Ngara-Irrai Traditional Council of Chiefs v. Airai State Gov't., 6 ROP Intrm. 198 (1997)

NGARA-IRRAI TRADITIONAL COUNCIL OF CHIEFS, et al.,
Appellants,

v.

AIRAI STATE GOVERNMENT,
Appellee.

CIVIL APPEAL NO. 19-94
Civil Action Nos. 170-90 & 260-91 (Consolidated)

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: August 15, 1997

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

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MILLER, Justice:

In 1990, the Ngara-Irrai, the traditional council of chiefs of Ordomel Hamlet in Airai, [1] and Bedasto Etumai, representing the people of Ordomel (hereinafter "appellants"), filed a civil action for a declaratory judgment that the newly-adopted Airai Constitution was unconstitutional under Article XI, § 1, and Article V, § 1, of the Palau Constitution. [2] In addition, the Ngara-Irrai also filed a subsequent suit seeking to invalidate Airai State Public Law ("ASPL") A-1-03-90, creating the Airai State Public Land Authority ("ASPLA"), because it allowed the Governor of Airai State to appoint the holder of the title Ngiraked, for the purpose of exercising his duties with respect to the ASPLA, where a dispute exists about who holds the title. These cases were consolidated below.

The trial court upheld the validity of the Airai Constitution and held that ASPL A-1-03-90 was not unconstitutional to the extent that it allowed the Governor to choose the "acting Ngiraked" to perform the duties of Ngiraked with respect to the ASPLA. We agree with the trial

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[1] Ordomel Hamlet is one of the six traditional hamlets of Airai State.

[2] The Appellants challenged the validity of the Airai Constitution on several grounds below. The only issue remaining on appeal with respect to the Airai Constitution is whether the Airai Constitution emphasizes democratic principles in the structure of the state government such that the role of traditional leaders is diminished in a manner that would violate Article XI, § 1, and Article V, § 1, of the Palau Constitution.

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court's conclusion that the Airai Constitution does not violate the Palau Constitution. We disagree, however, with the trial court's conclusion that the Airai Legislature can give the Governor the authority to choose the holder of the title Ngiraked--even for the sole purpose of performing the Ngiraked's duties with respect to the ASPLA on a temporary basis.

BACKGROUND

In 1989, this Court held the first Constitution of Airai State invalid in *Teriong v. State of Airai*, 1 ROP Intrm. 664 (1989), because it was never ratified by a majority of the voters of Airai State and because it failed to follow democratic principles, as mandated by the Palau Constitution. A second ⊥200 constitution was subsequently drafted by a Constitutional Convention and approved by a majority of the Airai voters on March 31, 1990. Unlike the first Constitution, which emphasized the role of traditional leaders in the Airai State Government, the second Constitution required the election of the Governor and state legislators. The Constitution also established a Council of Chiefs to advise the Governor regarding matters affecting the customs and traditions of Palau.

Also in 1990, a dispute arose concerning the holder of the title Ngiraked. [3] Airai enacted ASPL A-1-03-90 in part to deal with the dispute.

ANALYSIS

This appeal involves two issues: 1) whether the trial court erred in determining that the Airai Constitution did not violate the Palau Constitution by reducing Airai's traditional leadership's role in Airai to an advisory function, and 2) whether the trial court erred in upholding § 2 of ASPL A-1-03-90, which provides that in the case of dispute over the chief title holder of Airai (Chief Ngiraked), the Governor may certify one of the claimants as holder of the title for purposes of acting with respect to the ASPLA.

1. Airai State Public Law A-1-03-90

We deal first with appellants' challenge to ASPL A-1-03-90 establishing the ASLPA. Although the trial court upheld a number of appellants' challenges to that law, [4] it rejected the challenge to the following provision contained in Section 2:

> In the event of dispute over chief title with two or more people claiming to be the true title holder, the Governor may certify one of the claimants to act for the title for the purpose of exercising the power of that title that is ⊥201 required herein until such time that the dispute is resolved by court of law.

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[3] *See Melimarang v. Matlab*, Civil Action No. 125-90. Although that action was decided earlier this year with respect to the holder of the title Ubad, the female counterpart of Ngiraked, the dispute still persists. *See* Complaint in *Matlab v. Ngireblekuu*, Civil Action No. 173-97 (filed May 26, 1997).

[4] As no cross-appeal was filed, those portions of the law are not before us and the trial court's ruling stands.

Appellants renew their challenge here, contending that this provision is inconsistent with 35 PNC § 215,[5] the national law that authorizes the creation of state public land authorities. Following our recent decision in *Ngardmau Traditional Chiefs v. Ngardmau State Gov't* , 6 ROP Intrm. 192 (1997), we agree.

Ngardmau concerned a law by which the Ngardmau State Legislature purported to appoint the membership of the Ngardmau Council of Chiefs. We declared the law invalid, holding that the Framers of the Ngardmau Constitution intended that the Ngardmau Council of Chiefs be composed of the traditional chiefs of Ngardmau State and that appointment by the Ngardmau Legislature was contrary to tradition. We noted that to permit the Legislature to have this power would diminish "the role of the traditional chiefs mandated by the Ngardmau Constitution." *Id.* at 195.

> We reach the same result here. Section 215(b) of 35 PNC provides that
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> [e]ach state authority shall be governed by a board of trustees consisting of the paramount hereditary chief of the state, the chief executive officer of the state, three persons to be appointed by the chief executive officer with the advice and consent of the state legislature, and three persons to be appointed by the chief with the advice and consent of his traditional chiefs' council.

There is no question that this provision empowers the traditional chief of each state--in Airai, Chief Ngiraked--to sit on and select three additional members of the board. There is also no question that the governor of a state has no role, as governor, in choosing that chief pursuant to Palauan custom. We conclude, therefore, that the state law provision enabling the Governor of Airai State to perform that role--even on an interim basis--is inconsistent with the national statute.

Moreover, as in *Ngardmau*, we believe that giving such power ⊥202 to the governor in this case upsets the deliberate balance mandated by the legislature in adopting § 215(b). We have noted that "state public land authorities are designed not to be a part of state government, but are hybrid identities including both state and traditional representatives." *KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305, 308 (1993)(holding for that reason that state public lands authorities are not encompassed by the term "state government" in Article X, § 5, of the Palau Constitution). We do not believe that the drafters of § 215(b) intended that a state government should be permitted to tip this balance as the Airai Legislature has done.

2. The Role Of Traditional Leaders in Airai

Article XI, § 1, of the Palau Constitution, the Guaranty Clause, provides that "[t]he structure and organization of state governments shall follow democratic principles, traditions of Palau, and shall not be inconsistent with this Constitution." Article V, § 1, prevents the national

[5] Appellants also challenge the provision on constitutional grounds. In view of the conclusion below, we need not address that aspect of appellants' challenge.

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government from acting to "prohibit or revoke the role of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution. . . ." [6] Appellants contend that the Airai Constitution violates both of these provisions. We disagree.

We have now had two opportunities to consider the Guaranty Clause. In *Teriong*, as noted above, we found that the original Airai Constitution failed both in its promulgation and its operation to reflect the democratic principles mandated by that provision. We emphasized both that it had never been approved by a majority of Airai voters (and, in fact, had been disapproved) and that it had offered no mechanism by which the people could select or replace their leaders.

We revisited the Guaranty Clause and *Teriong* earlier this year in *Koror State Government v. Becheserrak* , 6 ROP Intrm. 74 ⊥203 (1997). There, while reaffirming *Teriong*, we held that following democratic principles does not preclude a state from specifying a significant role for traditional leaders in the law-making and governing of the state. [7] Since traditional leaders may exercise these powers in accordance with the Guaranty Clause, the question becomes in this case to what degree does the Guaranty Clause *require* that traditional leaders participate in state government.

Appellants argue that the principle of "equal dignity" [8] requires the Airai Constitution to give traditional leaders roles equal to, though not greater than, democratically-elected leaders. We agree that the principle of equal dignity means that the clause in Article XI, § 1, regarding "traditions of Palau" cannot be ignored. We reject, however, a rigid interpretation of the constitutional requirements of Article XI, § 1, that would require the Court to specify exactly how the States are to divide governmental positions between elected and traditional leaders. Nothing in Article XI, § 1, indicates how governmental powers are to be apportioned and any such formula adopted by the Court would be inconsistent with the Framers' intention "to leave the choice of structure of local government to each municipality." Palau Constitutional Convention, Standing Committee Report No. 34 (March 5, 1979) at 3.[9]

This is not to say that the Court has no role to play in extreme cases. Just as *Teriong*

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[6] Article V, § 1, provides in full:

> The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored or given formal or functional roles at any level of government.

[7] A constitutional requirement that every key state official be popularly elected would prohibit the states from giving traditional leaders more than a ceremonial role in the state government, a limitation not dictated by the Palau Constitution. *Id.* at n.4.

[8] *See Ullman v. U.S.*, 76 S.Ct. 497, 501 (1955) ("As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion.").

[9] "The people in each municipality are permitted to adopt the present system, a more traditional system, a combination of the two or any system of government that they think is suitable to their local needs and resources." *Id.*

Ngara-Irrai Traditional Council of Chiefs v. Airai State Gov't., 6 ROP Intrm. 198 (1997) concluded that the first Airai Constitution "[did] not conform with the minimum requirement of 'democratic principles'," 1 ROP Intrm. at 675-76, it is appropriate to ask whether the second Airai Constitution falls short in its recognition of the "traditions of Palau." We find, however, that it does not. The Airai Constitution, Article VI, ⊥204 § 6, provides, in pertinent part:

> A Council of Chiefs of a traditional chief from each hamlet of Airai State, Ngiraked, Tuchermel, Ngirachitei, Iyechaderteluang, Spis and Techedib, shall advise the Governor on matters concerning traditional laws, customs and their relationship to the Constitution and the laws of Airai State.

Although the role assigned to traditional leaders is advisory in nature, we believe it noteworthy that it is the same role assigned to the Council of Chiefs in the national Constitution. Indeed, the language of the Airai Constitution is nearly identical to and appears to have been adapted from Article VIII, § 6, of the Palau Constitution. [10] We are unable to conclude that in following one aspect of the Palau Constitution, the Airai Constitution falls short of another.

Having found that the current Airai Constitution is not invalid under Article XI, § 1 of the Palau Constitution, we do not believe that any different result is compelled by Article V, § 1. We see little reason to believe that the Framers, having directly addressed the issue of state governments in Article XI, intended to address the same issue in Article V. In particular, we do not believe that in preserving the role of traditional leaders "as recognized by custom and tradition," the Framers meant to address, much less mandate, the role that such leaders should play in the constitutional governments to be established by each state. [11] If that were the intent of the first phrase of Article V, § 1, there would have been no need for the second phrase preserving the right of traditional leaders to be "given formal or functional roles at any level of government." *See* n.6, *supra*.

⊥205 We conclude, therefore, that the Airai Constitution violates neither Article XI, § 1, nor Article V, § 1, of the Palau Constitution.

CONCLUSION

We therefore AFFIRM the trial court's judgment in part and REVERSE it in part as set forth above.

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[10] Article VIII, § 6, of the Palau Constitution states that "[a] Council of Chiefs composed of a traditional chief from each of the states shall advise the President on matters concerning traditional laws, customs, and their relationship to this Constitution and the laws of Palau."

[11] We acknowledge and accept the trial court's finding that "traditional chiefs" in traditional times had "all the law making power and decision making power" in Airai. *See* Decision at 3. But to argue that Article V, § 1, was intended to preserve those powers is untenable in light of the recognition of "democratic principles" in the Guaranty Clause.