ROP v. Airai State Pub. Lands Auth., 11 ROP 258 (Tr. Div. 2004)

REPUBLIC OF PALAU,
Plaintiff,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY, BOARD OF TRUSTEES OF THE AIRAI STATE PUBLIC LANDS AUTHORITY, CHARLES OBICHANG, DONALD HARUO, JOHN KYOSHI RECHUCHER, and TMEWANG RENGULBAI,
Defendants.

PALAU PUBLIC LANDS AUTHORITY,
Plaintiff,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY, BOARD OF TRUSTEES OF THE AIRAI STATE PUBLIC LANDS AUTHORITY, CHARLES OBICHANG, DONALD HARUO, and JOHN K. RECHUCHER,
Defendants.

CIVIL ACTION NOS. 99-186 & 99-209

Supreme Court, Trial Division
Republic of Palau

Decided: August 2, 2004

LARRY W. MILLER, Associate Justice:

Before the Court, after a lengthy agreed delay in its submission, is defendants' motion for summary judgment on the theory that the appellate panel that reversed this Court's prior ruling in defendants' favor was improperly constituted and the reversal therefore a nullity. For the reasons stated herein, the motion is denied.

The appellate panel in question was comprised of one Justice of the Supreme Court and two Judges of the Land Court. Defendants contend that the appointment of the two Land Court judges to the panel was in ⊥259 violation of, or not authorized by, the Constitution. The constitutional provision at issue is Article X, Section 12, which provides in pertinent part that the Chief Justice "may assign judges from one geographical department or functional division of a court to another department or division of that court and he may assign judges for temporary service in another court." The last is what happened here: two Land Court judges were assigned to the Appellate Division of the Supreme Court to hear an appeal. Defendants nevertheless

advance three arguments why the appointments were not validly made.[1]

The first two are not persuasive. Defendants argue that appointment of Land Court judges to sit on an appellate panel is inconsistent with both Article X, Section 2, which prescribes the number of Justices of the Supreme Court, and Article X, Section 7, which sets forth the duties of the Judicial Nominating Commission. These arguments would have force if the Chief Justice had purported to declare that a judge of the Land Court–or of any other court–would henceforth be a Justice of the Supreme Court. But there is nothing inherently inconsistent between having a fixed number of Supreme Court Justices, appointed by the President from a list prepared by the Judicial Nominating Commission, as mandated by Sections 2 and 7, and assigning judges from another court to perform "temporary service" in the Supreme Court in accordance with Section 12. Although defendants acknowledge the principle that constitutional provisions must be read in harmony with one another, their proposed strict interpretation of Section 2 and 7 would essentially read out of the Constitution the "temporary service" provision of Section 12.

Defendants' third argument relies on the constitutional history of Article X, Section 12. Discussing the proposed provision that became Section 12, the Committee on the Judiciary said:

> It is the intent of the Committee to make it possible for a judge of one court to be assigned to any other court for a temporary assignment as directed by the Chief Justice of the Supreme Court, provided, however, that the judges of the lower court may not be assigned to sit as judges of a higher court, unless the requirements for his qualification meet the same requirements for the qualifications of the judges of the court to which he was to be assigned. The judges of the National Court may be assigned to a temporary assignment in the Supreme Court.

Standing Committee Report No. 26, at 13 (Mar. 2, 1979). Defendants argue that this language shows that "the framers had no intention of allowing judges of inferior courts . . . from moving up the ladder for service in the Supreme Court, even on a temporary basis." That is surely too strong, since the framers spoke of a temporary assignment "to *any* other court" (emphasis added), and, even ⊥260 in setting forth the proviso, specifically contemplated circumstances in which a judge of a lower court could be assigned to sit as a judge of a higher court. The Court sees no basis for defendants' suggestion that the framers had to have said "a higher court, *including the Supreme Court*" rather than simply "a higher court."[2]

An argument could be made, however, as to the meaning of the proviso and whether it was satisfied here. There is no question that both Judges Cadra and Senior met the

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[1]The Court disagrees with plaintiff's contention that *stare decisis* requires the rejection of defendants' motion. According to the Appellate Division's Order of December 4, 2002, although it denied the relief sought by defendants there, it did not address the panel members' "eligibility to sit" on the merits, but left that issue to be raised "with the trial court on remand."

[2]Nor does the Court view as determinative the explicit recognition that National Court judges could be assigned to sit in the Supreme Court. That is true, but it does not preclude the possibility that other judges–sitting in courts that were yet to be created–might also be eligible for assignment.

"requirements for the qualifications" of justices of the Supreme Court, which are set forth in Article X, Section 8. However, the proviso arguably refers not to whether the assigned *judges* meet the qualifications of the court to which they have been assigned, but whether the qualifications of the *court* on which they sit are equivalent to those of the court to which they have been assigned. Here, although the required qualifications for the Senior Judge of the Land Court mirror those for appointment to the Supreme Court, *compare* 4 PNC § 204(b) *with* art. X, § 8,[3] those for Associate Judges do not, since they permit the appointment of trial counselors, *see* 4 PNC § 204(c).

Having raised this theory on its own, however, the Court is ultimately unpersuaded. The language of the Committee Report is important, but it is not part of the Constitution and should not be read hypertechnically to create a distinction that is in no way suggested by the constitutional text and makes little sense. The Court does not believe the framers intended that then-Associate Judge Senior should be disqualified from sitting on the Supreme Court, even though she was fully qualified to do so, simply because another judge in her position might not be.

For all of these reasons, defendants' motion is accordingly denied.

[3]In fact, the qualifications for sitting on the Land Court are even more rigorous, since they include the requirement of "extensive experience in public service or property law" or "broad knowledge of Palauan customs."