

Tulop v. Melekeok State Legislature, 14 ROP 147 (2007).

ELIA TULOP,
Appellant,

v.

MELEKEOK STATE LEGISLATURE,
Appellee.

CIVIL APPEAL NO. 07-003
Civil Action No. 05-206

Supreme Court, Appellate Division
Republic of Palau

Decided: August 28, 2007¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: J. Roman Bedor

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice;
HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, KATHLEEN M. SALII, Associate Justice,
presiding.

MILLER, Justice:

The sole issue raised in this appeal is whether the trial court erred when it denied appellant Elia Tulop's claim for damages in the form of back pay.

BACKGROUND

In his complaint, Tulop challenged the constitutionality of Melekeok State Public Law No. 5-22, which required that every member of the Melekeok State Legislature be or become a registered voter of Melekeok. Section 4 of MSPL No. 5-22 provided that any member of the Legislature who failed to register as a voter of Melekeok could be removed from his seat in the Legislature, have his compensation discontinued, or both. Tulop sought a declaration that MSPL No. 5-22 was unconstitutional and demanded damages equivalent to the salary he would have earned from November 12, 2002, the date MSPL No. 5-22 was enacted, to the present.

The trial court, citing *Francisco v. Chin*, 10 ROP 44 (2003), found that the **¶148** Legislature's enactment of MSPL No. 5-22 exceeded its constitutional authority to judge the

¹Pursuant to ROP R. App. P. 34(a), the Court finds that this matter can be decided on the papers submitted by the parties.

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qualifications of its members because it imposed a new eligibility requirement not set forth in the State's constitution. The statute was held void *ab initio*: the Legislature has not appealed that part of the decision. The trial court denied plaintiff's request for damages, however, finding that Tulop "failed to provide any evidence why he should receive back or future pay for legislative sessions he did not or has not attended." *Tulop v. Melekeok State Legislature*, Civil Action No. 05-206 (Decision dated Jan. 9, 2007, at 6-7).

STANDARD OF REVIEW

We review the trial court's findings of fact for clear error. *Melekeok Gov't Bank v. Adelbai*, 13 ROP 183, 186 (2006). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Id.* Conclusions of law are reviewed *de novo*. *Rechucher v. Lomisang*, 13 ROP 143, 145 (2006).

ANALYSIS

The trial court clearly erred when it found that there was no evidence to support Tulop's claim for backpay. Both of the witnesses who appeared at trial testified that legislators are entitled to a fixed, bi-weekly salary or honorarium. Trial Transcript ("T.T.") at 5 and 22. The Speaker of the Melekeok State Legislature, testifying on behalf of appellee, specifically stated that the salary was to be paid regardless of attendance. T.T. at 21 and 32. It is undisputed that Melekeok State Legislature stopped compensating Tulop as soon as MSPL No. 5-22 became law. Once the trial court determined that MSPL No. 5-22 was unconstitutional, appellee's only justification for its failure to pay Tulop after November 12, 2002, vanished. There being adequate evidence to support Tulop's claim for backpay and appellee having failed to raise any legal or factual impediment to such an award, the trial court's ruling regarding damages is reversed.

CONCLUSION

For all of the foregoing reasons, this matter is remanded to the trial court for the purpose of awarding appellant Elia Tulop backpay in the amount of \$200 bi-weekly from November 12, 2002.²

²On appeal, appellant seeks \$200 per pay period, the same amount to which Speaker Ongelungel testified at trial. T.T. at 21.