

In re Oiwil and Josei, 1 ROP Intrm. 238 (Tr. Div. 1985)

**IN THE MATTER OF THE
APPLICATION OF NGETWAI F.
OIWIL AND DEBESOL JOSEI,
Petitioners.**

CIVIL ACTION NO. 95-85

Supreme Court, Trial Division
Republic of Palau

Order re petition for a writ of habeas corpus
Decided: July 11, 1985

Counsel for Petitioner: Johnson Toribiong
Counsel for Government: Eric Basse

BEFORE: MAMORU NAKAMURA, Chief Justice.

On Wednesday, June 26, 1985 at 11:00 a.m., Petitioners filed an application for a writ of habeas corpus pursuant to 9 TTC § 102. The Court, after determining that both counsel for Petitioners and counsel for the government were ready to argue the matter, scheduled a hearing for 4:00 p.m. the same day. Petitioners were represented by Johnson Toribiong, Esq., and the Republic of Palau was represented by Eric Basse, Assistant Attorney General.

After hearing oral arguments of both counsel the Court took the matter under advisement and released Petitioners on their own recognizance with explicit instructions for them to appear when ordered to do so by the Court.

Petitioners Ngetwai Felicia Oiwil and Debesol Josei were indicted in the Superior Court of the Territory of Guam for importation of marijuana in violation of 9 G.C.A. § 50(a)(1), as amended. After being released on bail, Petitioners left Guam and returned to the Republic of Palau. According to Petitioners, and undisputed by the government, the Petitioners were arrested on June 24, 1985, between 1:00 p.m. and 2:00 p.m. by local police officers. Petitioner Josei was arrested at the MacDonald Memorial Hospital, his place of employment; and Petitioner Oiwil was arrested at her residence at Ngesekes, Koror State. Petitioners were detained at Koror Jail until 11:00 a.m., on June 25, 1985, after which date they were held in constructive custody of the Republic of Palau.

Petitioners were arrested and detained solely on the basis of, and pursuant to, warrants of arrest issued by the Federal District Court for the Territory of Guam, dated June 21, 1985, in Criminal Cases Nos. 85-00005 and 85-00006 for the charge of Unlawful Flight to Avoid Prosecution in violation of 18 U.S.C. § 1073.

The sole issue before the Court is whether the warrants of arrest issued in this case by the Federal District 1239 Court for the Territory of Guam, of its own force, can be executed within

the Republic of Palau.

After considering the Petition and the briefs of counsel and after hearing oral arguments, the Court concludes that the warrants of arrest issued by the Federal District Court for the Territory of Guam, pursuant to 18 U.S.C. § 1073, have no force and effect in the Republic of Palau.

Petitioners argue that their arrest and detention are unlawful as the Federal District Court for the Territory of Guam and a judge thereof ha[s] no jurisdiction over Petitioners.

The government of the Republic of Palau contends that the Federal District Court's warrants of arrest can be executed within the Republic. Its contention is grounded on 18 U.S.C. §§ 1073 and 10.

18 U.S.C. Section 1073 states:

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State is, charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than \$5,000 or imprisoned not more than five years or both.

Violation of this section may be prosecuted **1240** only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

The government contends that 18 U.S.C. § 1073 is applicable to the Republic of Palau by virtue of 18 U.S.C. § 10 which defines "interstate commerce" as "commerce between one state, territory, possession or D.C., and another state, territory, possession or D.C."

This Court finds that, for the purpose of 18 U.S.C. §§ 1073 and 10, that subject matter jurisdiction is lacking. That the Republic of Palau is beyond the reach of federal statutes of this

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type was made explicit in *Gale v. Andrus*, 643 F.2d 826 (1980). In that case, the United States Court of Appeals for the District of Columbia, in finding that the Freedom of Information Act did not apply to the Trust Territory of the Pacific Islands, held that the “laws of the United States do not automatically apply to the Trust Territory unless they are specifically made applicable by Congress.” (Emphasis added) *Id.* at 828. Additionally, that court noted that the U.S. Congress, when passing laws which affect the Trust Territory of the Pacific Islands, is constrained by the provisions contained in the Trusteeship Agreement, entered into by the United States and the United Nations that vested the United States with primary responsibility for nurturing the self-government of the Trust Territory. *Id.* at 830.

Article X [, Section 1] of the Constitution of the Republic of Palau vests judicial authority with the unified [judiciary] of Palau. The establishment of functioning courts pursuant to the Republic of Palau Constitution and the certification of these courts on December 23, 1981, by then Chief Justice of the Trust Territory High Court, the Honorable Harold W. Burnett, effectuated the transfer of judicial functions as provided for by Section 5 of Secretarial Order No. 3039. The creation and recognition of a separate functioning judicial system for the Republic of Palau precludes the enforcement of laws and regulations that are not intended to have territorial effect within the Republic.

1241 1 TTC § 101 specifies what laws are applicable to the Trust Territory. It states, in part:

The following are declared to be in full force and have the effect of law in the Trust Territory:

. . . (2) Such laws of the United States as shall by their own force, be in effect in the Trust Territory, including the executive orders of the President and orders of the Secretary of the Interior. (Emphasis added).

It cannot be argued that 18 U.S.C. §§ 1073 and 10 apply to the Trust Territory by their own force when nowhere within the statutes is the Trust Territory specifically mentioned. To hold otherwise would be inconsistent with the purpose and intent of the Trusteeship Agreement, as explained in *Gale v. Andrus*, *supra*.

The government contends that excluding the Trust Territory from the scope of 18 U.S.C. §§ 10 and 1073, would render the federal statutes virtually meaningless. To the contrary, §§ 10 and 1073 remain fully applicable to all the states of the United States, its territories, possessions, or D.C.

Congress has passed numerous Acts that are applicable to the Trust Territory, each of which have specific provision for the inclusion of the Trust Territory. The Occupational Safety and Health Act, 29 U.S.C.S. § 651 *et seq.*, the Endangered Species Act, 16 U.S.C.A. § 1531 *et seq.*, the Oil Pollution Casualties on the High Seas Act, 33 U.S.C.A. § 1401 *et seq.*, and the Older Americans Act of 1965, 42 U.S.C.A. § 3001 *et seq.*, are just a few examples. It is also noteworthy that after the initial enactment of the Justice System Improvement Act, 42 U.S.C.S. § 3721 (P.O. 90-351), it was necessary for Congress in 1976 to pass an amendment in the form of

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P.L. 94-503, § 129(c), in order to bring the Trust Territory under the Act's scope. *See* 42 U.S.C.A. § 3781.

The government next argues that 5 TTC § 5 requires the court of the Republic of Palau to enforce the warrants of arrest issued from the Federal District Court of Guam. Section 5 reads:

Any action taken by a court or judge thereof outside the Trust Territory or the territorial jurisdiction of the court shall **1242** be valid and effective within the Trust Territory to the same extent as if taken therein and within the territorial jurisdiction of the court.

The government's reliance on 5 TTC § 5 is misplaced. Section 5 must be read within the context of the whole title. The purpose of Section 5 was to allow Trust Territory judges to take action outside of the Trust Territory or the territorial jurisdiction of the court, that would be valid and effective within the Trust Territory as if taken therein. Section 5 applies only to Trust Territory judges and does not infer that judges from other jurisdictions have judicial authority within the Trust Territory.

The government also argues that 18 U.S.C. § 5 and Federal Rules of Criminal Procedure 4(d)(2) are sufficient to require the Republic of Palau to execute the warrant of arrest in question. The Court disagrees with this proposition.

18 U.S.C. § 5 states:

The term "United States", as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

Federal Rules of Criminal Procedure 4(d)(2) states:

(2) Territorial limits. The Warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

For the reasons stated above, this Court finds that 18 U.S.C. § 5 and Federal Rules of Criminal Procedure 4(d)(2), are without specific inclusionary language and are thus not applicable to the Republic of Palau. It should be emphasized that the Republic of Palau has its own court rules of criminal procedure.

The government's final argument is that the Republic of Palau is mandated by 28 U.S.C. § 1738 to give full faith and credit to the federal arrest warrant.

Since neither 28 U.S.C. § 1738 nor any other related section specifically include the Trust Territory of the Pacific Islands, the same reasoning that made Title 18, §§ 10 and 1073 inapplicable to the Trust Territory applies to Section 1738.

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¶243 In passing, it should be mentioned here that the Republic of Palau has its own criminal extradition statutes. *See* Palau Criminal Case No. 291-82, Criminal Appeal No. 1-83, *In re Extradition of Fenally Seklii*.

For all of the reasons stated herein above, the Writ of Habeas Corpus, pursuant to Title 9, Chapter 3 of the Trust Territory Code and Article IV, Section 7, of the Constitution of the Republic of Palau, is hereby granted.