

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
2016 MAY 10 AM 9 09

SUPREME COURT
OF THE REPUBLIC OF PALAU

OBAK'L DELOLK ISAO SINGEO,
RENGUUL DONALD HARUO, OBAK'L
LECHOL KUNIWO NAKAMURA,
Legislator at Large HARLAN NICHOLAS,
Legislator of Ngerchol Hamlet ANDRES
NAPOLEON, Legislator at Large PETER
NAPOLEON, Legislator at Large EUFRASIA
REMELIIK, YUKIWO SHMULL, and
POSTOL REMELIIK,

Appellants,

v.

Legislator at Large BILLY REKEMEL,
Legislator at Large FLORAH TEWID,
Legislator of Ngerdelolk Hamlet CORDINO
SOALABLAI, Legislator of Ngesias Hamlet
MEISAI CHIN, Legislator of Ngerkkeulk
Hamlet EDBURGH MABEL, and Legislator
of Teliu Hamlet CHARLES REKEMEL, on
behalf of themselves and the people of Peleliu,

Appellees.

CIVIL APPEAL NO. 16-008
(Civil Action No. 16-006)

OPINION

Decided: May 10, 2016

Counsel for Appellants: S. Nakamura
Counsel for Appellees: T. Hutzler

BEFORE: KATHLEEN M. SALII, Associate Justice; C. QUAY POLLOI, Associate
Justice Pro Tem; and KATHERINE A. MARAMAN, Part-Time Associate
Justice

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate
Justice, presiding.

PER CURIAM:

Defendants in the action below appeal the Trial Division's judgment in favor of Plaintiffs. For the reasons below, we **AFFIRM**.¹

BACKGROUND

The Peleliu State Legislature is composed of 15 members: five hamlet chiefs and ten elected members. Appellants are a group of nine purported Peleliu legislators in the current 12th Session of the Peleliu State Legislature ("12th PSL"). Appellees are a group of six purported Peleliu legislators in this session.²

The six Appellees assembled at the Peleliu State Building on January 1, 2016, where a Supreme Court Justice administered the oath of office. Appellees conducted no other business at this assembly.

On the same day, eight of the nine Appellants assembled in Koror,³ where the Supreme Court Chief Justice administered the oath of office. Of these eight, one is Appellant Yukiwo Shmull, a claimant to the hamlet chief seat of Uchelsias, a seat which remained vacant during the 11th PSL. The reason for this vacancy is that the 11th PSL found there to be a dispute regarding the rightful holder of the Uchelsias title. Before the

¹ We determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

² It bears mention that no two parties to this case claim the same seat on the Peleliu State Legislature. Accordingly, it is wholly possible that all 15 parties to this case are legislators on the 12th PSL. We refer to them as "purported" legislators only to make clear that we take no view on the matter.

³ There appears to be no dispute that Appellant Postol Remeliik, though named as a Defendant in this action, was not present at either group's January 1 assembly.

swearing-in, the Koror group⁴ conducted several pieces of legislative business, including adopting temporary rules, naming a temporary Speaker, establishing a Credentials Committee, adopting the Credentials Committee's report, and approving the credentials of 11 legislators, including those of Appellant Shmull as Uchelsias, purportedly resolving any remaining dispute as to the proper holder of the Uchelsias seat. The eight legislators in Koror then took the oath of office and voted to adopt permanent rules and select presiding officers.

On January 12, 2016, the 12th PSL met for its first regular session. At this meeting, the Peleliu group stated its objections to the January 1 assembly in Koror and contended that any business conducted at the meeting was null and void. The objections were not resolved; instead, business was conducted notwithstanding the Peleliu group's objections.

Their objections unresolved, the Peleliu group filed suit, seeking to invalidate the Koror group's swearing-in and all of the business that the Koror group conducted on January 1 and that the PSL has conducted since then. The Trial Division concluded that the Koror group lacked the requisite eight members to constitute a quorum as required

⁴ For convenience, this Decision will follow the Trial Decision's usage and refer to the two groups respectively as the "Peleliu group," or Plaintiffs/Appellees; and the "Koror group," or Defendants/Appellants.

by Article VIII, Section 8 of the Peleliu State Constitution, and accordingly granted Appellee's request for declaratory relief.⁵ This appeal followed.

STANDARD OF REVIEW

A trial judge decides issues that come in three forms, and decisions on each type of issue require a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *See Remengesau v. ROP*, 18 ROP 113, 118 (2011); *Ngoriakl v. Gulibert*, 16 ROP 105, 106-07 (2008); *see also Pierce v. Underwood*, 487 U.S. 552, 557-58 (1988). Matters of law we decide *de novo*. *Uchelkumer Clan v. Soweï Clan*, 15 ROP 11, 13 (2008); *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 31 (2006). We review findings of fact for clear error. *Urebau Clan v. Bukl Clan*, 21 ROP 47, 48 (2014). Under this standard, the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Itolochang Lineage v. NSPLA*, 14 ROP 136, 138 (2007). Matters of discretion are reviewed for abuse of that discretion. *Remengesau*, 18 ROP at 118. "An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the

⁵ Appellees also requested a declaration that their own swearing-in ceremony was valid. However, based on its conclusion that the Peleliu group also lacked a quorum on January 1, the Trial Division denied this request for relief. The Peleliu group did not appeal the denial.

court in weighing those factors commits a clear error of judgment.” *Eller v. ROP*, 10 ROP 122, 128-29 (2003) (citing *U.S. v. Kramer*, 827 F.2d 1174, 1179 (8th Cir. 1987)). Additionally, “[t]here is an abuse of discretion if the trial court grounds its decision upon a mistaken view of the evidence or an erroneous view of the law.” *Krolikowski v. Chicago & Nw. Transp. Co.*, 278 N.W.2d 865, 868 (Wis. 1979); accord *U.S. v. Ganier*, 468 F.3d 920, 925 (6th Cir. 2006) (“[I]t is an abuse of discretion to make errors of law or clear errors of factual determination.”) (internal citations and quotation marks omitted).

DISCUSSION

Of the many disputes the Trial Division was asked to resolve, this appeal focuses on only one: the Trial Division’s conclusion that the Koror group lacked a quorum at its January 1 assembly. Accordingly, we limit our review to this issue.

The Peleliu State Constitution provides that “[a] majority of the members [of the Peleliu State Legislature] shall constitute a quorum to do business.” Peleliu Const. art. VIII, § 8. The Koror group consisted of four individuals who were elected to the 12th PSL (whose seats appear to be uncontested); three individuals who have been seated as hamlet chiefs in former sessions of the legislature (whose seats also appear to be uncontested); and Yukiwo Shmull, who claims a hamlet chief seat as Uchelsias (a chief seat that was found to be contested by the 11th PSL).

The Trial Division concluded that, because there is a dispute over the rightful bearer of the Uchelsias title, and because the 11th PSL decided that the rightful holder

of Uchelsias title should be decided in court, Yukiwo Shmull does not currently have the right to hold the Uchelsias seat. Based on this conclusion, the Trial Division concluded that Yukiwo Shmull did not count as a member of the legislature for purposes of establishing a quorum, leaving the Koror group with only seven members, too few to establish a quorum.

The Koror group challenges this conclusion on appeal, arguing that (A) the 11th PSL's decision not to seat Yukiwo Shmull is not binding on the 12th PSL, and (B) the sole judge clause of the Peleliu State Constitution precludes judicial review of the 12th PSL's decision to seat Yukiwo Shmull. We do not take issue with either of these propositions and, indeed, we will assume for purposes of this appeal that they are correct. However, as explained below, we believe the Trial Division's decision can be affirmed on much narrower grounds that are consistent with both of Appellants' contentions.

We accept for purposes of this appeal that the 12th PSL could decide to seat Yukiwo Shmull as Uchelsias, notwithstanding the 11th PSL's refusal to do so. To the extent the Trial Division's decision can be read as holding otherwise, we expressly decline to adopt that reasoning. Because answering the question is unnecessary to resolve this appeal, we express no view on the question at all. Similarly, should the 12th PSL ultimately decide to seat Yukiwo Shmull as Uchelsias, we assume that our prior decision in *Louis v. Nakamura*, 16 ROP 144 (2009), would preclude review of that decision.

Of course, the Koror group contends that the 12th PSL *did* seat Yukiwo Shmull at their January 1 ceremony. The Peleliu group, on the other hand, contends that whatever actions took place on January 1 in Koror do not constitute the actions of the 12th PSL, but merely the actions of several individuals who may or may not incidentally be members of the 12th PSL. Due to the procedural irregularities surrounding the Koror group's January 1 assembly, we agree with Appellees that the Koror group's actions cannot be ascribed to the 12th PSL and—on this basis alone—we affirm the Trial Division's judgment.

As we have held before, “[m]embers of government boards cannot act for the board absent a quorum.” *Renguul v. ASPLA*, 8 ROP Intrm. 282, 286 (2001). Although this statement was made in the context of the board of directors for a public entity, the same principle is widely recognized with respect to all official decision-making bodies, including legislatures. *See, e.g.*, 59 Am. Jur. 2d *Parliamentary Law* § 9 (2012) (“[A] majority of a body constitutes a ‘quorum,’ which is the number of assembled members that is necessary for a decision-making body to be legally competent to transact business”). The Peleliu State Constitution gives explicit recognition to this principle in Article VIII, Section 8, which provides: “A majority of the members shall constitute a quorum to do business.”

Absent a quorum at the January 1 assembly, any purported seating of Yukiwo Shmull was not an official action of the Peleliu State Legislature, but the mere action of the individuals present. The Koror group urges that, because the question of quorum is

inextricably tied to the question of Shmull's membership, both questions are necessarily unreviewable as falling within the political question doctrine. We disagree.

As the Koror group themselves argue, "in controversies involving the seating of legislative members, the determination of whether the political question doctrine applies hinges on whether a party has already been seated as a chief member of the legislature unconditionally." (Appellants' Opening Brief at 5 (citing, *inter alia*, *Louis v. Nakamura*, 16 ROP 144 (2009)).) This is true enough, but it is premised on a determination that the legislature *has* in fact seated the member. *See, e.g., Louis*, 16 ROP at 146 (holding that the political question doctrine precluded review after "[t]he legislature . . . adopted a resolution, signed by 10 out of 14 legislators, to seat Nakamura"). It does not address whether the political question doctrine prevents the judiciary from determining if the necessary quorum was present at the purported member-seating to ascribe the act to the legislative body itself. We hold that the political question doctrine does not preclude such a determination. We reach this conclusion for two reasons.

First, if we were to accept the Koror group's contention that the question is non-justiciable, it could result in situations where a court would be forced to recognize more than 15 members on the Peleliu State Legislature. Such instances are not difficult to conceive of, nor are they particularly implausible. For example, such an occasion might arise if there were two claimants to a disputed seat on the Peleliu State Legislature and the other fourteen members were equally divided in their support for the two claimants. Seven members might meet with the first claimant in one location and purport to seat

that claimant as a member; simultaneously, the other seven members might meet with the second claimant in a different location and purport to seat him as a member.⁶ If the Koror group is correct that the question of quorum is non-justiciable in such cases, then the Court would have no choice but to treat both claimants to the disputed seat as having been unconditionally seated by the legislature. Under the doctrine of *Louis v. Nakamura*, 16 ROP 144 (2009), having determined that each claimant had been unconditionally seated by the legislature, the Court would be precluded from further review. The Court would accordingly have no choice but to recognize both individuals as members, thus recognizing 16 members on the Peleliu State Legislature, in direct violation of Article VIII, Section 1 of the Peleliu State Constitution. This is a conclusion we are not prepared to accept.

Second, although adjudication of members' qualifications has been constitutionally committed to the Peleliu State Legislature, *see* Peleliu Const. art. VIII, § 4, we do not think the determination of whether the Koror group had the quorum necessary to seat Yukiwo Shmull necessitates adjudication of his qualifications as a member. Rather, this determination can be made on the authority of *Renguul v. ASPLA*, 8 ROP Intrm. 282 (2001). In *Renguul* we held that, when determining whether a quorum is present, anyone "who is disqualified from voting on a matter also does not count toward the quorum" *Renguul*, 8 ROP Intrm. at 286. It follows from this that, where

⁶ The hypothetical situation described is essentially the one the Court would have been faced with if Appellant Postol Remeliik had joined the Peleliu group on January 1, 2016, and if the Peleliu group had purported to seat someone other than Yukiwo Shmull in the Uchelsias seat.

the matter to be decided is the resolution of a disputed seat on a legislative body, a claimant to that seat does not count toward the quorum.⁷ Because this determination can be made without reference to an individual's qualifications as a member, the determination does not risk usurping the adjudicatory role reserved for the legislature by the Peleliu State Constitution. This further bolsters our conclusion that the question of quorum under these circumstances is a justiciable issue.

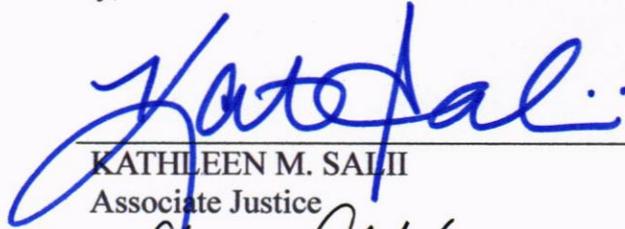
Because the procedural prerequisites for legislatively seating Yukiwo Shmull in the Uchelsias seat were not met on January 1, the Koror group's actions in purporting to seat him cannot properly be ascribed to the 12th PSL, but were instead merely the actions of the individuals present. Accordingly, we conclude that the 12th PSL has not yet seated Yukiwo Shmull as Uchelsias and affirm the Trial Division's judgment that the Koror group's January 1 assembly lacked a quorum. Nothing in this opinion should be interpreted as precluding the 12th PSL from deciding to seat Yukiwo Shmull as Uchelsias or as expressing any opinion thereon. Our holding is limited to the procedural propriety of the Koror group's January 1 attempt to seat him without the necessary quorum present.

CONCLUSION

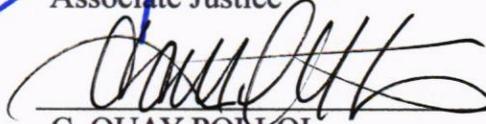
For the foregoing reasons, the judgment of the Trial Division is **AFFIRMED**.

⁷ Indeed, anything less would risk creating the situation described in the preceding paragraph.

SO ORDERED, this tenth day of May, 2016.



KATHLEEN M. SALI
Associate Justice



C. QUAY POLLOI
Associate Justice Pro Tem



KATHERINE A. MARAMAN
Part-Time Associate Justice