Silmai v. Magistrate of Ngardmau Municipality, 1 ROP Intrm. 181 (1984)

SADANG N. SILMAI, MECHUTEDIL NGIRAIWET, BEKETAUT TOWAI, REMENGESAU ADERKEROI, FERISTA TOWAI, and ERRANGAS BUKRINGANG Representing NGARDMAU MUNICIPAL COUNCIL and the PEOPLE OF NGARDMAU MUNICIPALITY,
Plaintiff-Appellees,

v.

MAGISTRATE OF NGARDMAU MUNICIPALITY, AICHI KUMANGAI,
Clerk of Ngardmau and President of the Republic of Palau, HARUO I. REMELIIK,
Defendants-Appellants.

CIVIL APPEAL NO. 7-82
Civil Action No. 95-82

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: December 18, 1984

Counsel for Appellant: John K. Rechucher
Counsel for Appellee: Johnson Toribiong

BEFORE: LOREN A. SUTTON, Associate Justice; ROBERT W. GIBSON, Associate Justice; ALAN L. LANE, Associate Justice.

I.
BACKGROUND

This is an appeal from a Judgment rendered by the Trial Division of the Supreme Court, Republic of Palau.

The case involved rulings on the composition of the Ngardmau Municipal Council and the central question of whether or not a proper quorum was present on March 28, 1982, at a Council session at which Ngardmau Municipal Ordinance No. ND-03-82 was enacted. Enactment of this Ordinance was the final act in a string of events which opened the door for the referendum on the State Constitution of Ngardmau, held in May 1982, after a long period of discussion and disagreement and ⊥182 many failed efforts to produce a viable draft constitution and present it to the people for ratification.

The Judgment rendered by the Trial Court declared the Ordinance null and void on the ground that no quorum was present at the Council Meeting of March 28, 1982, and that therefore

the referendum itself was a nullity.

Defendants-Appellants appeal on several grounds:

First, appellants contend that the Court committed error in going ". . . beyond the call of . . . questions presented in the pre-trial order and . . . complaint." [Appellants' Notice of Appeal, p. 2, para. 2(a)].

Then follows a series of contentions that the Court erred in determining that several of the persons present at the Council Meeting of March 28, 1982, when ND-03-82 was enacted, were not properly seated on the council and that therefore the Court's finding that there was no quorum and that the Ordinance was null and void was erroneous.

Appellants then contend that even if the Court was correct in its rulings re ND-03-82, the subsequent referendum which was held in Ngardmau May 31, 1982, acted in law to cure any defects existing re the preparation and promulgation of the proposed Constitution.

Appellants raise the Doctrine of Laches and claim that the alleged "unreasonable delay" had worked to the disadvantage of Defendants-Appellants and the people of Ngardmau.

Finally, Defendants-Appellants seek to appeal the Trial Court's denial of their Motion For Stay Pending Appeal on the ground that Republic of Palau Appellate Procedure Rule 8(a) requires a finding by the Court that no substantial question of law exists before a denial may be entered of such a Motion.

Plaintiffs-Appellees have submitted no answering briefs and pursuant to Republic of Palau Appellate Procedure 31(c) presented no oral argument on November 13, 1984, at 3:30 p.m., when this matter was heard.

II.
DECISION

Appellants' contention that the Trial Court committed error in going ". . . beyond the call of . . . question presented in the Pre-Trial order and . . . complaint" is without merit. While certainly a Pre-Trial order is limiting ⊥183 and binding upon adversary parties involved in the subsequent trial, nothing contained in Republic of Palau Civil Procedure Rule 16 limits the Court itself from going to the outer boundaries of the interest in substantial justice when led there by the evidence presented. In any case, this point has been presented with no supporting argument of facts which could raise it to a level beyond a mere assertion or conclusion and therefore must be disregarded.

It is well-settled that an Appellate Court shall not set aside findings of fact made by the Trial Court if reasonable evidence exists in support of the Trial Court's findings and in the absence of manifest error. *Ladore v. Rais*, (1968 4 TTR 169; *Calvo v. T.T.*, (1969) 4 TTR 506; *Helgenberger v. T.T.*, (1969) 4 TTR 530; *Arriola v. Arriola*, (1969) 4 TTR 486. In the Judgment

of September 15, 1982, the Trial Court made factual findings re the status of each seat and its occupant of the Municipal Council of Ngardmau on March 28, 1982, the date of enactment of ND-03-82, and concluded that only three (3) persons present that date were bona-fide members of the Council and that therefore, in the absence of a quorum, the Ordinance enacted at that session (ND-03-82) was a nullity.

This Court, having discovered no manifest error, and finding that reasonable evidence did exist in support of the Trial Court's Judgment on this issue declines to go further and affirms the Trial Court's conclusion.

It is simple logic and an axiom in law that no act by any authority may render a nullity viable. Neither the President of the Republic nor any other body or person has the power or authority in law to make something out of nothing. Thus, the President's "approval" of ND-03-82 is not considered by this Court to have had any effect whatsoever upon the validity of ND-03-82, in spite of and notwithstanding Appellants' argument that, Lazarus-like, new life was breathed into the Ordinance by the President's action.

The same view is taken with regard to Appellants' contention that the referendum of March 31, 1982, served, in law, to revive ND-03-82. Neither the President's approval or that of the majority of the people of Ngardmau could revive the dead ordinance and since, *ab initio*, ND-03-82 was null and void, the approval expressed by the people of Ngardmau at the referendum was an event empty of legal effect.

Appellant's contention that the Doctrine of Laches applies is likewise unpersuasive to this Court given the Trial Court's finding of fact that the Plaintiffs voiced objections ". . . as early as March 31, 1982." (Judgment, p. 11, para. 1).

⊥184 The Appellant's contention that the denial of the Motion For Stay constitutes error on the grounds that the Court did not specifically find that no substantial question of law was presented in the Notice of Appeal is rejected for two reasons:

1. While Republic of Palau Appellate Procedure Rule 8 (a) states that ". . . a showing that the appeal raises a substantial question of law shall be sufficient cause for granting a stay . . ." there is no mandate therein which requires the Court to do so even under that circumstance. The granting of a Stay is a discretionary act and a denial of same, unless patently grossly abusive of the rights of the parties, will not be overturned.

2. While not expressly stated in the Lower Court's comments, it is implicit in the Lower Court's denial of the Motion For Stay that in balancing the question of law present.

For the reasons stated above the Judgment rendered by the Trial Court of September 15, 1982, is ORDERED affirmed.