

Second, in the most recent case, CSSC CA No. 144-99, the Court entered an Order of Dismissal with prejudice, which provides that the claims over the Properties had been already litigated in a prior case before the Trust Territory High Court (Civil Action No. 222). "A dismissal with prejudice constitutes a judgment on the merits." Kitti Mun. Gov't v. Pohnpei 11 FSM Intrm. 622, 628 (App. 2003). Because the dismissal was with prejudice, there was a judgment on the merits.

Third, the prior action involved the same parties or their privies. In fact, the Plaintiff was specifically named as a defendant in the prior action.

Last, the Court believes that preclusive effect of the prior action can be determined from the face of the complaint.

CONCLUSION

Based on the foregoing, the Court finds that the doctrine of res judicata applies because all requirements have been satisfied. Accordingly, the Defendants' Motion to Dismiss is GRANTED.

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CHUUK STATE SUPREME COURT APPELLATE DIVISION

KESIA IRONS,	)	CSSC APPEAL NO. 01-2012
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
CHUUK STATE SUPREME COURT	)	
TRIAL DIVISION, CSSC CA NO. 35-09,	)	
	)	
Respondent.	)	
_____	)	

ORDER DISMISSING PETITION FOR WRIT OF MANDAMUS WITHOUT PREJUDICE WITH LEAVE TO AMEND

Decided: February 2, 2015

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding  
Hon. Brian Dickson, Temporary Justice\*  
Hon. Derensio Konman, Temporary Justice\*\*

\*Legal Counsel, 13th Chuuk State Legislature

\*\* Directing Attorney, Micronesian Legal Services Corporation, Chuuk Office

APPEARANCES:

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HEADNOTES

Mandamus and Prohibition – When May Issue

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

Mandamus and Prohibition – Procedure

A writ of mandamus petition will be dismissed without prejudice when the named respondent is the Chuuk State Supreme Court trial division because it is not a public officer – it is a public office. To meet the mandamus requirement of a public officer, the trial judge should be the named respondent. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

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COURT'S OPINION

PER CURIAM:

Approximately three (3) years ago, on or about March 26, 2012, Petitioner Kesia Irons ("Petitioner") filed a "Petition for a Writ of Mandamus" ("Petition").

Per a review of the appellate record, no further action was taken by the Petitioner. Thus, it is unclear whether the Petitioner has abandoned prosecution of this action.

Nevertheless, the Panel has carefully reviewed and considered the Petition. For the reasons that follow, the Petition is dismissed without prejudice with leave to amend.

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus. The five elements are: (1) *the respondent must be a judicial or other public officer*, (2) the act to be compelled must be non-discretionary or ministerial, (3) the respondent must have a clear legal duty to perform the act, (4) the respondent must have failed or refused to perform the act, and (5) there must be no other adequate legal remedy available. In re Failure of Justice to Resign, 7 FSM Intrm. 105, 109 (Chk. S. Ct. App. 1995).

Here, the first element is not satisfied. The Chuuk State Supreme Court Trial Division is not a public officer – it is a public office. See Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 568 (Kos. S. Ct. Tr. 2002) (The Office of the Attorney General is not a public officer – it is a public office). In order to meet the mandamus requirement of a public officer, the trial judge should have been named as a respondent. Therefore, on this basis alone, the Petition must be dismissed.

Irons v. Chuuk State Supreme Court Tr. Div.  
19 FSM R. 654 (Chk. S. Ct. App. 2015)

Based on the foregoing, the Petition is DISMISSED WITHOUT PREJUDICE WITH LEAVE TO AMEND. Petitioner must file an amended petition NO LATER THAN THIRTY DAYS FROM THE ENTRY OF THIS ORDER. If Petitioner fails to file an amended petition within the time specified, an order dismissing the Petition with prejudice shall be entered.

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