Melaitau v. Lakobong, 9 ROP 165 (2002)

FRANCISCO MELAITAU, RIUMD MOSES SAM, NGIRAIBAI MASAICHI ETITERNGEL, SIKESOL INACIO SADANG, SECHARKEBUR NGIRARIKEL GIDEON, RUSSELL MASAYOS, and LAZARUS INACIO,
Appellants,

v.

HILARIA LAKOBONG, DANNY ONGELUNGEL, SUSANA MATSUOKA, BENJAMIN TEMOL, AUGUSTO RENGUUL, and JOSEPH TIOBECH,
Appellees.

CIVIL APPEAL NO. 01-62
Civil Action No. 01-98

Supreme Court, Appellate Division
Republic of Palau

Argued: June 24, 2002
Decided: July 24, 2002

[1] **Appeal and Error:** Standard of Review

A lower court's conclusions of law are reviewed *de novo*.

[2] **Constitutional Law:** Justiciability; Sole Judge Clause

Despite the reservation to the legislature to be the sole judge of the qualifications of its members, where there is no dispute as to either the meaning of a constitutional eligibility requirement or as to the fact that a legislator's failure to meet that requirement, the court may declare that the legislator has not met the constitutional eligibility requirements.

⊥166

Counsel for Appellants: Mark Doran

Counsel for Appellees: Moses Uludong, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

MILLER, Justice:

Courts have an almost unflagging obligation to hear every case over which they have jurisdiction. But of commensurate importance is the duty of a court not to intrude into an area

over which the constitutional scheme divests it of power. The ultimate issue before us today is on what side of that line this case falls. Before us we have allegations that the Legislature of Ngiwal State, the Kelulul a Kiuluul ("KAK"), violated Ngiwal's Constitution by purporting to seat as KAK members three individuals who do not satisfy the eligibility requirements for KAK membership laid down by that Constitution. On the other hand, we have a claim that the Sole Judge clause of that Constitution places the power to answer this question squarely in the hands of the KAK itself, to the exclusion of the judicial branch. On the limited and unique facts of this case, where there is absolutely no dispute that the three challenged members do not satisfy the constitutionally-mandated eligibility requirements and where there is no claim that the KAK has made any determination otherwise, we find that the Sole Judge clause does not preclude judicial review of what is an obvious, indisputable constitutional violation.

BACKGROUND

The Ngiwal State Constitution provides that the KAK shall consist of 17 members, ten of whom are to be holders of certain specified traditional titles and seven of whom are to be elected. Ngiwal State Const. art. VIII, § 2. On August 8, 2000, the State of Ngiwal held a general election to select the seven elected members for the 9th KAK. On September 5, 2000, an installation ceremony was held at which 16 people were seated as members of the KAK. These included the seven elected members: Lazarus Inacio, Russel Masayos, Francisco Melaitau, Bendix Lakobong, Augusto Renguul, Benjamin Temol, and Joseph Tiobech; as well as nine traditional title holders: Angelo Udui, Danny Ongelungel, as acting Obak on behalf of Obak Mark Tewid, Masachi Etiterngel, Ngirarikel Gideon, Antonio Bells, Moses Sam, Inacio Sadang, Hilaria Lakobong, and Silil Meltel. At the same time, Melaitau was selected to be Speaker of the KAK, Etiterngel was named Vice Speaker, and Sam was chosen as Floor Leader.

On March 16, 2001, the 9th KAK met in a duly-called session with a quorum of 13 members present.[1] Among other business under consideration that day was the seating of Danny Ongelungel as a KAK member by virtue of his ascension to the traditional title ⊥167 of Obak,[2] and the seating of Susana Matsuoka as a KAK member by virtue of her ascension to the status of acting Misch. At the March 16 session, questions were raised about the eligibility of Ongelungel and Matsuoka, as well as of Hilaria Lakobong, who had been seated in September of 2000, to serve as members of the KAK. Matters quickly became heated, and Speaker Melaitau called for a recess, though a vote was never taken on the question. Nevertheless, after making his call for a recess, Speaker Melaitau and five other KAK members walked out, while disorder reigned outside the hall.

After the walkout, the seven remaining KAK members (including Hilaria Lakobong) continued the session and voted unanimously to seat both Ongelungel and Matsuoka. These nine

[1]Article VIII, § 3 of the Ngiwal State Constitution states that "[a] simple majority of the members [of the KAK] shall constitute a quorum to conduct official business[.]" Rule 3 of the KAK Rules of Procedure resolves any ambiguity in the constitutional provision ("a simple majority of the members" could mean a majority of the 17 seats in the KAK or a majority of the number of members actually seated at a given time) by explaining that "[n]ine members of the [KAK] shall constitute a quorum for legislative action."
[2]Obak Mark Tewid died in December, 2000.

then voted to appoint Temol as Speaker, Renguul as Vice Speaker and Tiobech as Floor Leader to replace the trio who had been selected in September 2000. This group of nine met on subsequent occasions during which meetings they performed acts such as seating Uong Ito Udui to take the seventeenth KAK seat that had previously been unfilled, and approving the State of Ngiwal's budget for the 2001 fiscal year.

The erstwhile KAK leaders, Melaitau, Etiterngel and Sam, joined by four other KAK members, Sadang, Gideon, Masayos and Inacio, filed suit on April 17, 2001. Among other things, they sought a declaration that Ongelungel, Matsuoka and Hilaria Lakobong were not eligible to be KAK members. The trial court ruled that the Sole Judge clause of the Ngiwal State Constitution precluded judicial review of this claim, that Ongelungel, Matsuoka and Lakobong were KAK members, and that the actions of the group of nine were therefore valid. This appeal followed.

ANALYSIS

[1] A lower court's conclusions of law are reviewed *de novo*. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). The parties do not dispute that Article VIII, § 4 of the Ngiwal State Constitution provides that a person must be a registered voter of the State of Ngiwal to be eligible for membership in the KAK and that this provision applies to traditional as well as elected members. [3] Nor is there any question that Ongelungel, Matsuoka and Hilaria Lakobong are *not* registered voters of the State of Ngiwal. Notwithstanding this state of affairs, the trial court concluded that Ngiwal's Sole Judge clause [4] precluded judicial review. On appeal, Appellants assert that by seating members who were not registered voters of the State of Ngiwal, the KAK violated the Ngiwal State Constitution, and that as the ultimate interpreter of the constitution, this Court has the authority, and indeed the obligation, to review such extra-constitutional acts.

Appellants' argument does not find much support in United States case law. Both ⊥168 federal and state courts have been consistent in holding that, in the absence of an allegation of a constitutional violation independent of a legislative body's interpretation of constitutionally-mandated eligibility requirements, a Sole Judge clause deprives the judicial branch of authority to review challenges to legislative seating decisions. *See, e.g.*, *Roudebush v. Hartke*, 92 S. Ct. 804, 807 (1972); *Powell v. McCormack*, 89 S. Ct. 1944, 1978 (1969) (dicta); *Morgan v. United States*, 801 F.2d 445, 448-49 (D.C. Cir.1986); *In re Jones*, 476 A.2d 1287, 1290-92 (Pa. 1984) (collecting cases); *McPherson v. Flynn*, 397 So. 2d 665, 668 (Fla. 1981).

It is arguable that the Sole Judge clause of the Palau Constitution does not sweep as

---

[3]As the trial court observed, the Ngiwal State Constitution specifically exempts traditional chiefs from the requirement that legislators be at least 25 years of age, *see* art. VIII, § 4(c), but contains no exemption for the requirement that a person must be "[a] registered voter of Ngiwal State" to hold office in the KAK. Art. VIII, § 4(b).

[4]"The Kelulul a Kiuluul shall be the sole judge of the election and qualifications of its members." Art. VIII, § 11.

broadly as the Sole Judge provisions found in the United States. [5] The Committee which first prepared this language explained to the Constitutional Convention that "[c]onsistent with the doctrine of the separation of powers, the Assembly is to be the sole judge of the qualifications of its members, *with the implied exception of those eligibility requirements set forth in the constitution*." Standing Committee Report No. 22, March 2, 1979, at 16-17 (emphasis added). We need not decide here, however, whether and to what extent the Framers intended by this language to open the door to judicial intervention because we conclude that we are not barred from acting in the unique circumstances of this case. Even were we to follow the more restrictive approach of the U.S. cases, we are aware of no case in which a court was presented with circumstances where there was no dispute either as to the meaning of a constitutional eligibility requirement or as to the fact that a legislator or legislators failed to meet that requirement.[6]

[2] If the underlying purpose of the Sole Judge clause is to avoid judicial interference with, or lack of respect for, the judgments of another branch of government, *see, e.g.*, *Powell*, 89 S. Ct. at 1978, *Morgan*, 801 F.2d at 450, then we are confident that our intervention here is not inappropriate. We intend and indeed show no disrespect to the members of the Ngiwal Legislature in observing that the decision to seat Ongelungel and Matsuoka in March 2001, and Hilaria Lakobong before that, was not the result of a conflicting judgment based on a differing view of either the facts or the law. [7] Rather, as ⊥169 was readily conceded at oral argument, the requirement that even traditional chiefs be registered voters was simply a matter that no one had thought about until "the lawyers" pointed it out. Now that all agree that such a requirement exists and that the challenged legislators do not meet it, we can see no basis for the Court not to say so. We conclude, therefore, that so long as they are not registered voters of the State of Ngiwal, Ongelungel, Matsuoka and Hilaria Lakobong cannot legally be seated as KAK members.[8] Appellants are entitled to declaratory relief to this effect and we remand this matter to

---

[5]While we are here applying the Ngiwal State Constitution, the relevant language of the Sole Judge clauses contained in both documents are identical, and it is a fair inference that the Framers of the Ngiwal State Constitution looked to the Palau Constitution in choosing that language. *Compare* Palau Constitution art. IX, § 10 ("Each house of the Olbiil Era Kelulau shall be the sole judge of the election and qualifications of its members . . . .") *with* Ngiwal State Constitution art. VIII, § 11, *supra*, n.4.

[6]This case is in some ways the converse of the situation presented in *Powell v. McCormack*. There, as it was "undisputed that [Powell] met th[e] requirements" of the Constitution, 89 S. Ct. at 1962; *see id.* at 1979 ("Respondents concede that Powell met these."), the Court found no bar to a declaration that Powell was entitled to be seated. Here, Appellees do not dispute that the challenged legislators do *not* meet one of the constitutional requirements.

[7]*Cf. Barry v. United States ex rel. Cunningham*, 49 S. Ct. 452, 455 (1929):

> Exercise of the power [to judge the elections, returns and qualifications of its own members] necessarily involves the ascertainment of facts, the attendance of witnesses, the examination of such witnesses, with the power to compel them to answer pertinent questions, to determine the facts and apply the appropriate rules of law, and, finally, to render a judgment which is beyond the authority of any tribunal to review.

[8]We reach this conclusion with some reluctance as to Hilaria Lakobong, as we are informed that she has been a member of the KAK since its inception, and was seated with the concurrence of both Appellants and Appellees in September 2000. We can see no principled basis, however, to distinguish between her

the trial court for that purpose. Because the term of the 9th KAK is nearly complete, and a new election imminent, we leave it to the trial court to determine what other relief might be appropriate in light of this opinion.

---

status and that of Ongelungel and Matsuoka.