

*Kingon v. ROP*, 2 ROP Intrm. 72 (1990)

**GARY P. KINGON,**

**Appellee,**

**v.**

**REPUBLIC OF PALAU,**

**Appellant.**

CIVIL APPEAL NO. 18-88

Civil Action No. 219-86

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: June 22, 1990

Counsel for Appellee: Jonas W. Olkeriil, T.C.

Counsel for Appellant: Shad D. Priest, AAG, and Mark Horlings, AG

BEFORE: MAMORU NAKAMURA, Chief Justice; ROBERT A. HEFNER, Associate Justice;  
FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

This appeal contests the Trial Court's judgment that although Defendant had lawfully terminated Plaintiff's employment, it was estopped from denying the enforceability of the unfulfilled portion of the employment contract<sup>1</sup> and, therefore, Plaintiff was entitled to \$7,000.00 in damages.

The Trial Court found that Plaintiff was employed by Defendant from May 9, 1986 to November 4, 1986, as a member of the **L73** Vice-President's staff. Plaintiff was paid for the six months he worked and was given severance pay in the form of an additional month's pay. However, the Court found that Plaintiff's term of employment was supposed to run until May 8, 1987, per an employment contract signed on May 7, 1986.

The employment contract is crucial to this case because by its terms, Plaintiff was hired as an independent contractor. That status would seem to make his termination a breach of contract, and to subject Defendant to liability for damages in the amount of the unpaid contract price. If one goes by the Personnel Action Form [PAF], however, Plaintiff had a very different status as a staff appointee whose employment was terminable at will, without subjecting his employer to liability. The issue is whether Plaintiff was an independent contractor or a staff appointee.

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<sup>1</sup> The term "employment contract" as used herein refers to the written contract signed by the parties on May 7, 1986.

*Kingon v. ROP*, 2 ROP Intrm. 72 (1990)

The Trial Court's ruling was clear:

In deciding the partial summary judgment for the defendant, the court held that the plaintiff had been appointed to his position as staff assistant to the Vice-President and accordingly, under 2 PNC 111, the Vice-President could lawfully terminate plaintiff's employment at will. (Memorandum Opinion, page 3).

This finding is fully supported by the evidence because the employment contract did not comply with the statute, as 40 PNC § 401 makes any contract void which purports to obligate public funds without a certification "on the document to be used as a contract" **¶74** that funds are available to complete the contract. There was a place on "the document to be used as a contract" for such a certification, but it was unsigned, so the contract was void ab initio. *Gibbons v. Republic of Palau, et al.*, 1 ROP Intrm. 634, 642 (App. Div. June 1989); *Orion Telecommunications, Ltd. v. PNCC, et al.*, 1 ROP Intrm. \_\_\_\_ (App. Div. June 16, 1989). A void contract is no contract at all; it binds no one and is a nullity. *Chrisistomo v. Trust Territory*, 7 TTR 375, 383 (App. Div. 1976). But the Trial Court ruled that the employment contract complied with the requirements of 40 PNC § 401 because the PAF stated in Item 4 that Plaintiff's employment status was "exempt" and contained a signature in Item 16 for "District Program & Budget."

Such a ruling is inconsistent with this Court's decision in *Towai v. Republic of Palau*, 1 ROP Intrm. 658, 662-663 (App. Div. Sept. 1989), where we said:

Plaintiff contends that the PAF that was executed at the same time as his employment contract, which itself did make reference to the PAF, should be read as part of his employment contract. Plaintiff has misunderstood the purpose of the PAF, which is to implement government policies and regulations as well as contractual arrangements. The PAF reflects and implements rights derived from other sources. It does not independently establish rights.

The lesson to be learned from Towai is that government employment contracts contain the terms of employment, regardless of what is contained in the corresponding PAF. In other words, the contract **¶75** speaks for itself, and the PAF cannot be used to modify the terms of the contract.

As applied in the instant case, the Towai rationale prevents the PAF from being used to cure any deficiency in the employment contract itself. The Trial Court's ruling that the PAF could be used to cure the defect in the contract was, therefore, incorrect.<sup>2</sup>

We note that the Trial Court's conclusion that Plaintiff was a staff appointee implies that Plaintiff's employment was not pursuant to the employment contract. By reason of its failure to be approved by the National Director of Program, Budget, and Management, the employment

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<sup>2</sup> We need not consider the argument that an employment contract with the President or Vice-President for a specified period violates 2 PNC 211.

*Kingon v. ROP*, 2 ROP Intrm. 72 (1990)

contract was void as being in violation of 40 PNC § 401. The Trial Court's error with regard to the effect of the PAF led to a second error, namely that the employment contract could be used to determine whether damages were allowable and the extent thereof. Given that the employment contract was void, it had no legal existence, and was incapable of being used for any purpose.

Plaintiff's employment, therefore, was pursuant to an oral agreement which was memorialized in the PAF. The terms of this agreement regarding salary, term of employment, starting date, and Plaintiff's status differ from those of the employment contract. ¶76 The crucial difference is that under the employment contract. Plaintiff would have been "employed" for one year and could possibly have sued for breach of contract if he were terminated before the year was up and he was not paid all of his annual salary. Under the terms and limitations of the employment he actually accepted, however, his term of employment was "not to exceed one year" and he could be terminated anytime at the will of the Vice-President without entitling Plaintiff to any further compensation.

The application of the doctrine of estoppel to this case is without merit in law or fact. There never was a valid contract for one year or for any other clearly designated period. Plaintiff was hired for a period "not to exceed one year," which should have given him reason to believe that the length of his employment might be less than one year. Given that the Trial Court's rulings in this matter were based on the pleadings, motions, memoranda, and arguments of counsel, there was no source of fact from which it could reasonably conclude that the Government contracted with Plaintiff in bad faith. That is, the Government must be held to have withheld information from Plaintiff concerning 2 PNC §111. That is the premise upon which the Court's conclusions regarding estoppel would have to be made, but no bad faith was found at the time of the agreement. Instead, the Court found that the Government acted unfairly at the time it terminated Plaintiff's employment (Memorandum Opinion, p.6). ¶77 This is inconsistent with its previous ruling that "under 2 PNC §111, the Vice-President could lawfully terminate Plaintiff's employment at will." It is also illogical, in that Plaintiff could not possibly have relied to his detriment in November 1986 on something which occurred in May 1986.

The Government was within its rights to terminate Plaintiff's employment as it did, and did not incur any liability thereby. Accordingly, the judgment below is REVERSED and the suit is DISMISSED.