

*Ngarchelong State Assembly v. Midar*, 8 ROP Intrm. 216 (2000)  
**NGARCHELONG STATE ASSEMBLY,**  
**Represented by its Speaker, Tadao Ngotel,**  
**Appellant,**

v.

**SPIS MIDAR,**  
**Appellee.**

**CIVIL APPEAL NO. 99-30**  
**Civil Action No. 99-21**

**Supreme Court, Appellate Division**  
**Republic of Palau**

Argued: August 31, 2000  
Decided: September 11, 2000

Counsel for Appellant: Yukiwo P. Dengokl

Counsel for Appellee: Moses Y. Uludong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
JANET HEALY WEEKS, Part-Time Associate Justice

NGIRAKLSONG, Chief Justice:

Appellee Spis Midar brought this action challenging the Ngarchelong State Assembly's practice of allowing its members who are seated because they are chiefs to appoint substitutes to act in their stead when they are unable to attend legislative sessions. The trial court held that the practice violated Article XI, section 2 of the Ngarchelong Constitution. We reverse.

### **Background**

Article VII of the Ngarchelong Constitution establishes the Assembly as the legislative branch of the Ngarchelong State Government, and provides for each of Ngarchelong's municipalities to be represented in the Assembly by its chief and by one elected representative. Ngarchelong Const. Art. VII, sec. 2. Article XI of the Ngarchelong Constitution, entitled "Customs and Traditions," provides that,

[i]n the event that the seat of a chief of any municipality becomes vacant due to death, disability, or sickness, the second ranking chief of that municipality shall succeed to assume the responsibilities of the absent chief until a new chief is appointed according to custom.

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Ngarchelong Const. Art. XI, sec. 2. Midar brought this action contending that under this provision, the second-ranking chief shall assume an absent chief's duties. Thus, Midar argued, the Assembly's practice of permitting chiefs to send substitutes other than second-ranking chiefs to the Assembly violated Article XI, section 2.<sup>1</sup>

At trial, the Assembly presented evidence of a longstanding custom whereby a chief who is unable to attend to his duties appoints a representative, known as a *merolel*, to act in his stead. The Assembly invoked the Ngarchelong Constitution's Preamble, which states that the Constitution was intended, *inter alia*, to "preserve our heritage and traditions . . . and to recognize . . . our adherence to . . . customs." Thus, the Assembly argued, absent an express provision prohibiting a chief from sending a *merolel* to the Assembly, the practice was not unconstitutional. The Assembly further argued that Article XI, **L217** section 2 was inapplicable in this case where there was no vacancy in the seat of any chief.

The trial court found that, "the practice of the Ngarchelong State Assembly in not seating second-ranking chiefs in the absence of the first ranking chief is not in harmony with Article XI of the Constitution of Ngarchelong." The court then issued a Declaratory Judgment holding that the practice of permitting chiefs to send designated substitutes to the Assembly violated Article XI, section 2, as "[t]he only persons who may assume the legislative responsibilities of chief are the second ranking chiefs . . . per section 2." Appellant brought this appeal, contending that the court erred in applying Article XI, section 2 where there was no vacancy in the seat of any chief.<sup>2</sup>

### Analysis

The scope of Article XI, section 2 and its applicability here are questions of law that we consider *de novo*. See *Becheserrak v. ROP*, 8 ROP Intrm. 147, 147 (2000). According to the plain language of Article XI, section 2, that provision applies, "[i]n the event that the seat of a chief of any municipality becomes vacant," and then only until "a new chief is appointed pursuant to custom." Based on this language, we believe that this provision is applicable not when a chief is merely ill, disabled, or otherwise unable to attend to his duties, but where there is no longer anyone bearing the chief's title. In this case, it was undisputed that all of the chiefs' positions were filled. Thus, their seats were not vacant, and Article XI, section 2 is inapplicable.

Midar attempts to obscure the distinction between a chief's absence from a legislative session and a vacancy in the seat of a chief by contending that Article XI, section 2 "addresses . . . absence or vacancy of a seat in the assembly." We disagree. Article XI addresses the role of traditional chiefs generally, with no reference to their legislative duties. Accordingly, a vacancy in "the seat of a chief" does not arise under Article XI, section 2 when a chief is merely absent from the Assembly, but rather arises only when the chief vacates his position as

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<sup>1</sup> Midar also challenged his ejection from the Assembly as the product of an unlawfully constituted Assembly. The trial court granted summary judgment to the Assembly on that issue. Midar has not raised this issue on appeal.

<sup>2</sup> Appellant raised additional objections to the trial court's application of Article XI, section 2, but in light of our holding that Article XI, section 2 is inapplicable, we need not consider these other objections.

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chief altogether.<sup>3</sup> The trial court therefore erred in applying Article XI, section 2 in this case where there was no vacancy in the seat of any chief.<sup>4</sup>

### **Conclusion**

For the foregoing reasons we REVERSE the Trial Division's Declaratory Judgment holding that the practice of permitting chiefs to send designated substitutes to the Assembly violated Article XI, section 2 of the Ngarchelong Constitution.

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<sup>3</sup> Article VII further confirms the clear distinction between mere absence from a legislative session and vacancy of a position. Article VII addresses absence by permitting the Assembly to compel the attendance of any absent members, and addresses vacancy by providing for special elections to fill vacant seats of elected Assembly members.

<sup>4</sup> Midar's complaint challenged the constitutionality of the Assembly's practices on grounds other than Article XI, section 2, but these issues were not developed or adjudicated below, and the parties have not addressed them on appeal.