

**LEE T. OTOBED, SILES
NGIRAREMIANG, RIDEP R.
EMESIOCHEL, RAZI C-BOY
RIMIRICH, ELIN R. KLOULECHAD,
FRANCISCA OTONG, JOHNSON
EMESIOCHEL, and IBUUCH
TOMOICHI,
Appellants,**

v.

**PALAU ELECTION COMMISSION;
SANTOS BORJA, in his official capacity
as the Chairman of the Palau Election
Commission; and REPUBLIC OF
PALAU, Represented by JOHNSON
TORIBIONG, in his official capacity as
President of Palau,
Appellees.**

CIVIL APPEAL NO. 12-011
Civil Action No. 11-148

Supreme Court, Appellate Division
Republic of Palau

Decided: October 18, 2012

[1] **Appeal and Error:** Standard of Review

Constitutional interpretation is a matter of law which is reviewed de novo.

[2] **Appeal and Error:** Standard of Review

A trial court's ruling on a motion for summary judgment is reviewed de novo.

[3] **Constitutional Law:** Interpretation

When analyzing a constitution, the Court begins its analysis with the language of the disputed provision itself.

[4] **Constitutional Law:** Interpretation
Where a constitution has both English and Palauan versions, a court should not lightly conclude that there is a conflict between the two versions of the Constitution but should rather strive, if possible, to find a single interpretation that gives effect to both.

Counsel for Appellant: Siegfried Nakamura
Counsel for Appellee: Alexis Ortega

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and C. QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

PER CURIAM:

Appellants filed a motion for summary judgment below. The Trial Division construed certain provisions of the Ngatpang State Constitution and ruled against Appellants. For the following reasons, the decision of the Trial Division is reversed.

BACKGROUND

The Trial Division did not hold a hearing on the motion for summary judgment from which Appellants now appeal. The core facts are not in dispute and are drawn from the Trial Division’s Decision and Order and from the record before the trial court.

I. Ngatpang State Constitution and 2010 Election.

Appellants in this case are would-be Ngatpang State legislators. In the 2010 elections, each Appellant received a majority of the votes cast in Ngatpang State. The Palau Election Commission (“PEC”) interpreted the Ngatpang State Constitution to require that legislators be elected by a majority of the registered voters instead of a majority of the votes cast. PEC certified the election results but, based on its interpretation of the Constitution, refused to seat the Appellants as legislators.

The English and Palauan version of Article IV, Section 2 of the Ngatpang State Constitution providing for the election of Ngatpang legislators is as follows, with emphasis added:

**Article IV, Section 2
Legislature**

Palauan: A rechedal a mo mengilt er a rubdois er a rehad el sengkyo er a beluu er a Ngatpang el mo eua (4) el rak a klsir.

English: Members shall be elected at large in the general or special election by the majority of registered voters of Ngatpang State who voted in such election for the term of four (4) years.

II. Palau Election Commission.

PEC determined that there was a conflict between the English and Palauan versions of Article IV, Section 2 (“Section 2”), of the Ngatpang State Constitution. The

English version of Section 2 provides that legislators are to be elected “by the majority of the registered voters of Ngatpang State *who voted in such election.*” Emphasis added. In contrast, PEC interpreted the Palauan version of Section 2, which reads in relevant part, “er a rubdois er a rechad el sengkyo,” to mean that legislators must be elected by the “majority of registered voters,” whether or not such registered voters actually cast a vote in the election. PEC determined the Palauan version should control over the English version based on Ngatpang law. Because none of the Appellants obtained enough votes to satisfy the “majority of registered voters” threshold, PEC refused to seat Appellants as Ngatpang State legislators.

III. Trial Division.

Appellants sued PEC, and on February 1, 2012, the Trial Division issued its Decision and Order denying Appellants’ motion for summary judgment and dismissing Plaintiffs’ complaint. Like PEC, the Trial Division found a conflict between the Palauan and English version of Article IV, Section 2, of the Ngatpang State Constitution, and it concluded the Palauan phrase “er a rubdois er a rechad el sengkyo” could not be interpreted to include the English phrase “who voted in such election.” In light of the conflicting language, the Trial Division looked to Article VI, Section 3, of the Ngatpang State Constitution (“Section 3”), concerning the election of a governor, for guidance on how to interpret the Palauan version of Section 2. Article VI, Section 3, of the Ngatpang State Constitution provides as follows, with emphasis added:

Article VI, Section 3 Governor

Palauan: A governor a mengilt er a rubdois el chad el sengkyo er a beluu er a Ngatpang el mo euang (4) el rak a klsel e diak el bol betook er a erung el kabechebech.

English: Governor is elected by the majority of registered voters of Ngatpang State for the term of four (4) years and for not more than two (2) consecutive terms.

Based on the trial court’s conclusion that the language in the Palauan versions of Section 2 and Section 3 are identical, the court held that the translation of the phrase “er a rubdois er a rechad el sengkyo” is unambiguously defined by the English translation of Section 3, which provides for election of a governor by “the majority of the registered voters.”

To harmonize the conflicting English and Palauan versions of Section 2 in accordance with established rules of constitutional interpretation, the Trial Division struck the words “who voted in such election” from the English version, thereby requiring that legislators be elected by “a majority of registered voters.”

In support of its interpretation that the English phrase “who voted in such election” was “misplaced” and was “inserted by mistake,” the Trial Division noted that Section 2’s English phrase “who voted in such election” does not appear anywhere else in either the English or Palauan versions of the Ngatpang State Constitution. It also found the English version of Section 2

“terribly awkward” because it expressed a concept that was more easily articulated as “majority of votes cast” rather than by reference to registered voters “who voted in such election.” The trial court concluded: “Common sense dictates that one does not choose a convoluted way of expressing a well-known practice when there exists a better and well-known way to express it.” Tr. Div., at 5.

Moreover, the trial court reasoned that because no other state in Palau requires the election of its representatives by a majority of registered voters, “it follows that the framers of the [Ngatpang State] Constitution deliberately went out of their way to be different,” and their intent to require the higher election threshold “is clear from the very text of the document.” Tr. Div., at 6. Thus, the Trial Division declined to turn to extrinsic evidence in the form of, among other things, affidavits by the framers of the Ngatpang State Constitution.

Accordingly, the Trial Division denied Appellants’ motion for summary judgment and dismissed the case.

STANDARD OF REVIEW

[1, 2] Constitutional interpretation is a matter of law. *See The Ngaimis v. Republic of Palau*, 16 ROP 26, 28 (2008) (reviewing constitutional interpretation de novo); *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 158 (2006) (reviewing de novo a disposition of summary judgment based on interpretation of state constitution). A lower court’s conclusions of law are reviewed de novo. *See Wong v. Obichang*, 16 ROP 209, 211-12 (2009); *Roman Tmetuchl Family*

Trust v. Whipps, 8 ROP Intrm. 317, 318 (2001). Specifically, a trial court’s ruling on a motion for summary judgment is reviewed de novo, “employing the same standards that govern the trial court and giving no deference to the trial court’s findings of fact.” *Gibbons*, 13 ROP at 158 (citing *ROP v. Reklai*, 11 ROP 18, 20-21 (2003)).

ANALYSIS

The constitutional interpretation issue on appeal is whether, under Article IV, Section 2, of the Ngatpang State Constitution, legislators must be elected by a majority of votes cast in the election or by a majority of the registered voters in Ngatpang State.

The parties submitted substantial briefs in support of their interpretations of Section 2, which include extensive reference to various canons of constitutional interpretation, extrinsic evidence, and other provisions of the Ngatpang State Constitution.¹ This Court has carefully considered the Trial Court’s decision and the extensive briefs filed on appeal. Because this Court rules that the plain language of Section 2 is not ambiguous, the various

¹ For example, much reference is made to Article VI, Section 3, of the Ngatpang State Constitution, which addresses the election of a governor in Ngatpang. The Court notes that both the English and the Palauan versions of Section 3 are worded differently from both versions of Section 2. “[W]here two parts of a constitution use different language to address the same or similar subject matter, a difference in meaning is presumed as a result of using the different language.” 16 Am. Jur. 2d *Constitutional Law* § 79 (2009). In any event, for the reasons set out herein, the Court concludes it is unnecessary to turn to Section 3 under these circumstances.

arguments that presuppose ambiguity need not be addressed.

[3, 4] When analyzing a constitution, the Court begins its analysis with the language of the disputed provision itself. *See Seventh Koror State Legislature v. Borja*, 12 ROP 206, 208 (Tr. Div. 2005) (“In the ordinary course of constitutional interpretation, the Court begins with the constitutional language and, only if that language is ambiguous, does it then turn to constitutional history and other secondary evidence.”); *Senate v. Nakamura*, 7 ROP Intrm. 212, 214 (1999) (same). Specifically, where a constitution has both English and Palauan versions, a court “should not lightly conclude that there is a conflict between the two versions [of the Constitution] but should rather strive, if possible, to find a single interpretation that gives effect to both.” *Borja*, 12 ROP at 208 (“[A] construction must be sought which will bring the terms of the two languages into harmony with the other.”). *See also* 16 Am. Jur. 2d *Constitutional Law* § 66 (“[H]armony in constitutional construction should prevail whenever possible Every effort should be made to construe constitutional provisions harmoniously, and no provision should be construed to nullify or impair another.”). It is “[o]nly where an irreconcilable conflict exists between different provisions of the constitution [that] the office of judicial construction is to determine which shall prevail.” *Id.* at § 67.

Here the Court concludes the language of the English version of Section 2, which provides for election “by the majority of registered voters of Ngatpang State who voted in such election.” is not ambiguous. Emphasis added. The Court must give

meaning to the adjective clause “who voted in such election.” That adjective clause modifies the preceding noun-phrase “registered voters.” Thus, the entire subordinate clause “by the majority of registered voters of Ngatpang State who voted in such election” states plainly, even if inartfully, that legislators are elected by a majority of the votes cast.

The Court also concludes that, as to Section 2, the English phrase, “by the majority of the registered voters of Ngatpang State who voted in such election” can be translated in Palauan as “er a rubdois er a rechad el sengkyo er a beluu ra Ngatpang”. Technical differences are insignificant and, ultimately, are reconcilable because a single interpretation that gives effect to both versions is possible. In accordance with the Court’s duty to harmonize the English and Palauan versions of a constitution, the Court concludes the English and Palauan versions of Section 2 mean the same thing: under Article IV, Section 2, of the Ngatpang State Constitution, candidates for the legislature in Ngatpang State are elected by a majority of the registered voters of that State who voted in the election. This holding effectuates the intent of the drafters of the Ngatpang State Constitution based on a plain reading of Section 2, and further analysis of the language of Section 2 or other sections of the Constitution is not required.

CONCLUSION

For the foregoing reasons, the February 1, 2012, Decision and Order of the Trial Division denying Appellants’ motion for summary judgment is **REVERSED**.