

*Moros v. Besong*, 1 ROP Intrm. 316 ( Tr. Div. 1986)  
**DENNIS MOROS,**  
**Plaintiff,**

v.

**SYLVERIUS BESONG, ET AL.,**  
**Defendants.**

CIVIL ACTION NO. 175-85

Supreme Court, Trial Division  
Republic of Palau

Decision re defendants' motion to dismiss

Decided: May 2, 1986

BEFORE: LOREN A. SUTTON, Associate Justice.

On November 13, 1985, Plaintiff filed Complaint alleging the commission of an Assault and Battery against himself by defendant Besong, acting at the time of the incident in his individual capacity and as a police officer of the Department of Public Safety, Republic of Palau.

Also complained against are Kaoru Brel, Director, Department of Public Safety and Lazarus E. Salii, President, Republic of Palau each in his official capacity.

After a number of procedural steps, taken in the normal course, defendant filed, on February 10, 1986, a Motion to Dismiss the Complaint on the ground that 14 PNC § 502(e) removes jurisdiction from the Court in the case of such a claim. Plaintiff filed, on February 28, 1986, a brief in opposition to the Motion to Dismiss which was responded to by defendant on March 14, 1986.

Subsequently, the parties waived oral argument and agreed that the Court would decide the issue on the basis of the memos of law and briefs submitted.

The sole issue presented is whether or not the Court has jurisdiction to entertain an action against the Government where it is alleged that a police officer in the scope of his official duties committed an assault and battery against the complainant.

The Government's contention that the Court is bereft of jurisdiction is grounded upon 14 PNC § 502(e) which lists **1317** exceptions to the Governments waiver of immunity and which reads in pertinent part:

The Trial Division of the High Court or Supreme Court shall not have jurisdiction under the foregoing § 501 of: . . . § 502(e). Any claim arising out of assault, battery, . . . .

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This section in the Palau National Code is taken en toto from the TT Code, Title 6, § 252(5) which in turn is a verbatim copy of a portion of the U.S. Fed. Tort Claims Act as it existed prior to 1976 when said act was amended by Congress to exclude “. . . investigation of law enforcement officers of the United States Government . . .” from the exception.

Neither the Trust Territory Government nor that of the Republic of Palau have taken legislative note of the 1976 Amendment to 28 U.S.C. § 2680(h) and thus the statute in Palau remains unamended and the Government of Palau immune from suit for an act of a police agent committed in the course and scope of his/her duties which amounts to an intentional tort.

As stated in *Santa v. Johnston*, (1974) 7 TTR 133:

The general rule in the United States, and accepted by this Court, is that public officers are immune from civil suit for money damages for negligent, non ministerial acts committed by them while acting within the scope of their authority and in discharge of their official duties. Citing: *David v. Cohen*, 407 F.2d 1268; *Baumon v. White*, 388 F.2d 756 and 63 Am. Jur. 2d. 798.

Further that:

The test is not the theory upon which the plaintiff's elect to proceed or how artfully the pleadings may have been drawn. Rather, the decisive factor is whether, in substance and essence, the claim arises out of assault and battery. Citing: *Nicholas v. U.S.*, 236 F. Supp. 260.

Here, it is clear that Assault and Battery forms the basis for plaintiff's claim.

**¶318** *Santa v. Johnston, supra*, is the only Trust Territory Case directly on point and while not of precedential weight, since it is a Trial Division holding, this case provides some guidance and is considered by the Court to be correct in its interpretation and application of the law as it exists in Palau today.

It is therefore the conclusion of the Court that the act complained of was a non ministerial act and that plaintiff's complaint, insofar as it is directed against Kaoru Brel, Director of Public Safety, Republic of Palau and Lazarus E. Salii, President, Republic of Palau should be dismissed as barred by 14 PNC § 502(e).

Likewise, the claim against Sylverius Besong, in his capacity as Police Officer must fall.

The claim, however, against Sylverius Besong in his individual capacity, remains within the jurisdiction of this Court although such claim must rest on the further allegation that this defendant acted outside the scope of his official duties for money damages to lie.

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Accordingly, it is the ORDER of this Court that this action be dismissed against Kaoru Brel, Director of Public Safety, Lazarus E. Salii, President of the Republic of Palau and Sylverius Besong acting in his capacity as Public Officer.

Plaintiff is entitled to seek relief from Sylverius Besong in his individual capacity and if desiring to proceed is ORDERED to amend the Complaint in a manner consistent with this ruling by no later than May 9, 1986 or suffer further dismissal.

Status Conference is ORDERED set for May 22, 1986, at 2:00 p.m.

The Court is aware that this ruling places every citizen of Palau in a position of disadvantage re the police power of the State at least to the extent that remedy from the Government may not be available where Tortious conduct on the part of police officers occurs.

This ruling also places each police officer in a position of jeopardy as he/she must then go about his/her duties with the knowledge that if a claim is made alleging the commission of Assault and Battery by an officer the officer could be “out in the cold” and required to defend with no expectation of financial or other support from the Government. To say that this situation may have a “chilling effect” upon the performance of an officer’s duty is an understatement.

¶319 This Court recognizes, however, that we are a government of separate powers and neither claims nor desires the power to exercise jurisdiction or supervision over the Legislature. On the other hand it is this Court’s hope that members of the OEK, having the best interests of the citizenry in mind and desiring that the police may perform their duties under the law without hesitation and without fear of being unsupported when claims of this nature are made against them, will exercise their powers under our constitution and consider appropriate amendments to 14 PNC Chap. 5 that shall bring our statute into line with the modern trend of the law.