TABLON LOROK LAJUAN and FAMILY, Plaintiff-Respondent

v.

CLANCY MAKRORO, Defendant-Petitioner

Civil Appeal No. 86

(Marshall Islands Civil Action No. 435)

Appellate Division of the High Court

June 20, 1972

Petition by defendant in civil action for writ of prohibition barring Trial Division judge from proceeding further in the action on the ground that the cause plead was res judicata. The Appellate Division of the High Court,

Harold W. Burnett, Chief Justice, held that motion to dismiss on ground of res judicata did not deprive lower court of jurisdiction and denial of the motion did not warrant issuance of writ.

1. **Courts—Power to Issue Writs**

   Under federal statute authorizing administrative agency designated by the President to provide for the judicial authority necessary for the civil administration of the Pacific Trust Territory, until Congress shall further provide for the government of the territory, High Court is not one "established by Act of Congress" within meaning of federal statute granting all such courts power to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (28 U.S.C. §§ 1651(a), 1681(a))

2. **Courts—Prohibition**

   A writ of prohibition may be issued against an inferior court only when such court has exceeded or abused its jurisdiction.

3. **Courts—Prohibition**

   Defense plea of res judicata, no matter how well founded, did not deprive Trial Division of jurisdiction, and writ of prohibition would not issue against Trial Division barring it from proceeding further in action in which it denied a motion to dismiss based upon claim of res judicata.

For Plaintiff-Respondent: JOHN R. HEINE
For Defendant-Petitioner: ANIBAR TIMOTHY

Before BURNETT, *Chief Justice*, BENSON,[1] *Temporary Judge*

BURNETT, *Chief Justice*

Defendant-petitioner seeks a Writ of Prohibition against the Honorable D. Kelly Turner, Trial Division of the High Court, to bar him from proceeding further with Marshall Islands Civil Action No. 435 on the ground that the cause there plead is res judicata. Both parties have filed memoranda with respect to the application, and have waived oral argument.

The complaint in Civil Action No. 435 alleges that de-

[1] Judge of the Island Court of Guam, sitting by designation.

fendant-petitioner claims all of the money due with respect to *dri jerbal* interests in Komlal and Jabonbar watos, Rairok Island, Majuro, which were awarded, pursuant to Civil Action No. 406, *Clancy Makroro v. Joblur Kokke*, and asks that the court order "a proper division of *dri jerbal* money between all entitled."

Paragraph 1 of the Judgment in Civil Action No. 406 reads:

> "That plaintiff Clancy Makroro, and those claiming through him, hold the *dri jerbal* interest in Komlal *Wato,* Rairok Island, Majuro Atoll."

The petition herein asserts that the plaintiff in this action is barred by reason of the judgment in Civil Action No. 406 since he, and those whom he represents, are related by blood to the defendant Kokke, who was held in that action to be the *alab* but not to have any *dri jerbal* interest.

Petitioner's statement of law is divided into three parts; one, that res judicata gives conclusive finality to a valid judgment; two, that res judicata, as an affirmative defense, may be raised by a motion to dismiss; and, three, that a writ of prohibition may issue when there is either a usurpation of jurisdiction or power by the court below.

The first two portions of petitioner's memorandum need not detain us long, since they are so well established under both Trust Territory and American law as to require no citation of authority. The third, however, as to the propriety of use of the extraordinary writ of prohibition, is deserving of further comment.

[1] Petitioner would ground the authority of this court to issue writs of prohibition upon Section 1651(a), Title 28, United States Code, which reads:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their

respective jurisdictions and agreeable to the usages and principles of law.",

and contends Section 1681, Title 48, U.S. Code, makes that section applicable to this court.

Section 1681(a), Title 48, U.S.C. reads as follows:

"Until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize."

We are unable to follow petitioner's reasoning in this regard; all that Section 1681(a) does is to authorize the administrative agency designated by the President to provide for the necessary judicial authority for the civil administration of the Trust Territory. We do not conceive it as constituting this court as one "established by Act of Congress."

There is, however, no question as to the authority of this court to issue all writs necessary for the administration of justice in the Trust Territory. 5 Trust Territory Code, Section 2.

None of the cases cited by petitioner deal with the use of the writ to prevent a lower court from proceeding in a case alleged to be barred on the basis of res judicata.

Petitioner quotes *Will v. United States* (1967), 389 U.S. 90, 95, 88 S.Ct. 269, to establish that the writ may be used to prevent a judicial "usurpation of power." Immediately following that portion of the opinion quoted by petitioner, the Court said:

"Thus the writ has been invoked where unwarranted judicial action threatened 'to embarrass the executive arm of government in conducting foreign relations,' where it was the only means of forestalling intrusion by the federal judiciary on a delicate area of federal-state relations, where it was necessary to confine a lower

court to the terms of an appellate tribunal's mandate, and where a district judge displayed a persistent disregard of the Rules of Civil Procedure promulgated by this Court. And the party seeking mandamus has 'the burden of showing that its right to issuance of the writ is clear and indisputable.'." (Cases cited are omitted) *Will v. United States, supra.*

It may be noted, in *Will*, the Supreme Court vacated a writ granted in the Court of Appeals.

[2, 3] To the same effect, see the following:

"We think that extraordinary writs should not issue. Such writs may go only in aid of appellate jurisdiction. 28 U.S.C., Sec. 1651. The power to issue them is discretionary and it is sparingly exercised. Rule 30 of the Revised Rules of this Court, 28 U.S.C.A. and the cases cited herein. This is not a case where a court has exceeded or refused to exercise its jurisdiction, nor one where appellate review will be defeated if a writ does not issue. *Here the most that could be claimed is that the district courts have erred in ruling on matters within their jurisdiction.* The extraordinary writs do not reach to such cases; they may not be used to thwart the congressional policy against piecemeal appeals." (emphasis supplied) (Cases cited are omitted)

Parr v. United States (1956) 351 U.S. 513, 76 S.Ct. 912, 917. It is thus clear even under the authorities cited by petitioner, that the writ may issue only where there has been action by an inferior court which is either in excess of its jurisdiction or which is such as to constitute an abuse of that jurisdiction. We find no case in which the affirmative defense of res judicata, and a denial of a motion to dismiss on that basis, was held to warrant prohibition. See Annotation in 159 A.L.R. at page 1293. On the contrary, it appears to be the universal rule that a plea of res judicata does not deprive the trial court of jurisdiction and that appeal, not prohibition, is the remedy. 42 Am.Jur., Prohibition, Section 31.

To that effect, see *Garcia v. Superior Court*, (Arizona) 280 P.2d 270, in which prohibition was sought on the basis of res judicata:

"Inasmuch as the respondent court manifestly was acting within its jurisdiction, the alternative writ of prohibition heretofore issued should be quashed . . . ."

The court cited, with approval, *Baird v. Superior Court*, (California) 268 P. 640; and *Goodman Bros. v. Superior Court*, (Cal.) 124 P.2d 644. In the latter case, the following appears:

"It is true that the trial court may decide the issue incorrectly. If it does so, its error is no different than when it refuses to recognize the binding force of other types of evidence. Such errors can only be corrected on appeal from the judgment . . . ."

Goodman Bros. v. Superior Court, supra.

In the instant case, the trial court was clearly acting within its jurisdiction. A plea of res judicata, no matter how well founded it may be, does not divest the court of that jurisdiction. In any event, the plea raises questions which can best be determined by the trial court. If it decides incorrectly, petitioner has his remedy by appeal.

The Application for Writ of Prohibition is denied.