

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>IBEDUL YUTAKA M. GIBBONS, <i>Appellant,</i></p> <p style="text-align:center">v.</p> <p>KOROR STATE GOVERNMENT and GOVERNOR FRANCO GIBBONS, <i>Appellees.</i></p>
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Cite as: 2019 Palau 10
Civil Appeal No. 18-021
Appeal from Civil Action No. 16-116

Decided: March 19, 2019

Counsel for Appellant	Yukiwo P. Dengokl
Counsel for Appellees	Mark P. Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Ibedul Yutaka M. Gibbons² is appealing the Trial Division’s determination that actions taken by former Governor Yositaka Adachi,

¹ Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

² We note the House of Traditional Leaders is not named as a party in this appeal. As such, we would typically treat Appellant as bringing this lawsuit in his individual capacity—not his official capacity—thus rendering him unable to represent the HOTL. However, the underlying case properly named Appellant as acting in both his individual and official capacities, Appellant’s briefing clearly indicates that he purports to represent both himself and the HOTL, and Appellees have not objected to this error. Therefore, we follow the

including reassigning office space in the Koror State Capitol Building (“the Capitol”) previously used by Appellant, did not violate the Koror State Constitution. For the reasons set forth below, we **AFFIRM in part** and **REMAND** for further proceedings.

BACKGROUND

[¶ 2] Before discussing the events precipitating this lawsuit, a brief review of the history of the Koror State Government is necessary. The Koror State Constitution was adopted on April 13, 1983 and established three branches of government: the House of Traditional Leaders (the HOTL), comprising of the Ngarameketii and Rubekulkeldeu and headed by the Ibedul; the Administration, headed by the Governor;³ and the Legislature, headed by the Speaker. From 1986 until 2002, the operations of the Koror State Government were housed in Bai Ra Meketii, which is owned by the Ngarameketii. This changed in November of 2002 with the completion of the Capitol. The Capitol had designated offices equipped with telephone and internet services for the Governor, the Speaker, and the Ibedul. Once the Capitol opened, the Legislature and Administration branches completely relocated to the Capitol. While Appellant maintained an office space within the Capitol, he and the HOTL continued to use Bai Ra Meketii.

[¶ 3] Former Governor Adachi was elected as the Governor of Koror State in 2006. He testified that over the next ten years, Appellant’s office was essentially vacant. Considering it a waste of resources to pay for an unused internet connection, former Governor Adachi disconnected the telephone and internet services to the office. The HOTL later set up an internet connection at Bai Ra Meketii.

[¶ 4] On January 19, 2016, former Governor Adachi sent a letter to Appellant noting that the Office of the Governor required more office space

parties’ lead and treat this appeal as if it were filed by Appellant on behalf of himself and the HOTL. Similarly, because former Governor Adachi was sued in his official capacity in the underlying case, and later replaced as Governor of Koror by Franco Gibbons, we assume that Governor Gibbons is being sued in his official capacity.

³ The original Constitution of Koror State named the State Executive Administrator as the head of the Administration. This was changed when the Constitution was first amended on July 15, 1997, designating the Governor as the head of the Administration.

for staff and indicating that he intended to take over Appellant's office unless he received an objection. Darius B. Ellis, the Executive Director for the HOTL, responded to the letter on behalf of Appellant, indicating that Appellant would resume use of the office at the beginning of February. Despite this letter, the office remained unoccupied for the next six months. On July 28, 2016, former Governor Adachi sent a letter informing Appellant that the office had been reassigned and the locks changed. The office was given to Speaker of the Legislature Eyos Rudimch.

[¶ 5] Appellant filed suit against the Koror State Government and former Governor Adachi. Appellant raised several causes of action, asserting that former Governor Adachi violated the Koror State Constitution by (1) reassigning Appellant's office; (2) cutting off internet and telephone services to the office; and (3) eliminating a staff position within the HOTL. Following a two-day trial, the Trial Division concluded that former Governor Adachi did not violate the Koror State Constitution by reassigning Appellant's office. The Trial Division also concluded that Appellant had failed to prove damages regarding disconnection of the internet because the evidence showed that the Koror State Government paid for the cost of internet service to Bai Ra Meketii when the HOTL submitted those bills for payment. The Trial Division did not address the purported elimination of the HOTL staff position.

STANDARD OF REVIEW

[¶ 6] On appeal, this Court reviews a trial court's findings of fact for clear error and its conclusions of law *de novo*. *Ngarbechesis Klobak v. Ueki*, 2018 Palau 17 ¶ 7. "Under the clear error standard, findings will be reversed only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record." *Otei v. Smanderang*, 2018 Palau 4 ¶ 10.

[¶ 7] "A trial court's decision to entertain a claim for declaratory relief is reviewed for abuse of discretion." *Id.* "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 10 (internal quotation marks and alterations omitted).

DISCUSSION

[¶ 8] Appellant raises three issues. First, Appellant asserts that Appellees violated Article IV, § 2 and Article VI, § 1 of the Koror State Constitution by changing the locks on Appellant's office. Appellant next asserts that the HOTL are entitled to recover the costs of setting up and maintaining internet at Bai Ra Meketii. Finally, Appellant asserts that former Governor Adachi violated Article VI, § 2(5) of the Koror State Constitution by eliminating the staff position of Assistant Secretary to the HOTL. We address each contention in turn.

I. Office Space in the Capitol

A. Article VI, § 1

[¶ 9] “The House of Traditional Leaders . . . shall be the supreme authority of the State of Koror for all matters relating to traditional law.” Koror Const. art. VI, § 1. Appellant's argument on this issue is that this provision makes the HOTL “an integral part of the Koror State government,” which entitles it to office space within the Capitol. If, as Appellant contends, the HOTL is constitutionally entitled to an office within the Capitol, this right must derive from a specific constitutional provision.

[¶ 10] In addition to establishing the HOTL as a branch of government, Article VI, § 1 grants the HOTL “supreme authority . . . for all matters relating to traditional law.” This Court has interpreted this provision as granting the HOTL absolute control over its own membership. *See House of Traditional Leaders v. Koror State Gov't*, 17 ROP 101, 108 (2010) (“[T]he statement granting HOTL ‘supreme authority’ is in the context of the section titled Membership The language itself and the location of the clause reflect[] the intent of the drafters that HOTL's ‘supreme authority for all matters relating to traditional law’ is in the context of membership.”). Appellant does not contend that former Governor Adachi attempted to revoke Appellant's position as Ibedul or that reassigning his office has in any way controlled or influenced the membership of the HOTL. Therefore, this provision of the Koror Constitution was not violated.

B. Article IV, § 2

[¶ 11] Appellant next contends that former Governor Adachi violated Article IV, § 2 by taking over Appellant's office and changing the locks. In relevant part, this provision states that the Koror State Government shall not "prevent a traditional leader from being recognized, honored, and given formal or functional roles at [any] level of government." Koror Const. art. IV, § 2. Appellant contends that by taking away his office, former Governor Adachi prevented him from being given a "formal or functional role" in the Koror State Government.

[¶ 12] There can be no real dispute that the HOTL cannot serve a functional role in the government without a work space to accomplish their governmental responsibilities. Indeed, the issue in this case is not whether Appellant is entitled to *any* office, but whether Appellant is entitled to a *particular* office. The Trial Division found that Appellant "kept some files and office supplies in the HOTL office at the Capitol, . . . but [he] never actually occupied the space." For nearly ten years, Appellant used Bai Ra Meketii as his primary work space, and there is no indication that his choice to use his office there, rather than his office at the Capitol, in any way hindered his ability to perform a functional role in the Koror State Government. Consequently, there is no support for the argument that reassigning Appellant's office unconstitutionally prevented him from being given a functional role in the government.

[¶ 13] Appellant also argues that revoking his office in the Capitol prevents him from being recognized and given a formal role in the government. Appellant relies heavily on the testimony that the Capitol building was originally constructed to house all three branches of government and claims that, by denying him space at the Capitol, former Governor Adachi was attempting to undermine the HOTL's status as a branch of the Koror State Government. However, Bai Ra Meketii has long been recognized as a place of governmental authority and indeed, the entirety of the Koror State Government was housed there for nearly a decade prior to the completion of the Capitol. Even after the Capitol was completed, Bai Ra Meketii remained a well known and respected work space for the HOTL. By Appellant's own choice, the HOTL continued to be housed in Bai Ra Meketii

and the office in the Capitol served as little more than a storage space. As such, there is nothing inherently exclusory about the HOTL being housed at Bai Ra Meketii rather than at the Capitol. It was Appellant's choice to operate from Bai Ra Meketii; he cannot now argue that his choice creates an unconstitutional limitation on his formal role in the Koror State Government.

II. Internet Expenses

[¶ 14] Appellant also contends that he is entitled to recover damages for the out-of-pocket costs associated with setting up and maintaining internet access at Bai Ra Meketii. The time period at issue spans from June 2016 through March 2017. There is no dispute that the internet bills were paid by the Koror State Treasury from October 2016 through March 2017. As such, the only relevant time period is from June 2016 through September 2016.⁴ The Trial Division found—and Appellant does not contest—that no requisition requests were submitted to the Koror State Treasury for this time period. Instead, Appellant contends that the HOTL had made regular informal requests to the Office of the Governor, but had been repeatedly denied.

[¶ 15] Whether such a request was made is a fact issue, reviewed for clear error. Appellant presented testimony in support of this argument and it is the province of the fact finder to determine how much credibility such testimony is to be afforded. *See Ngiraked v. Koror State Pub. Lands Auth.*, 2016 Palau 1 ¶ 8 (“We do not reweigh the evidence. We do not reassess the credibility of witnesses.” (internal citations omitted)). Here, the Trial Division determined that, because there was no documentary evidence to support Appellant's testimony, it was not credible enough to meet his evidentiary burden. Appellant's testimony was undermined by contrary evidence establishing that the HOTL had been appropriated money for operational costs and miscellaneous expenses, as well as evidence that the internet bills were paid whenever the HOTL submitted requests to the Koror State Treasury. The Trial Court's decision to credit the documentary evidence over the testimonial evidence was not clearly erroneous. *See id.* (“Where evidence is subject to

⁴ Appellant asserts that the out-of-pocket cost for setting up and maintaining internet services during this time totals \$2,979.99. A review of the trial exhibits shows that Appellant improperly calculated these damages by double counting nearly all of the expenses. Properly calculated, the potential compensatory damages total \$1,529.99.

multiple reasonable interpretations, a court's choice between them *cannot* be clearly erroneous." (internal quotation marks omitted)).

III. Elimination of HOTL Staff Position

[¶ 16] Finally, Appellant alleges that former Governor Adachi violated Article VI, § 2(5) of the Koror State Constitution by eliminating the position of Assistant Secretary to the HOTL. *See* Koror Const. art. VI, § 2(5) (“[The HOTL] may recruit, hire, and supervise its own staff which shall be paid in accordance with law”). However, whether former Governor Adachi actually eliminated this position is a question of fact properly left to the Trial Division to decide in the first instance. Here, Appellant raised this cause of action in the underlying complaint and presented evidence at trial, but the Trial Division did not decide the issue. Therefore, a limited remand is appropriate to determine whether the actions allegedly taken by former Governor Adachi actually eliminated the staff position of Assistant Secretary to the HOTL.

CONCLUSION

[¶ 17] We **AFFIRM** the Trial Division's judgment in regard to Appellant's office space within the Capitol and internet expenses. We **REMAND** for the limited purpose of resolving Appellant's cause of action regarding the purported elimination of a HOTL staff position.