

MARIA SAM, Plaintiff  
v.  
MIKEL SAM, Defendant  
Civil Action No. 306  
Trial Division of the High Court  
Ponape District  
October 18, 1966

Review of district court decision and order decreeing separation and providing for support payments of forty dollars monthly. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that where potential total support payments in suit for separate maintenance exceed jurisdictional limit of district court, court is without jurisdiction to proceed.

1. Domestic Relations--Divorce

District and Community Courts are authorized to grant divorces and annulments and to make orders for support of minor children and support of either party. (T.T.C., Sees. 702, 704)

2. Domestic Relations--Divorce-"A Mensa Et Thoro"

Divorce *a mensa et thoro* is limited divorce from bed and board which terminates obligation and right of cohabitation but does not affect status of parties as married persons.

3. Domestic Relations--Separate Maintenance

Decree of separate maintenance affirms marriage relation and enforces support obligations of that relation.

4. Domestic Relations--Divorce

Absolute decree of divorce granted pursuant to Trust Territory Code restores parties to state of unmarried persons so far as marriage in question is concerned. (T.T.C., Sec. 705)

5. Domestic Relations--Support

There is no authorization for District Court to consider prayers for support except in actions for divorce or annulment and unless prayer is for amount within jurisdiction of court. (T.T.C., Sees. 138, 702, 704)

6. Courts-District Court

District Court has original jurisdiction in all civil cases where amount claimed or value of property involved does not exceed \$1,000.00, except admiralty and maritime matters and adjudication of title to land or interests therein. (T.T.C., Sec. 138)

7. Courts-District Court

Where total amount of support prayed for in action for divorce exceeds jurisdiction of District Court, action must be brought in High Court. (T.T.C., Sec. 138)

## 8. Civil Procedure-Jurisdictional Allegation

If plaintiff is to bring cause of action within jurisdiction of District Court, this must be done affirmatively in complaint.

## 9. Civil Procedure-Jurisdictional Allegation

Where court is one of limited jurisdiction, averment of jurisdiction must be definite and positive and cannot be inferred from other averments.

## 10. Civil Procedure-Splitting Cause of Action

Plaintiff cannot split indivisible claim so as to give jurisdiction to court that would not have jurisdiction if entire claim were sued for, unless plaintiff waives his claim to amounts in excess of that demanded in complaint, so that excess is forever lost to plaintiff.

## 11. Civil Procedure-Splitting Cause of Action

Suit for support money already due does not involve splitting of cause of action.

---

*GOSS, Associate Justice*

Pursuant to Section 199 of the Trust Territory Code, the Judgment Order of the District Court entered November 3, 1965, in the above entitled action was reviewed on the record. In the complaint filed October 14, 1965, the Plaintiff prayed that the court decree "the followings for me: 1. Separation of marriage from the defendant. . . . . 3. Support and alimony to be \$50.00 per month". The Judgment Order provided in part that the Plaintiff was granted a decree of separation and the Defendant was ordered to pay \$40 per month for support and alimony.

## OPINION

The initial question before this Court is whether the above cause of action, including the prayer for support and alimony, is within the jurisdiction of the District Court.

[1] Trust Territory Code, Section 702, provides that an annulment or divorce may be granted by a District or Community Court. Section 704 provides that in granting or denying an annulment or divorce the court may make

orders for the support of minor children and the support of either party.

[2-4] The Plaintiff's prayer, however, was not for a divorce or annulment but was for a decree of "separation of marriage from the Defendant". It is necessary to distinguish between a divorce under Trust Territory Code, Section 698 ff, a divorce *a mensa et thoro* and a decree of separate maintenance. Distinctions between these three types of actions are described in 24 *Am. Jur. 2d*, p. 176-178. A divorce *a mensa et thoro* is a limited divorce from bed and board which terminates the obligation and the right of cohabitation but does not affect the status of the parties as married persons or dissolve the marriage. A decree of separate maintenance affirms the marriage relation and in fact enforces the support obligations of that relation. Trust Territory Code, Section 705, however, specifies that an absolute decree of divorce, granted pursuant to the Trust Territory Code, restores the parties to the state of unmarried persons so far as the marriage in question is concerned.

Although the Plaintiff in her complaint referred to Trust Territory Code, Section 698 (a) and (b), which set forth the grounds for divorce, the District Court concluded that the Plaintiff was not seeking a divorce. In the Judgment Order the Plaintiff was granted a "decree of separation".

[5] There is no specific or implied authorization in the Trust Territory Code for a District Court to consider prayers for alimony and support except in actions for divorce or annulment, unless the prayer is for an amount within the jurisdiction set forth in Trust Territory Code, Section 138. (See T.T.C. 702, 704 and 20 *Am. Jur. 2d*, p.451.)

[6, 7] Trust Territory Code, Section 138, provides that a District Court shall have original jurisdiction in all

civil cases where the amount claimed or value of the property involved does not exceed \$1,000, except admiralty and maritime matters and the adjudication of title to land and interests therein. Is a prayer for "Support and alimony to be \$50.00 per month" within the \$1,000 limitation? In the complaint the Plaintiff alleges that the Defendant has stopped supporting her and their ten children, aged from five months to 17 years old. It must be inferred that the Plaintiff claims \$50 per month for her support and the support of the children until they are capable of supporting themselves. The complaint indicates that the parties were at least recently of child bearing age and the ages of the children are alleged. The life expectancies are therefore such that the prayer must be deemed to be in an amount in excess of \$1,000. The case should thus have been filed in the High Court, and the District Court was without jurisdiction to proceed.

**[8-11]** It might be argued that the amount presently due from Defendant to Plaintiff is within the jurisdiction of the District Court or that the District Court would have the power to construe the complaint as a plea for support and alimony to the total amount of \$1,000. However, if a Plaintiff is to bring a cause of action within the jurisdiction of the District Court, this must be done affirmatively in the complaint.

"Where . . . the court is a court of limited jurisdiction, the facts on which jurisdiction depends must be set forth. The averment of jurisdiction where required should be definite and positive. It is not sufficient that jurisdiction may be inferred, argumentatively, from other averments.

In the Federal courts, a short and plain statement of the grounds upon which the court's jurisdiction depends must be made unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it. Rule 8(a), Federal Rules of Civil Procedure." (41 Am. Jur., p. 342.)

It is not possible for a Plaintiff to split an indivisible claim so as to give jurisdiction to a court that would not have jurisdiction if the entire claim were sued for, unless Plaintiff has either specifically or as a matter of law waived his claim to amounts in excess of the amount demanded in the complaint, so that the excess is lost to the Plaintiff forever. (20 Am. Jur. 2d, p. 506, and see also p. 504.) No splitting of the cause of action would be involved if the Plaintiff were to sue only for support money which is already past due. (*Nelson v. Meyer*, 66 Colo. 164, 180 P.86.)

From the above discussion it should not be inferred that the parties hereto are without relief. If no reconciliation is practicable, there are remedies in the courts of the Trust Territory under existing law, and it would also be possible for the parties to request that the Congress of Micronesia change the Trust Territory Code to grant alimony and support jurisdiction to District and Community Courts in separate maintenance actions in amounts in excess of \$1,000.

In consideration of the above, it is therefore ordered:

That the Judgment Order herein is set aside and the summons issued January 3, 1966, and all subsequent summons to enforce said Judgment Order are quashed.