

**JOAQUIN C. ARRIOLA and DOUGLAS F. CUSHNIE,**  
**Petitioners**

**v.**

**ROBERT A. HEFNER and THE TRIAL DIVISION OF THE  
HIGH COURT OF THE TRUST TERRITORY OF THE  
PACIFIC ISLANDS, Respondents**

**Civil Action No. 172**

**Appellate Division of the High Court**

**November 3, 1976**

Petition for writ of prohibition. The Appellate Division of the High Court, Brown, Associate Justice, held that writ of prohibition does not properly lie in proceeding for contempt since adverse ruling can be remedied by way of appeal.

**1. Prohibition—Generally**

Writ of prohibition is to be used with great caution and forbearance and should be issued only in cases of extreme necessity.

**2. Prohibition—Prerequisites for Writ**

Requisites for issuance of writ of prohibition, absence of any of which requires denial of writ, are that petitioner must show that respondent is about to exercise judicial power, that exercise of such power is unauthorized by law, and that it would result in injury for which there is no other adequate remedy.

**3. Prohibition—Particular Cases**

Writ of prohibition does not properly lie in proceeding for contempt since an adverse ruling can be adequately remedied by appeal. (Rules Crim. Procedure, Rule 20(c))

**4. Prohibition—Generally**

Writ of prohibition is not one of right but one of sound judicial discretion, to be granted or refused according to facts and circumstances of particular case, and it ordinarily will not issue where there is another legally adequate remedy, as by appeal or otherwise.

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*BROWN, Associate Justice*

Hearing on the Petition for Writ of Prohibition herein came on before this Court on November 3, 1976, petitioners, and each of them, appearing by and through their counsel of record, William M. Fitzgerald, Esq., of Arriola

and Cushnie. No appearance was made in opposition to the petition.

After carefully considering all of the matters before this Court,

IT IS HEREBY ORDERED that the said petition be, and it is denied.

[1, 2] In this connection, it must be remembered that a Writ of Prohibition is a prerogative writ and is to be used with great caution and forbearance and should be issued only in cases of extreme necessity. The requisites for the issuance of a Writ of Prohibition are that the petitioner must show that the respondent is about to exercise judicial power, that the exercise of such power is unauthorized by law, and that it would result in injury for which there is no other adequate remedy. Each of these three elements is essential, and if the petitioner fails to establish any one of them, the writ must be denied.

[3] In *State v. Superior Court of Washington King County*, 131 P. 816 (Wash.) the Court was faced with a matter strikingly similar to that now before this Court and held that prohibition does not properly lie in a proceeding for a contempt since an adverse ruling has an adequate remedy by way of an appeal. This being so, the Court held that the petitioner was not entitled to the prerogative writ it sought. Rule 20(c), Rules of Criminal Procedure, clearly provides that contempt proceedings, summary or otherwise, shall be subject to review and appeal to the same extent as other cases, and the record shall be forwarded in the same manner.

[4] Briefly, it may be said that a Writ of Prohibition is not one of right, but one of sound judicial discretion, to be granted or refused according to the facts and circumstances of the particular case, and it ordinarily will not issue where there is another legally adequate remedy, as by

appeal or otherwise. *Ex parte Peru*, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793; 63 Am.Jur. *Prohibition*, § 7, 232.

A reading of the authorities submitted by petitioners shows them to be clearly distinguishable from the case before the Court.

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LAUBON, Defendant-Appellant

v.

MONNA X., Plaintiff-Appellee

Civil Appeal No. 48

Appellate Division of the High Court

Marshall Islands District

November 9, 1976

Dispute over *dri jermal* rights to certain *watos* in Marshall Islands District. The Appellate Division of the High Court, per curiam, affirmed judgment of trial court that plaintiff and his brother and sisters were entitled to *dri jermal* rights.

1. Appeal and Error—Evidence—Weight

It is not the function of the appellate division to weigh evidence anew when trial court's findings are supported by substantial credible evidence.

2. Marshalls Land Law—"Dri Jermal"—Establishment

Finding of trial court that plaintiff and his brothers and sisters possessed *dri jermal* rights to certain *watos* in Marshall Islands District was supported by more than sufficient credible evidence where record on appeal revealed that mother of plaintiff and his brothers and sisters not only lived and worked on land in question but that her position as *dri jermal* was recognized by former *alab* and by *iroij lablab*.

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HEFNER, *Acting Chief Justice*; BROWN, *Associate Justice*, and WILLIAMS, *Associate Justice*

PER CURIAM:

The judgment entered in this matter determined that the plaintiff and his brothers and sisters possess the *dri jermal*