

FSM SUPREME COURT APPELLATE DIVISION

MIJU MULSAN COMPANY, LTD.,)	APPEAL CASE NO. P2-2016
)	
Petitioner,)	
)	
vs.)	
)	
ASSOCIATE JUSTICE BEAULEEN)	
CARL-WORSWICK,)	
)	
Respondent,)	
)	
MARCELO PETERSON, as Governor and)	
individually, JUDAH JOHNNY, as Attorney)	
General of Pohnpei State and individually,)	
JOSEPH SAIMON, individually and as)	
Director of OFA, and POHNPEI STATE)	
GOVERNMENT,)	
)	
Real Parties in Interest.)	
)	

ORDER DENYING PETITION WITHOUT PREJUDICE

Decided: October 26, 2016

BEFORE:

Hon. Larry Wentworth, Associate Justice, FSM Supreme Court
Hon. Camillo Nokat, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

APPEARANCE:

For the Petitioner:	Joseph S. Phillip, Esq.
(Miju Mulsan Co.)	P.O. Box 464
	Kolonia, Pohnpei FM 96941

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HEADNOTES

Mandamus and Prohibition – Procedure

The appellate rules require that a petition for a writ of prohibition be accompanied by proof of service on the respondent judge or justice and on all parties to the action in the trial court. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Mandamus and Prohibition – Procedure

Since Appellate Rule 21(a) requires that a petition for a writ of prohibition contain copies of any

order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition, that would, at a minimum, be the trial judge's written order denying her recusal and the reasons for that denial or, if the denial was oral, a transcript of that denial. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Courts – Recusal – Procedure; Mandamus and Prohibition – Procedure

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Mandamus and Prohibition – Procedure; Mandamus and Prohibition – When May Issue

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Mandamus and Prohibition – Procedure

When a new FSM Supreme Court associate justice has taken the oath of office and is not disqualified, he, as the remaining article XI, section 3 FSM Supreme Court justice is eligible to consider a petition for a writ of prohibition and he alone could deny that petition. But when a specially assigned justice has already sat on the appeal case since his designation in March 2016, both the specially assigned justice and the remaining article XI, section 3 justice will constitute the appellate division for the case. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

* * * *

COURT'S OPINION

PER CURIAM:

This is before the appellate division as an application for a writ of prohibition.¹ Miju Mulsan Company, Ltd. ("Miju") seeks a writ barring Associate Justice Beaulen Carl-Worswick from continuing to preside over Civil Action No. 2015-037. The petition is denied for the following reasons.

I.

Miju contends that it is entitled to a writ of prohibition because there exists a clear family relationship between Justice Carl-Worswick and Pohnpei [Acting] Attorney General Judah C. Johnny since Johnny's sister was once married to Justice Carl-Worswick's now-deceased uncle. Miju contends that, since Johnny is both a party and counsel in Civil Action No. 2015-037, Justice Carl-Worswick abused her discretion by not recusing herself.

Miju's April 11, 2016 application does not contain an affidavit supporting the application and setting forth the reasons for the trial judge's disqualification. Nor does Miju's application contain a copy of the trial judge's order denying her disqualification. On May 5, 2016, a single justice issued an order

¹ This was originally filed on January 20, 2016, as an interlocutory appeal from a January 6, 2016 order denying recusal. On March 24, 2016, an appellate order stated that if Miju wished to pursue interlocutory appellate review of the trial judge's denial of a recusal, it had to comply with Appellate Rule 21 procedure for a writ of prohibition. On April 11, 2016, Miju Mulsan Company, Ltd., filed its application for a writ of prohibition.

requiring service of the application for a writ of prohibition on the real parties in interest as well as on the respondent justice. There has been no indication that this has been accomplished.

II.

The appellate rules require that a petition for a writ of prohibition be accompanied by "proof of service on the respondent judge or justice and on all parties to the action in the trial court." FSM App. R. 21(a). There was no proof of service on any of the other parties to the trial court action. There was proof of service on Justice Carl-Worswick.

Appellate Rule 21(a) also requires that the petition contain "copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition." *Id.* At a minimum, that would be the trial judge's written order denying her recusal and the reasons for that denial or, if the denial was oral, a transcript of that denial. That denial was not included in Miju's application.

Furthermore, the relevant judicial disqualification statute, 4 F.S.M.C. 124(6), requires that an application to disqualify a justice, "be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist." No affidavit accompanies the present petition.

Since these deficiencies are too many to overlook, Miju Mulsan Company, Ltd.'s application for a writ of prohibition is accordingly denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016) (citing Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015)).

III.

When this appeal case was originally filed in January 2016, and when the petition for writ of prohibition was filed in April 2016, *see supra* note 1, all sitting justices of the FSM Supreme Court were disqualified from considering it, and Chuuk State Supreme Court Chief Justice Camillo Noket was assigned to handle it. Since then, one more person has been nominated for, and confirmed as, an FSM Supreme Court associate justice and has taken the oath of office.

Since he is not disqualified from this appeal case, he, as the "remaining article XI, section 3 justice(s) of the Federated States of Micronesia Supreme Court, acting as the appellate division, [is] eligible to consider the petition." FSM App. R. 21(b). And since he, as the "the remaining fulltime justice" is "of the opinion that the writ clearly should not be granted," because of the procedural deficiencies, he alone could deny the petition.

However, since the specially assigned justice has sat on this appeal case since his designation in March 2016, both the specially assigned justice and the remaining article XI, section 3 justice will constitute the appellate division for this case. Accordingly, we hereby deny the petition because of its procedural deficiencies and hereby dismiss the case. This dismissal is without prejudice to any future petition in which the procedural deficiencies have all been cured. This case is closed.

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