

CHUUK STATE SUPREME COURT TRIAL DIVISION

IN THE MATTER OF TITLE TO TWO PARCELS)
OF REAL PROPERTY DESIGNATED NO. 012-A-21)
AND 012-A-28 AS PLAT NO. 012-1-00,)
YUSER JESSE, THE ESTATE OF KUNI, and)
DIVISION OF LAND MANAGEMENT,)
Claimants.)
_____)

CSSC CIVIL ACTION NO. 12-93

ORDER DENYING CHUUK LAND MANAGEMENT'S MOTION TO DISQUALIFY TRIAL JUDGE

Keske Marar
Associate Justice

Hearing: July 14, August 11, 2014
Decided: August 12, 2014

APPEARANCES:

For the Movant: Sabino S. Asor, Esq.
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Office of the Chuuk Attorney General
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For the Claimant: Jack Fritz, Esq.
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HEADNOTES

Courts – Recusal

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavit(s) establishing a factual basis for the motion. Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible, competent evidence. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

Courts – Recusal

A trial judge is justified in denying a motion for recusal on the basis of the moving party's failure to file an affidavit explaining the factual basis for the motion. In re Title to Two Parcels, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

Courts – Recusal

An application for a trial judge's disqualification must be filed at the earliest opportunity. This rule will be strictly applied against a party who, having knowledge of the facts constituting a

disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. *In re Title to Two Parcels*, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

Courts – Recusal

A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and when the movant has known for months which justice would be presiding over the trial. *In re Title to Two Parcels*, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

Courts – Recusal

By Chuuk statute, a disqualification motion filed after trial has begun must be denied unless there is good cause for filing it at a later time. *In re Title to Two Parcels*, 19 FSM R. 482, 485 (Chk. S. Ct. Tr. 2014).

Courts – Recusal

A disqualification motion is deficient and untimely when it is unclear what involvement, if any, the trial judge had in the instant matter; when it was only after a judgment had been rendered in another's favor, and after the denial of two motions to set aside the judgment, that the movant sought to disqualify the trial judge; when the movant has failed to establish "good cause" for filing the disqualification motion almost seven months after the judgment was rendered; and when, in support of its disqualification motion, the movant merely stated that it "did not have knowledge of the facts constituting a disqualification until about seven months, or this month, June 2014," since this statement, without anything further, is insufficient to meet the good cause standard. *In re Title to Two Parcels*, 19 FSM R. 482, 485-86 (Chk. S. Ct. Tr. 2014).

* * * *

COURT'S OPINION

KESKE MARAR, Associate Justice:

On June 11, 2014, Chuuk State Land Management ("Movant") filed a Motion to Void Judgment and to Disqualify the Trial Judge that Issued the Judgment ("Motion"). In response to the Motion, Yuser Jesse filed an opposition on June 19, 2014 ("Opposition").

A hearing on the Movant's Motion was set and held on July 14, 2014, at 10:00 a.m. before the Honorable Keske Marar. Sabino S. Asor, Esq. appeared on behalf of the Movant. Jack Fritz, Esq. appeared on behalf of Yuser Jesse.

A continued hearing was held on August 11, 2014, and the Court took the matter under advisement.

The Court, having considered the pleadings filed, applicable authorities, and the entire record finds as follows:

I. BACKGROUND

On or about January 26, 1993, over twenty-one years ago, this matter, CSSC Civil Action No. 12-93 ("Civil Action") was referred and transferred from the Land Commission to this trial court to determine the ownership of Parcels Nos. 012-A-21 and 012-A-28. The Civil Action was re-assigned to Associate Justice Repeat Samuel on December 16, 2010, almost four years ago.

A Judgment was entered in favor of Yuser Jesse on November 6, 2013, ("Judgment") in the Civil Action. No appeal of the Judgment was taken.

Movant filed its first Motion to Set Aside the Judgment on January 29, 2014, which was later denied by order dated February 21, 2014. Movant then filed its second Motion to Set Aside the Judgment on May 30, 2014, which was denied by order dated June 16, 2014.

Now, the Movant moves to disqualify Judge Samuel for two main reasons as fully set forth in its Motion. First, Movant contends that the trial judge should have recused himself from the Civil Action because he had personal knowledge of evidentiary facts concerning the proceeding. Second, Movant contends that the trial judge served as trial counselor/family lawyer to the Mersai family, and was "working on their complaint to intervene" in the instant action. Mot. at 4. In support, Movant submitted the affidavit of Ms. Elizabeth Mersai Aten.

In response to the Motion, Jesse raised the following arguments, among others:

First, he argues that the Movant failed to comply with Chuuk State Supreme Court Rule 6(d), which states in pertinent part that "all motions shall contain certification by the movant that a reasonable effort has been made to obtain the agreement or acquiescence of the opposing party and that no such agreement has been forthcoming."

Second, Jesse argues that the Movant has failed to establish "good cause" for the late filing of the Motion. He points to the fact that the Movant did not provide any legal authority in support of its Motion, and/or any affidavit showing due diligence on its part or some excusable reason on why it took over seven months after the Judgment was entered to file the Motion, especially given that the Movant has been paying the Mersai family compensation for the alleged lands at issue since 2006. Opp'n at 6, 18-19.

Third, Jesse argues that Ms. Aten's affidavit is inadmissible hearsay. Further, Jesse points to the fact that Ms. Aten party to the instant matter.

Fourth, Jesse argues that Ms. Aten's description of the alleged land purchase involves several lots that are not the subject of this case. Opp'n at 9.

II. ISSUE

The *only* question before this Court is whether the trial judge should be disqualified from presiding over this matter.

III. APPLICABLE LAW

A. *Chuuk State Judiciary Act of 1990*

The Chuuk State Judiciary Act, Chk. S.L. No. 190-08, Section 22 provides in pertinent part as follows:

- (1) A justice or a municipal judge may not hear any proceeding in which his impartiality might reasonably be questioned.
- (2) A justice or municipal judge may not hear any proceeding in any of the following circumstances:

In re Title to Two Parcels
19 FSM R. 482 (Chk. S. Ct. Tr. 2014)

- a. Where he has personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- b. Where in private practice he served as a lawyer or trial assistant in the matter in controversy The term private practice shall include practice with legal services or public defender organization;

(5) A party may move to disqualify a Justice or a municipal judge for one of the reasons stated in subsection (1) or (2) of this Section. The motion shall be accomplished by an affidavit stating the reasons for the belief that grounds for disqualification exist, and shall be filed before the trial or hearing unless good cause is shown for filing it at a later time. Upon receipt of such motion, the Justice shall refer the motion to another Justice, to hear the motion and rule upon it.

B. A Motion for Disqualification Must be Supported by an Admissible Affidavit Establishing a Factual Basis for the Motion

A motion for disqualification of a Chuuk State Supreme Court justice must be supported by affidavit(s) establishing a factual basis for the motion. Nakamura v. Sharivy, 15 FSM Intrm. 409, 412 (Chk. S. Ct. Tr. 2007) (citing Kupenes v. Ungeni, 12 FSM Intrm. 252, 259 (Chk. S. Ct. Tr. 2003)). Mere argument by counsel, be it oral or set forth in a brief, is not the basis on which motions to disqualify are determined. *Id.* It is the movant's burden to go beyond wide-ranging speculation or conclusions and show a factual basis for recusal by admissible, competent evidence. Jano v. King, 5 FSM Intrm. 266, 268 (Pon. 1992).

A trial judge is, therefore, justified in denying a motion for recusal on the basis of failure of the moving party to file an affidavit explaining the factual basis for the motion. Skilling v. FSM, 2 FSM Intrm. 209, 216-17 (App. 1986); *see also* Allen v. Kosrae, 13 FSM Intrm. 55, 59 (Kos. S. Ct. Tr. 2004) (A motion to disqualify a judge that is not supported by an affidavit which explains the factual basis for the motion is insufficient and will be denied.).

C. A Showing of Good Cause Must be Established When a Motion to Disqualify is Filed After Trial has Commenced

An application for a trial judge's disqualification must be filed at the earliest opportunity. Tolenoa v. Kosrae, 11 FSM Intrm. 179, 184 (Kos. S. Ct. Tr. 2002). This rule will be strictly applied against a party who, having knowledge of the facts constituting a disqualification, does not seek to disqualify the judge until an unfavorable ruling has been made. *Id.* A motion to recuse may be considered untimely when it is brought many weeks after the deadline for pretrial motions and where the movant has known for months which justice would be presiding over the trial. Shrew v. Kosrae, 10 FSM Intrm. 533, 535 (Kos. S. Ct. Tr. 2002).

By statute, a disqualification motion filed after trial has begun must be denied unless there is good cause for filing it at a later time. Chk. S.L. No. 190-08, § 22(5); Hartman v. Bank of Guam, 10 FSM Intrm. 89, 95-96 (App. 2001).

IV. APPLICATION OF LAW TO FACTS

The Movant's disqualification motion is deficient and untimely. First, there appears to be several issues with the affidavit submitted in support of the Movant's disqualification motion. Specifically, it is unclear what involvement, if any, the trial judge had in the instant matter.

In re Title to Two Parcels
19 FSM R. 482 (Chk. S. Ct. Tr. 2014)

Moreover, even if the Court were inclined to find that the trial judge should have recused himself, the Movant has failed to establish "good cause" for filing the disqualification almost seven months *after* the Judgment was rendered. In support of its disqualification motion, the Movant merely states that "the state did not have knowledge of the facts constituting a disqualification until about seven months, or this month, June 2014." Mot. at 3. This statement, without anything further, is insufficient to meet the good cause standard. It was only after a Judgment was rendered in favor of Jesse, and after the denial of two motions to set aside the Judgment, that the Movant moved to disqualify the trial judge. Given these reason, the Movant's disqualification motion is untimely.

V. CONCLUSION

Based on the foregoing, the Movant's motion to disqualify Associate Justice Repeat Samuel is DENIED.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2013-500
)	
Plaintiff,)	
)	
vs.)	
)	
MAVERICK EZRA, MAXON JOHNNY,)	
MYRON JOHNNY, JOHNNY JOHNNY a/k/a)	
SONY JOHNNY,)	
)	
Defendants.)	
)	

ORDER AND MEMORANDUM ON JURISDICTION

Beauleen Carl-Worswick
Associate Justice

Decided: August 22, 2014

APPEARANCES:

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