

Toribiong v. Election Commissioner, 1 ROP Intrm. 265 (1985)

**FRANCIS TORIBIONG and
YUKIO SHMULL,
Appellants,**

v.

**ELECTION COMMISSIONER,
CHAIRMAN, ELECTION BOARD,
and JOHN DOES I thru X
Appellees,**

and

**REPUBLIC OF PALAU,
Real Party in Interest.**

CIVIL APPEAL NO. 3-85
Civil Action No. 10-85

Supreme Court, Appellate Division
Republic of Palau

Appellate decision

Decided: October 16, 1985

Counsel for Appellee: John K. Rechucher
Counsel for Appellant: Phillip Isaac, AAG

BEFORE: MAMORU NAKAMURA, Chief Justice; ALAN L. LANE, Associate Justice;
LOREN A. SUTTON, Associate Justice.

PER CURIAM:

This Motion for Temporary Restraining Order is filed in the context of and under the Civil Appeal numbered 3-85 and is grounded upon ROP R. App. Pro. 8. It is therefore viewed by this Court as a Motion For Stay of the lower Court's Judgment in Civ. Act. No. 10-85.

In that case the lower Court granted defendants/appellee's Motion to Dismiss on the ground that jurisdiction was lacking in the Court to interfere with the decision of the National Congress that certain person were qualified to sit as members of that body, the OEK being the **1266** sole judge thereof pursuant to Republic of Palau Constitution, Article IX, § 10.

Said members were seated, however subsequent events have created a vacancy in one such seat and a special election is currently set for October 17, 1985 (Senatorial Election, 6th District).

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Appellant seeks to either have said election stayed or the count and result delayed, pending the appeal in Civ. App. No. 3-85.

No such motion has been made before the Trial Court though ROP R. App. Pro. 8 requires that such be the procedure, “. . . ordinarily . . . [.]”

The question before this Court is whether Appellant may come in equity and achieve by way of an order in Restraint an Appellate Judgment which is presently pending before us in law. We think not. A decision by this Court either granting or denying the Motion for Temporary Restraining Order would have the effect of a declaration at the appellate level that the Trial Court is vested with jurisdiction, and would therefore be Res Judicata on the pending appeal in law. Where a remedy in law exists the Court will not entertain a prayer in equity.

The Motion for Temporary Restraining Order is ORDERED and the same is DENIED.