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Loyola ex rel. Edmund v. Hairens
19 FSM R. 401 (App. 2014)

FSM SUPREME COURT APPELLATE DIVISION

QUIRINO LOYOLA, in his capacity as Nett)	APPEAL CASE NO. P1-2014
District Election Chairman, ex rel.)	
ADELINO EDMUND,)	
)	
Appellant-Petitioner,)	
)	
vs.)	
)	
PETERIKO HAIRENS,)	
)	
Appellee-Respondent.)	
_____)	

ORDER CONCERNING JURISDICTION

Decided: May 15, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Beauleen Carl-Worswick, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellant/Petitioner: Joseph S. Phillip, Esq.
P.O. Box 464
Kolonias, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Decisions Reviewable

The FSM Supreme Court appellate division has the power of appellate review of cases on appeal from the highest state court in which a decision may be had. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

Appellate Review – Decisions Reviewable; Courts; Mandamus and Prohibition – Authority and Jurisdiction

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

Mandamus and Prohibition – Authority and Jurisdiction; Mandamus and Prohibition – Procedure

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App.

2014).

Appellate Review – Decisions Reviewable; Mandamus and Prohibition – Authority and Jurisdiction

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. *Loyola ex rel. Edmund v. Hairens*, 19 FSM R. 401, 403 (App. 2014).

Mandamus and Prohibition – Authority and Jurisdiction; Mandamus and Prohibition – Procedure

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. *Loyola ex rel. Edmund v. Hairens*, 19 FSM R. 401, 403 (App. 2014).

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COURT'S OPINION

PER CURIAM:

The court asked appellant petitioner Quirino Loyola to file a brief on this court's jurisdiction over the matter being appealed, which he did on February 14, 2014, and a copy of the Pohnpei Supreme Court case he cited was provided later. The question we asked Loyola to brief was whether the FSM Supreme Court appellate division has jurisdiction over this petition for a writ of prohibition and this appeal or whether, in this instance, the appeal and petition should have (first) been filed and relief sought from a division of the Pohnpei Supreme Court. The court asked for this brief because of the constitutional provision that grants the FSM Supreme Court appellate division the power of appellate review of cases "on appeal from the highest state court in which a decision may be had." FSM Const. art. XI, § 7.

Loyola contends that the Pohnpei Supreme Court has no jurisdiction over Nett District Court decisions and that since it does not, the only appeal possible from the Nett District Court is to this court – there is no higher state court than the Nett District Court from which a decision can be had. To support this contention he cites (and provides a copy of) the Pohnpei Supreme Court appellate division's decision in *Katerson v. Gallen*, Opinion, App. No. 4-2002 (Pon. S. Ct. App. June 26, 2006).

We have reviewed that case which was a petition for a writ of mandamus directed to a judge of the Madolenihmw Municipal Court. The *Katerson* court decided to address not only their jurisdiction over the petition before them but also the Pohnpei Supreme Court trial division's jurisdiction over a pending appeal from the same municipal court case to the trial division. *Id.* at 2. The *Katerson* court held unconstitutional under the Pohnpei Constitution the Pohnpei statute, Pon. S.L. No. 3L-99-95, § 16-6, which governed appeals from the municipal courts to the Pohnpei Supreme Court. Opinion at 9. The Pohnpei Supreme Court concluded that the Pohnpei Supreme Court trial division did not have appellate jurisdiction over Pohnpei municipal or local courts, *id.* at 10, and that therefore the Pohnpei Supreme Court appellate division lacked jurisdiction over the petition before it and ordered dismissed all pending Pohnpei Supreme Court cases based on that supposed jurisdiction. *Id.* at 11.

It appears therefore that the highest state court in which a decision can be had for this Nett District election contest case is the appellate division of the Nett District Court. It is unclear from Loyola's filings that all of the matters he seeks to have reviewed by us have been adjudicated in the

Nett District Court appellate division. We note that a writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. See GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014) (extraordinary writs generally must be sought from the next highest tribunal and not the FSM Supreme Court appellate division even when the FSM Supreme Court appellate division may have concurrent jurisdiction).

Accordingly, we may exercise jurisdiction over this appeal to the extent that it is an appeal from the Nett District Court appellate division and we consider this petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division.

NOW THEREFORE IT IS HEREBY ORDERED that the clerk of the Nett District Court appellate division shall certify the record below and transmit it to the FSM Supreme Court appellate clerk, FSM App. R. 10(c), so that the FSM Supreme Court appellate clerk may issue a notice to the parties that the record is ready and set the briefing schedule, FSM App. R. 12(b), for the part of this case that is an appeal from the Nett District Court appellate division.

Loyola also seeks a writ of prohibition directed to the Chief Justice of the Nett District Court. Since the Nett Chief Justice was acting as a Nett District Court trial division judge, that writ must first be sought from the Nett District Court appellate division. Accordingly, the part of this case that is a petition for a writ of prohibition directed to the Nett District Court trial division or to its chief justice is dismissed without prejudice. That petition must first be sought in and ruled on by the Nett District Court appellate division.

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FSM SUPREME COURT TRIAL DIVISION

PATRICK ZACCHINI,)	CIVIL ACTION NO.2012-018
)	
Plaintiff,)	
)	
vs.)	
)	
FSM PUBLIC AUDITOR HASER HAINRICK, on)	
his own and in his official capacity, FSM PUBLIC)	
AUDITOR'S OFFICE, and FSM GOVERNMENT,)	
)	
Defendants.)	
)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: November 15, 2013
Decided: May 19, 2014