alleged bias of the judge, the writ would be denied.

6. Prohibition—Prerequisites for Writ

A writ of prohibition will not issue where there exists a plain, speedy and adequate remedy in the ordinary course of the law, such as an appeal.

DUENAS, Temporary Judge

On November 25, 1974, petitioner filed a complaint for Writ of Prohibition in the Appellate Division of the High Court requesting that this court issue a writ of prohibition declaring the appointment of Judge Robert Hefner in Civil Case No. 74-103 null and void and restraining the Honorable Robert Hefner and the Trial Division of the High Court, Mariana Islands District, from proceeding further in Civil Case No. 74-103, which had been filed by petitioner on November 11, 1974.

Petitioner was at one time a District Court Judge in the Mariana Islands District. Civil Case No. 74-103 challenged, among other things, Judge Harold W. Burnett's participation in petitioner's removal from his judgeship. Consequently, Judge Burnett, as Chief Justice of the High Court, assigned the case to the Honorable Paul J. Abbate, Presiding Judge of the Superior Court of Guam.

Judge Abbate entered a Temporary Restraining Order directing the defendants in Civil Case No. 74-103 to restore and maintain petitioner in his judgeship until a hearing could be held November 25, 1974 on the question of whether to issue a preliminary injunction.

Petitioner alleges that after the Temporary Restraining Order was granted, Judge Burnett relieved Judge Abbate from the case and assigned it to Judge Hefner, an Associate Justice of the High Court.

At this point, petitioner filed his complaint for a Writ of Prohibition in the Appellate Division of the High Court. Petitioner made a motion before Judge Hefner to continue the Temporary Restraining Order and hold the case in abeyance until a hearing on his petition for a Writ of Prohibition had been held. Judge Hefner denied the motion and on December 2, 1974, he dissolved the Temporary Restraining Order and denied the request to issue a Pre-

liminary Injunction. Subsequently, Judge Hefner granted defendant's motion to dismiss the complaint in Civil Case No. 74-103.

On January 16, 1975, the defendants filed a motion to dismiss the complaint in this action.

[1] The basis of defendant's motion is that final adjudication in Civil Case No. 74-103 has rendered all of the issues involved in the petition moot and thus no justiciable case or controversy is before the court. Since the motion to dismiss raises the issue of whether or not this court has jurisdiction over the action, such a motion may be determined by a single judge, TTC, Sec. 552. It has already been established that the Appellate Division of the High Court has the power to issue a Writ of Prohibition, *Lujan v. Makroro*, 6 T.T.R. 209 (1972).

[2] Prohibition, like all other prerogative writs, is to be used with great caution and forbearance, for the furtherance of justice and to secure order and regularity in judicial proceedings and should be issued only in cases of extreme necessity, 63 Am. Jur. 2d, Prohibition, Sec. 6.

[3] As a rule, the writ will not issue where the act in question has already been done. Thus, prohibition will not lie to restrain an inferior court after the judgment has been given and fully executed, unless it appears on the face of the proceedings that the court has no jurisdiction, 63 Am. Jur. 2d, Prohibition, Sec. 42.

[4] In the case before the court, no action can be taken. The purpose of a Writ of Prohibition is to restrain or prevent. It is not to be used for the purpose of reviewing and correcting errors and irregularities of the court below, 63 Am. Jur., Prohibition, Sec. 4.

[5] However, Judge Hefner has already heard the case and dismissed the complaint. This court cannot restrain or

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prohibit Judge Hefner from proceeding with Civil Case No. 74-103 since there is nothing more for Judge Hefner to do with regard to Civil Case No. 74-103.

Moreover, petitioner is not challenging the jurisdiction of the court in this matter but rather the bias and prejudice of the judge. A writ of prohibition shall not issue where the court below had jurisdiction to take the action so taken.

[6] Respondent correctly contends that a writ of prohibition shall not issue where there exists a plain, speedy, and adequate remedy in the ordinary course of law. Petitioner's contentions may properly be made on appeal and appeal in this instance is a plain, speedy, and adequate remedy. Extraordinary writs cannot be used as a substitute for appeal. *In re Buckey*, 395 F.2d 385, 387 (1968), *Bankers Life and Casualty Co. v. Holland*, 346 U.S. 379 (1953).

Respondent's motion to dismiss petitioner's complaint is hereby granted.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff-Appellee

v.

GEORGIOS SKIADOPULUS, et al., GEORGIOS LEONDIS, et al. and VASSILIOS GIANOUTSOS, et al., Defendants-Appellants

Criminal Appeal No. 40

Appellate Division of the High Court

Palau District

July 17, 1975

Consolidated appeals in criminal cases. The Appellate Division of the High Court, Hefner, Associate Justice, held that persons who were not defendants could not be ordered to place up to \$5000 at the disposal of others for their benefit, for a fine must be on a specific person, who is a defendant, and must be placed in the territorial treasury.