

Louis v. Nakamura, 16 ROP 144 (2009)
OBAKLECHOL FRANCISCO LOUIS, NGARAIBESACHEL,
Appellants,

v.

KUNIWO NAKAMURA, PELELIU STATE LEGISLATURE,
Appellees.

CIVIL APPEAL NO. 08-035
Civil Action No. 07-349

Supreme Court, Appellate Division
Republic of Palau

Decided: April 10, 2009

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Counsel for Appellants: Moses Y. Uludong

Counsel for Nakamura: J. Roman Bedor

Counsel for Peleliu State Legislature: Mark P. Doran

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice presiding.

PER CURIAM:

BACKGROUND

Appellants Francisco R. Louis (“Louis”) and Ngaraiibesachel (collectively, “Appellants”) seek review of the trial court’s grant of summary judgment in favor of Appellees Peleliu State Legislature, and Kuniwo Nakamura (collectively, “Appellees”). This case concerns the proper holder of the title Obaklechol and the corresponding seat in the Peleliu State Legislature. Upon the death of Obaklechol Ichiro Blesam, the Peleliu State Legislature appointed Okada Ongklungel to the seat in July of 2007, then replaced him with Appellee Nakamura in December 2007.¹ Appellants assert that Louis was chosen to be Obaklechol by Ngaraiibesachel, a council of chiefs of Ngerchol Hamlet in Peleliu State, and told by Peleliu State Legislature in 2007 that they would appoint him to that position. Appellants allege that Nakamura’s appointment violates the Peleliu State Constitution, custom, due process, and the promise to Louis.

¹Appellee Peleliu State Legislature asserts that Ongklungel was seated, not as Obaklechol, but as the second highest ranking chief of Ngerchol Hamlet, who is entitled to be seated if the highest ranking seat is vacant. Peleliu Brief at 4.

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This case has a long legal history; a dispute over the proper appointment of Obaklechol was first heard in court over twenty years ago. See *Blesam v. Tamakong*, Civ. Act. No. 52-81 (Tr. Div. 1984); *Blesam v. Tamakong*, 1 ROP Intrm. 578 (1989); *Ngetchab Clan v. Blesam*, Civ. Act. No. 05-296.

Informed by that case history, the trial court determined that because “Nakamura has been installed by the Peleliu State Legislature and has been approved by the Credentials Committee, as long as his appointment meets the customary standards established in the earlier cases, the political question doctrine precludes review by the Court of Peleliu State Legislature’s decision to seat Nakamura as Obaklechol.” Order at 3. With regard to the customary standards, the trial court determined that Obaklechol is selected by the Ourrot and other traditional leaders of Ngetpak Clan, rather than p.146 Ngaraiibesachel, and that there was no dispute that Nakamura was chosen for that title by Ngetpak Clan. As a result, the court determined that there was no dispute as to any issue of material fact and granted Appellee’s Motion for summary judgment. The court acknowledged that there was a factual dispute, who was accepted by Ngaraiibesachel as Obaklechol, but noted that this issue is not material, and thus did not prevent summary judgment.

STANDARD OF REVIEW

Summary judgment orders are reviewed *de novo*. *Becheserrak v. Eritem Lineage*, 14 ROP 80, 81 (2007). The Appellate Division must review “whether the trial court correctly found that there was no genuine issue of material fact and whether, drawing all inferences in the light most favorable to the nonmovant, the moving party was entitled to judgment.” *Id.*; *Mesubed v. ROP*, 10 ROP 62, 64 (2003).

DISCUSSION

Appellants make two assertions on appeal: 1) that the court erred in ruling that there was no issue of material fact and 2) that the court abused its discretion by failing to consider the customary standards for selection of Obaklechol.

A. Issues of Material Fact

The trial court determined that there was an outstanding dispute concerning who was accepted by Ngiraibesachel as Obaklechol, but that the dispute was not material to the case. The trial court noted that the *Blesam v. Tamakong* court found that Obaklechol was not appointed by Ngiraibesachel or any other representative of Ngetchab Clan, but by the members of Ngetpak Clan. For that reason, the trial court found that a dispute as to Ngiraibesachel’s actions was not material.

Additionally, the trial court noted that a dispute about Ngiraibesachel’s selection was not material because the Peleliu State Legislature’s appointment of Nakamura was unreviewable, due to the political question doctrine.

Prior to seating Nakamura as Obaklechol, the Peleliu State Legislature created a credential committee, composed of five (5) people, to investigate the dispute. That committee analyzed the legal, factual, and customary backgrounds of the dispute about Obaklechol and determined that Obaklechol is appointed by the Ourrot and Okdemaol of Ngetpak Clan. *See Nakamura Resp. Br., App. A at 3.* The committee also determined that the Ourrot and Okdemaol submitted Nakamura's name to the Ngiraibesachel and it was accepted. *Id.* at 4. Based on those determinations, the credential committee recommended that Nakamura be seated as Obaklechol. *Id.* at 5. The legislature then adopted a resolution, signed by 10 out of 14 legislators, to seat Nakamura. *Id.*, App. A1.

An issue is nonjusticiable under the political question doctrine when there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Baker v. Carr*, 369 U.S. 186, 217 (1962) (adopted by *Obeketang v. Sato*, 13 ROP 192, 195 (2006); *Francisco v. Chin*, 10 ROP 44, 49 (2003)). p.147 Article VII, Section 4 of the Peleliu State Constitution states that “[t]he state legislature shall be the sole judge of the qualifications of its members.” This clause parallels “the sole judge clause” of the Palau National Constitution, which has been interpreted to allow legislative discretion in determining which candidates were elected and qualified, but left any constitutional interpretation issues to the Court. PALAU CONST. Art. IX, § 10; *Francisco v. Chin*, 10 ROP 44, 49 (2003) (reserving to the Court the right to interpret the term “resident,” as it applies to eligibility for a Senate seat). In *Francisco*, the court found that it had the obligation to define constitutional terms relating to a candidate's eligibility for the Senate, but did not have the authority to apply those terms and rule on the candidate's eligibility because the sole judge clause put that responsibility in the hands of the Senate. 10 ROP at 52; *See Tudong v. Sixth Kelulul A Ngardmau*, 13 ROP 111, 115 (2006) (describing and applying the *Francisco* holding “that where the constitution empowers the legislature to make a factual determination, the interpretation of a constitutional term may raise a justiciable issue; however, the factual determination as to whether the facts of a particular case satisfy that constitutional term, once defined, is non-justiciable and lies with the legislature.”)

The idea that state legislatures have complete discretion in seating their members, when there is no need for constitutional interpretation, is also supported by *Obeketang v. Sato*, 13 ROP 192 (2006). In a case preceding *Sato*, the court had found that certain qualifications must be met before someone could bear the title Chief Tet ra Ollei (“Tet”). *Id.* at 193-4; *Tet Ra Ollei Uehara v. Obeketang*, 1 ROP Intrm. 267 (Tr. Div. 1985); *see also Sato v. Ngarchelong State Assembly*, 7 ROP Intrm. 79 (1998). In *Sato*, the Ngarchelong State Assembly determined that Sato was Tet, despite the fact that he did not meet the qualifications laid out by the court, and granted him the seat in the Assembly reserved for the holder of that title. 13 ROP at 194. The Appellate Division ruled that the Assembly's decision to seat Sato as Tet was “a nonjusticiable political issue to be resolved solely by the Assembly” despite the previous factual determination made by the court. *Id.* On those grounds, the court granted summary judgment in favor of Sato. *Id.* at 199. The situation before this court is comparable to the *Sato* case. In *Sato*, as here, there are no constitutional terms to be interpreted by the judiciary. Without any constitutional issue, the sole judge clause places all the responsibility and authority to determine potential members'

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eligibility with the legislative bodies.

Another important factor in determining that the issue is nonjusticiable is that the Peleliu State Legislature has already seated Nakamura as Obaklechol. *Compare Ngerul v. Chin*, 8 ROP Intrm. 263, 266 (2001) (holding that, because the Senate had not yet seated a candidate, the court still had jurisdiction over issues relating to the tabulation of election results or the qualification of candidates); *Tulop v. Palau Election Comm'n*, 12 ROP 100, 103 (2005) (sole judge clause in the Palau Constitution did not prevent review of a seated member's election because the House indicated that the resolution seating the member was contingent on the Court's decision). The *Tulop* court interpreted that contingent seating as an **p.148** invitation from the House to review the, otherwise non-reviewable, political issue. Unlike *Tulop* and *Ngerul*, where the elected member was not yet seated or seated conditionally, in the instant case the Peleliu State Legislature seated Nakamura without condition or contingency. As a result, Nakamura is a full member of the Peleliu State Legislature and protected under the literal terms of the sole judge clause from a judicial review of his qualifications. *See Sato*, 13 ROP at 194 (challenged member had been seated; review was inappropriate).

Under the aforementioned cases, the issue of Nakamura's appointment to the Peleliu State Legislature is unreviewable by the Court. ² Appellants have not alleged any issue of constitutional interpretation; ³ they claim only that the Legislature made incorrect factual and customary findings. ⁴ Whether or not the Court agrees with the Legislature's findings, they are properly decided by the Legislature, not by the Court. The sole judge clause of the Peleliu State Constitution is a "textually demonstrable commitment of the issue" to the Peleliu State Legislature. *Sato*, 13 ROP at 195. Because the case seeks resolution of a nonjusticiable political question, the trial court was correct to grant summary judgment in Appellees' favor.

²The case currently before the Court differs from the previous case, *Blesam v. Tamakong*, in that the previous case involved the title Obaklechol, but not the legislative seat. 1 ROP Intrm. at 578. Accordingly, the political question doctrine was not controlling.

³Appellants assert that they raise constitutional issues, but their pleadings do not reveal any such issues.

⁴Appellant argues that the earlier *Blesam* decisions established customary standards, which must be met in the appointment of Obaklechol. In support of this argument, Appellant highlights the trial court's phrasing "as long as [Nakamura]'s appointment meets the customary standard established in the earlier cases, the political question doctrine precludes review by the Court...." This argument must fail; there has not been a finding that the customary determinations from previous cases can bind these parties. Also, even if previous customary determinations were applied to this case, they would not prevent a grant of summary judgment because the case is nonjusticiable for separate reasons.

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CONCLUSION

For the foregoing reasons, there is no genuine issue of material fact and the trial court was correct in granting summary judgment to Appellees. The Order of the Trial Division is **AFFIRMED** as to the determination that the case is nonjusticiable due to the political question doctrine and to the result.