Salii v. House of Delegates, 1 ROP Intrm. 708 (1989)

CARLOS H. SALII, ET AL.,
Appellees,

v.

HOUSE OF DELEGATES, SECOND OLBIIL ERA KELULAU,
Appellant.

CIVIL APPEAL NO. 13-88
Civil Action No. 168-88

Supreme Court, Appellate Division
Republic of Palau

Opinion and order
Decided: October 9, 1989

Counsel for Appellees: John K. Rechucher

Counsel for Appellant: Jonas W. Olkeriil, Trial Assistant

BEFORE: MAMORU NAKAMURA, Chief Justice; ROBERT A. HEFNER, Associate Justice; EDWARD C. KING, Associate Justice.

NAKAMURA, Chief Justice:

Plaintiff/Appellee, Carlos H. Salii, was elected from the State of Angaur to the House of Delegates, Second Olbiil Era Kelulau (OEK) in the 1984 general election, for a term from January 1, 1985 until December 31, 1988.

On May 25, 1988, the Speaker of the House of Delegates called for the 20th Special Session of the House of Delegates to meet on May 27, 1988. The call stated that the following matters would be considered:

> 1. Report of the House of Delegates to U.S. Congress and U.N. Security Council and Trusteeship Council.

⊥709 2. Such other and further legislative matters that may be submitted to the Olbiil Era Kelulau during the said Twentieth Special Session by the President of the Republic of Palau and the Presiding Officers of the Olbiil Era Kelulau.

A copy of the "call" was placed in each delegate's OEK mailbox, and the call was also announced on WSZB Radio.

On May 27, 1988, House Resolution No. 02-0080-20S passed by a greater than two-

thirds majority, expelling Salii from the House of Delegates. Salii was not in attendance.

On June 2, 1988, Salii and some of his constituents filed a "Complaint for Declaratory Relief and For a Writ of Mandamus," in which they alleged, inter alia, that the adoption of the resolution expelling him was in violation of Article IV, Section 6 of the Constitution of the Republic of Palau because he was not given notice and an opportunity to be heard. It is not disputed that Salii received no actual notice. Salii named each member of the House of Delegates as defendant, and also Hersey Kyota, the Chief Clerk.

The trial court allowed plaintiffs to join the House of Delegates of the Second Olbiil Era Kelulau as a party defendant, heard arguments on the defendants motion to dismiss, and ordered supplemental briefs from each party.

On June 28, 1988, the trial court issued its "Order and Declaratory Judgment" that forms the basis of this appeal. The order denied the motion to dismiss but granted the dismissal ⊥710 of all claims against the members of the House of Delegates as individuals on the basis of Article IX, Section 9 of the Constitution of the Republic of Palau, which reads, "No members of either House of the Olbiil Era Kelulau shall be held to answer in any other place for any speech or debate in the Olbiil Era Kelulau." (This section is often referred to as the "Speech and Debate Clause"). The order also adjudged "that the rights of the parties are as follows: House Resolution No. 02-0080-20S expelling Carlos Salii was adopted in derogation of Salii's constitutional right to notice and opportunity to be heard. Accordingly, House Resolution No. 02-0080-20S is hereby declared null and void." *Salii v. House of Delegates, OEK, and Hersey Kyota, Chief Clerk*, Civil Action No. 168-88 at 12.

Defendant House of Delegates has appealed. Defendant Hersey Kyota, Chief Clerk, is not a party to the appeal.

Appellee argues, in its motion to dismiss, that the House of Delegates of the Second Olbiil Era Kelulau terminated on December 31, 1988, and is no longer a party before the Court; therefore, the appeal must be dismissed.

"The rules of the common law as generally understood and applied in the United States shall be the rules of decision in the courts of the Republic of Palau in applicable cases." 1 PNC § 303.

⊥711 "Simply stated, a case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 496, 498 (1969), (Citing E. Borchard, Declaratory Judgments 35-37 (2d ed. 1941)).

Using the above test, we hold that the issues in this appeal are no longer live, and also that the Second Olbiil Era Kelulau, is no longer in existence. It is not a proper party to the appeal. We therefore dismiss this appeal because it has become moot.

Several cases from the United States are appropriate for guidance. *Trust Territory v.*

Ngiraitpang, 5 TTR 282, 285 (Mar. 1970). In *Alejandrino v. Quezon* , 271 U.S. 528 (1926), Senator Alejandrino had been expelled from the Philippine senate for one year, and deprived of all "prerogatives, privileges and emoluments" for that period. "By the time the case reached this [Supreme] Court, the suspension had expired and the Court dismissed as moot Alejandrino's request that the suspension be enjoined." *Alejandrino v. Quezon* , 271 U.S. 528 (construed in *Powell v. McCormack* , 395 U.S. at 497). Alejandrino's failure to plead sufficient facts to establish his (mandamus) claim to the withheld salary made it impossible for the Court to resolve the mandamus request (for back salary). *Powell v. McCormack*, 395 U.S. at 498.

In the instant case, plaintiff Salii admitted that there were no emoluments still due to him. There are, therefore, no current issues remaining, since the second OEK no ⊥712 longer exists and plaintiff's expulsion has expired.

Following standard appellate practice, we also vacate the judgment below, and remand to the trial court with instructions to dismiss the complaint as moot. 32 Am. Jur. 2d Federal Practice and Procedure § 349 (1982), *United States v. Munsingwear*, 340 U.S. 36, 39 n.2 (1950).[1]

We approve, however, the dicta in *Powell v. McCormack* , 395 U.S. at 503, that "[L]egislative immunity does ⊥713 not . . . bar all judicial review of legislative acts[.]", and that "a claim alleging that a legislature has abridged an individual's constitutional rights by refusing to seat an elected representative constitutes a "case or controversy" over which federal courts have jurisdiction". *Powell v. McCormack*, 395 U.S. at 513 n.35. It is not a question of whether courts have jurisdiction over such matters. They do. *Id.* Such questions may also be justiciable,

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[1] We note that by vacating the judgment, Resolution No. 02-0080-20S remains for historians and sages to comment upon in the future. The appellee may not wish to be remembered by such a document. However, the mootness of this whole matter becomes even clearer when considering the ostensible "injury" incurred by the appellee and any remedy requested.

Mr. Salii does not request or claim any back wages. He does not claim the resolution affected his personal or professional finances nor has it had any deleterious effect on him. Injuria deminimus non curate lex.

The thrust of his complaint was the failure of the OEK to give him notice of the consideration of the resolution. Throughout this matter the substance of the resolution was not contested - only the way the OEK adopted it. In paragraphs 20, 21 and 22 of the complaint the plaintiff either expressly or impliedly concedes the contents of the resolution.

A review of the relief requested in the prayer of plaintiff's complaint further demonstrates that any injunctive and mandamus enforcement would be a meaningless gesture because the legislative body he was expelled from no longer exists. The only "viable" relief prayed for is to void Resolution No. 2-0080-20S on procedural grounds. In light of the complete failure to show any property interest, plaintiff must fail here also. *Izaak Walton League of America v. Marsh*, 655 F2d 346, 361 (D.C. Cir. 1981) (the protections of due process are extended only when a property or liberty interest has been threatened.)

depending on the circumstances of each case. *Powell v. McCormack*, 395 U.S. at 512, 549.

This Court is the ultimate interpreter of the Constitution, and has the responsibility of deciding whether the action of any (other) branch of government has exceeded whatever authority has been committed to it (by the Constitution). *Remeliik, et al., v. The Senate* , 1 ROP Intrm. 1, 4, 5, (High Ct. Aug. 1981) (citing *United States v. Nixon*, 418 U.S. 683, 704 (1974), and *Marbury v. Madison* , 1 Cranch. 137, 177 (1803); *The Senate v. Remeliik, President of the Republic of Palau* , 1 ROP Intrm. 90, 91 (Tr. Div. Nov. 1983)). See also *Powell v. McCormack* , 395 U.S. at 519, 521, 548-549 (citing *Baker v. Carr*, 369 U.S. 186, 211 (1962)). The "Speech or Debate Clause" (of the Constitution) may not shield members of Congress in all conceivable circumstances. *See Powell v. McCormack* , 395 U.S. at 506, n. 25. *See also Ngiralois v. Trust Territory*, 4 TTR 517, 522 (Pal. App. 1969).

⊥714 The appeal is dismissed and the case is remanded to the court below, with instructions to vacate the judgment.

⊥715 KING, Associate Justice, dissenting:

While I agree with my colleagues that we may not reach the merits of this attempted appeal, and that the appeal must be dismissed, we differ as to the reasons why dismissal is required. More importantly, we differ as to the ultimate result of our dismissal.

The majority has ignored an important threshold question. That question is whether the only appellant in this case, the House of Delegates, has standing to appeal from the trial court's decision. They do not.

The only defendants named in the complaint filed on June 2, 1988, were the individual members of the House of Delegates and the chief clerk. Defendant Hershey Kyota, the chief clerk of the House of Delegates, did not appeal from the decision of the trial division. Of course, since the claims against the individual members of the House of Delegates had been dismissed, none of the members appealed.

The House of Delegates itself was not named in the original complaint and, as the trial court record reveals, never did become a party. The trial court's order of June 20, 1988 did authorize the House of Delegates to be joined as a party. However, an order granting joinder does not actually add the new party but merely permits the movant to do so. The actual joinder normally is accomplished by filing an amended complaint, or a third party complaint, setting forth claims against the new party and describing any relief sought from that party. At a minimum, ⊥716 there must be a pretrial statement or some document in the file framing the issues as to the new party.

No such step was taken in the trial proceedings. No amended complaint was filed and plaintiffs never asserted any specific claims against the House of Delegates as a body. For its part, the House of Delegates did not file any paper with the trial court and did not appear in the

litigation in any form prior to the trial court's June 28 opinion. The opinion does not refer to the House of Delegates, describing the parties as follows:

> Plaintiff Carlos Salii was elected last general election (1984) from the State of Angaur to the House of Delegates, Olbiil Era Kelulau. His four-year term, like the term of all members of the OEK, began on June 1, 1985. Plaintiff Salii's term was to end on December 31, 1988. The other plaintiffs in this case are alleged registered voters of the State of Angaur and allegedly voted for plaintiff Salii last general election.
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> All of the defendants , except the Chief Clerk of the House, are members of the House of Delegates who voted in adopting House Resolution No. 02-0080-20S expelling, inter alia, plaintiff Carlos Salii from the House of Delegates.

Slip opinion at 2 (emphasis added).

The fact that the House of Delegates itself was not a party to the litigation prevents an appeal by that entity. Under the common law, it is well established that only parties to litigation at the trial level are entitled to appeal from the decision of the trial court, absent some extraordinary reason for permitting intervention after judgment. *Karcher v. May* , 484 U.S. 72, 108 S.Ct. 388, 98 L. Ed. 2d 327 (1987); 9 J. Moore, B. Ward, ⊥717 Moore's Federal Practice para. 203.06 (2d ed. 1987 & Supp. 1988- 89). The House of Delegates has not even requested an opportunity to intervene in the appeal after judgment.

This court's procedural rules are based upon United States rules and link us to those common law procedural standards. This particular standard is a necessary one for a contrary rule would undermine judicial efficiency and fairness by allowing potential parties to sit out the litigation until the appeal. There appears here no reason to depart from the well-established and fundamental principle that only parties who participated in a litigation at the trial may appeal.

No matter within our jurisdiction has been placed before this Court and the appeal should be dismissed. There being no proper appeal, there is no appellate authority to set aside the trial court's judgment. I therefore respectfully dissent from this Court's action in setting aside the trial court's judgment.