

Aitaro v. Koror State Gov't, 15 ROP 175 (Tr. Div. 2008)
**IYECHAD RIBUKEL THEODORE AITARO, IYECHADERCHEMAI KALISTO
JOSEPH, ESPANGEL SANTOSIKLUK, RECHEUNGEL MINORU F. UEKI,
NGIRAIKELAU, and HOUSE OF TRADITIONAL LEADERS,
Plaintiffs,**

v.

**KOROR STATE GOVERNMENT,
Defendant.**

CIVIL ACTION NO. 07-177

Supreme Court, Trial Division
Republic of Palau

Decided: May 28, 2008

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ARTHUR NGIRAKLSONG, Chief Justice:

This matter comes before the Court on Defendant's Motion to Dismiss and Motion for Summary Judgment and Plaintiffs' Cross Motion for Summary Judgment. Defendant argues that the complaint in this matter should be dismissed because Plaintiffs have failed to state a claim upon which relief may be granted. In the alternative, Defendant maintains that summary judgment should be granted in its favor because it is entitled to judgment as a matter of law. In their cross-motion for summary judgment, Plaintiffs assert that they are entitled to judgment as a matter of law. After carefully reviewing the briefs and arguments in this matter, the Court now rules.

BACKGROUND

Individual Plaintiffs are citizens of the Republic of Palau and residents of Koror State. The House of Traditional Leaders ("HOTL") is a legal entity existing pursuant to the Koror State Constitution and traditional law of Palau. Defendant is the existing Government of Koror State ("KSG") and Yoshitaka Adachi is its elected Governor.

On December 28, 2006, Defendant enacted Koror State Public Law ("KSPL") No. K8-179-2006, which states in § 12 that in case of title disputes, honorariums shall only be paid to a person who is adjudged finally by the court to be the true title bearer. The intent of the law appears in Legislative Standing Committee Report No. 08-10 ("Committee Report"). The Committee Report explains in essence that KSG wants to avoid making compensation payments to persons whose titles are in dispute, because if payments are made to the wrong person, KSG may ultimately have to make the same payments to a person who is later deemed the proper title ¶177 bearer. This would cause KSG to make "double" payments and force KSG to expend time and resources trying to recover the misappropriated funds. Pursuant to KSPL No. K8-179-2006, Governor Adachi withheld the compensation payments for Plaintiffs Aitaro, Joseph, Ueki and

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Ikluk because of alleged disputes regarding the rightful bearers of their titles.

Plaintiffs argue that KSPL No. K8-1792006 is null and void because it unconstitutionally authorizes the Governor “to terminate the payments of compensation to the individual Plaintiffs,” violating Article VI, Section 1 of the Koror State Constitution. Defendant contests this claim and maintains that it is entitled to judgment as a matter of law.

STANDARD OF REVIEW

When considering a motion for summary judgment, the Court must determine whether there is any genuine issue of material fact that would preclude judgment as a matter of law in favor of the moving party. *Obeketang v. Sato*, 13 ROP 192, 194 (2006). The evidence and inferences to be drawn therefrom must be considered in the light most favorable to the non-moving party. *Ulechong v. Palau Pub. Utils. Corp.*, 13 ROP 116, 119 (2006).

DISCUSSION

“[A] legislature is presumed to intend to pass a valid act, and . . . a law should be construed to sustain its constitutionality whenever possible.” *Ngirengkoi v. ROP*, 8 ROP Intrm. 41, 42 (1999) (citing *Yalap v. ROP*, 3 ROP Intrm. 61, 66 (1992)). If, however, “all or part of a statute clearly violates the constitution, the court must give effect to the language of the constitution without regard to the consequences.” *Yalap*, 3 ROP Intrm. at 64.

Plaintiffs argue that KSPL No. K8-1792006 is null and void because it unconstitutionally authorizes the Governor “to terminate the payments of compensation to the individual Plaintiffs” violating Article VI, Section 1 of the Koror State Constitution. Article VI, Section 1 states, in pertinent part, that “[t]he organization and function of the house of Traditional Leaders shall be in accordance with traditional law.” In addition, Plaintiffs assert that according to Article VI, Section 2(6), determining the rightful bearer of traditional titles is a traditional matter that falls within the scope of the authority granted to the HOTL. Koror State Const. art. VI, § 2(6) (“[The HOTL] shall function in accordance with traditional law and practices as well as other duties and responsibilities as maybe established bylaw.”). Thus, Plaintiffs contend that KSPL No. K8-179-2006 is unconstitutional because it grants the Koror State Government and Governor the “authority to determine the validity of the appointments or qualifications of members of the HOTL.”

In contrast, Defendant asserts that KSPL No. K8-179-2006 is constitutional because it falls within the scope of Article VI, Section 3 of the Koror State Constitution. Article VI, Section 3 states that “[t]he members of the House of Traditional Leaders shall be compensated in accordance with law.” Defendant notes that nothing in the Koror State Constitution expressly prohibits the Legislature from withholding payments to traditional title bearers in the event of a dispute. Instead, Defendant argues that the Legislature is authorized to pass a law to establish compensation for members of the HOTL. **¶178** Moreover, Defendant maintains that the act of determining compensation does not affect how the HOTL operates or functions, and does not affect the membership of the HOTL as recognized by the HOTL. Thus, Plaintiffs’ complaint that

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KSPL No. K8-179-2006 unconstitutionally grants the Governor the power to determine the rightful bearer of traditional titles is misplaced. The Court agrees.

As stated in Article VI, Section 3 of the Koror State Constitution, “[t]he members of the House of Traditional Leaders shall be compensated in accordance with law.” In the case at bar, the parties do not contest that this constitutional provision grants the KSG the responsibility to determine and provide compensation payments to members of the HOTL. Paying compensation to such members, however, is not determining who is the rightful title bearer. The legislative power to appropriate funds necessarily includes the power to require procedural steps of ensuring that the intended recipients of the funds receive them. Making sure that only the true recipient of appropriated public funds receive them and no other is a legitimate business of the Defendant. Therefore, the Court finds that Plaintiffs’ claims on this issue are without merit.

The Court, however, is troubled by certain language in KSPL No. K8-179-2006. The law states that “[i]n the event that two or more persons claims to bear the same traditional title, then no honorariums shall be paid to any person until a final and unappealable judgment of the court determines the true and proper title bearer.”

This means every time two or more persons dispute over a traditional title, the *issue must be exclusively decided by the court* and only when the “final and unappealable judgment of the court” is issued can the honorariums be disbursed. In other words, once there is a title dispute, only the court can resolve it and only the “final and unappealable judgment” will settle the dispute once and for all.

This is an overbroad statute in that it impinges on the right of a clan, that owns its title in the first place, to resolve title disputes between and among its members as well as the role of the House of Traditional Leaders in the approval process. While steps to ensure that the right recipients of appropriation receive the funds are legitimate subject of the legislation, the statute becomes unconstitutionally overbroad when it vests the court with exclusive authority to resolve title dispute in derogation of the rights of the affected clans and the House of Traditional Leaders. Koror State Const. art. VI § 2(6).

And even when a title dispute is pending in court, the affected clan may still resolve the dispute and submit its chosen title bearer acceptable to the HOTL. Under this overbroad statute, it would appear that such settlement would be no avail absent the “final and unappealable judgment of the court.”

As written, the statute is like a bulldozer that levels down not only the dead and unwanted tree stumps, but treasured betel nut trees as well. The statute must be redrafted to cure only the ills without infringing on the right of a clan that owns and decides its title and the right of the HOTL to give its approval. The affected clan and the HOTL may exercise their rights in resolving title disputes at any time, even when the matter is pending in court.

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While the court has jurisdiction to hear and decide title disputes, *see Arbedul v. Diaz*, 9 ROP 218 (Tr. Div. 1989); *Nakamura v. Sablan*, 12 ROP 81, 85 (2005), the parties’ right to settle

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their disputes must never be infringed upon or taken away from them, even when the dispute has been lodged with the court. When title or customary disputes are resolved through traditional means, such resolutions can only strengthen traditions and customs.

Although § 20 of the statute provides for severability in case of defects, the court concludes that the offending language in § 12 cannot be cured by severing the offending language or without judicial legislating which the court refuses to engage in.

In conclusion, the offending language in § 12 of KSPL No. K8-179-2006 is hereby declared unconstitutionally overbroad. Defendant's Motion for Summary Judgment is denied. Plaintiffs' Cross-Motion for Summary Judgment is granted.