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REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

MAJURO ATOLL LOCAL GOVERNMENT,

Plaintiff

v.

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY,

Defendant.

CIVIL ACTION NO. 2015-025

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO: Roy T. Chikamoto, counsel for plaintiff
Natan Brechtefeld, Attorney General, counsel for defendant

I. Introduction

Plaintiff Majuro Atoll Local Government has requested the court issue a summary judgment in its favor finding provisions in the Marshall Islands Marine Resources Act 1997 ("the Act") unconstitutional. Plaintiff asserts that portion of the Act which grants exclusive powers and functions over fishery waters in the Republic, insofar as it includes the Majuro Atoll lagoon, conflicts with constitutional provisions in Article IX relating to local government. First, plaintiff argues Article IX, Section 1(3) of the Constitution grants jurisdiction over the lagoon to the local government and that such jurisdiction is violated by the exclusive powers provision of the Act. Second, plaintiff argues Article IX, Section 1(1) which states in part that a system of local government shall operate in accordance with applicable law limits the Nitijela's legislative authority to laws dealing with the structure of local government, and that the exclusive powers provision of the Act exceeds that grant of authority.

The court denies plaintiff's motion, finding the constitutional provisions relied upon do not limit the Nitijela's authority to adopt this legislation.

II. The jurisdiction of a local government, as used in Article IX, Section 1(3), is the area within which the local government may exercise its authority.

Article IX, Section 1(3) of the Constitution provides: “The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government; and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.”

The Marshall Islands Marine Resources Act 1997 (51 MIRC Chapter 1) provides in relevant part at Section 119(1):

Unless otherwise provided in this Title, the Authority shall have the exclusive powers and functions to:
(a) conserve, manage and sustainably develop all resources in the Fishery Waters . . .

The Act further at Section 102(31) defines “Fishery Waters” as “the exclusive economic zone, the territorial sea and internal waters, including lagoons, as described in the Marine Zones (Declaration) Act, 1984, and any other waters within the jurisdiction of the Republic of the Marshall Islands . . .”

Plaintiff asserts Article IX, Section 1(3), through the statement of local government “jurisdiction,” gives authority to the local government to exercise broad powers over the Majuro lagoon. Consequently, plaintiff argues MIMRA may not exercise exclusive power over the Majuro lagoon in derogation of this constitutional grant of jurisdiction to the local government. Indeed, plaintiff states “no Act should be allowed to encroach upon that constitutionally reserved jurisdiction.” (Memorandum in Support of Plaintiff’s Motion for Summary Judgment, filed May 15, 2015, p. 20) Plaintiff reasons that because the Act is an unconstitutional infringement of local government jurisdiction, the provision of Article IX, Section 2(1), which states that local ordinances may not be inconsistent with any act, does not apply. Defendant disputes plaintiff’s contention, asserting “jurisdiction” as used in Article IX, Section 1(3) refers to the territorial area

over which a local government may exercise its authority and consequently does not limit the Nitijela's legislative authority in the manner claimed by plaintiff.

In interpreting the constitution, words, if not otherwise defined, typically should be given their everyday meaning. "In examining constitutional provisions, the Supreme Court's task is to give effect to the clear, explicit, unambiguous, and ordinary meaning of language; if the language of the provision is unambiguous, it must be given its literal meaning and there is neither the opportunity nor the responsibility to engage in creative construction." *In the Matter of the Vacancy of the Mayoral Seat*, 3 MILR 114, 117 (2009)

Plaintiff argues that it is clear that the "jurisdiction" referred to in subsection 3 means the power and authority of the local government to take official action. However, a consideration of the definition of the word "jurisdiction" suggests a more precise reading is necessary to determine its meaning as used in Article IX, Section 1(3.) Consistent with plaintiff's position, "jurisdiction" may be defined as "a government's general power to exercise authority over all persons and things within its territory." *Black's Law Dictionary*, Eighth Edition, p. 867. However, that is not the only definition of jurisdiction given there. It may also mean a "geographic area within which political or judicial authority may be exercised." (*Ibid.*) The former definition favors plaintiff's interpretation of Article IX, Section 1(3), the latter does not.

When faced with ambiguity in a term, the court must look to the context in which the term is used.

In construing a constitutional provision, our obligation is to give effect to the intent of the electorate that adopted it. In giving effect to that intent, we look to the words used, reading them in context and according them their plain and ordinary meaning. Where ambiguities exist, we interpret the constitutional provision as a whole in an attempt to harmonize all its parts. *Bruce v. City of Colorado Springs*, 129 P.3d 988 (Colo.2006)

The U.S. Supreme Court has stated:

Of course, the "starting point in every case involving construction of a statute is

the language itself.” . . . But the text is only the starting point. As Justice O’CONNOR explained last Term: “ ‘ “In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.” ’ ” (internal cites omitted) *Kelly v. Robinson*, 479 U.S. 36, 43-44, 107 S. Ct. 353, 357-58, 93 L. Ed. 2d 216 (1986)

The oft-cited assessment of Judge Learned Hand is instructive: “Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used....” *NLRB v. Federbush Co.*, 121 F.2d 954, 957 (CA2 1941).

In this case, the context is helpful in determining the meaning of “jurisdiction” as used in this instance. The provision begins with the words “The whole of the land and sea areas to which any system of local government extends. . .” This phrase explicitly refers to the “areas” of the local government. It describes the geographic limits of each system of local government. Those areas lie “within” the “jurisdiction of a local government.” The use of “within” is consistent with the setting of geographic boundaries for a local government. The language as used does not imply the grant of power and authority to be exercised by the local government. The language describes the territorial aspect of a local government’s “jurisdiction.”

This interpretation of jurisdiction is confirmed by the second part of the subsection, which describes how the geographic area of jurisdiction is to be determined where there is more than one local government; in that case “the land and sea **boundaries** of their respective jurisdictions shall be as defined by law.” (Emphasis added.) Article IX, Section 1(3) defines the area over which a local government has authority and describes how the territorial jurisdiction of each local government is to be determined when there is more than one local government in an area. In the context of Article IX, Section 1(3), jurisdiction must be understood in the second definition of word, i.e., the “geographic area within which political or judicial authority may be exercised.” It is not a grant of political authority to the local government.

The jurisdiction of a local government in the first sense of the word, i.e., a government's "general power to exercise authority over all persons and things within its territory," is dealt with in Article IX, Section 2(1):

A local government may make ordinances for the area in respect of which it has jurisdiction, provided that such ordinances are not inconsistent with any Act, or, to the extent that it has the force of law in the Republic of the Marshall Islands, with any other legislative instrument (other than a municipal ordinance) or any executive instrument.

Under this provision, local governments are granted broad powers, so long as the exercise of those powers, through enactment of ordinances, is not inconsistent with "any Act . . ." The local government's exercise of its jurisdiction in the sense of its authority within its territorial jurisdiction is limited with specific reference to the national government.

Thus the constitution deals with both elements of the jurisdiction of local governments. It establishes the territorial jurisdiction of a local government in Article IX Section 1(3) and the limits of its political authority in Article IX, Section 2(1). While local governments have broad powers within their geographic areas, they are subject to the authority of the national government, including the authority to grant exclusive authority to MIMRA for the management of the nation's fishery waters, including Majuro lagoon.

III. Article IX Section 1(1) gives the Nitijela broad discretion to enact laws that apply to local governments as long as the laws do not violate the right to a system of local government.

Article IX Section 1(1) reads as follows: "The people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law."

Plaintiff asserts this subsection limits the authority of the Nitijela to adopt laws that affect local governments. Plaintiff defines "system" as the "orderly combination or arrangements, as of particulars, parts, or elements into a whole," while "operate" means "to perform a function."

From this, plaintiff reasons the Nitijela is limited to laws that address the “operation of those local governments, i.e. how the structure of the local governments or their organized collective as a whole should be arranged.” (Memorandum in Support of Plaintiff’s Motion for Summary Judgment, filed May 15, 2015, p. 14.) The Nitijela then is restricted to “those laws relating to the structure or scheme of either a local government individually, or local governments collectively *inter se*, or as between the local governments and the national government. (Memorandum in Support of Plaintiff’s Motion for Summary Judgment, filed May 15, 2015, p. 18.) It follows that the Act, by reserving exclusive jurisdiction of “fishery waters” (with particular reference to the Majuro lagoon) to MIMRA, goes outside this grant of authority to the Nitijela in that, while it may affect the local government, it does not address the structure of the local governments or the system of local government throughout the Marshall Islands as an organized collective.

This is a misreading of the constitution. Reference to the “system of local government” simply means the combination or arrangement of the parts of the local government into a whole. The language is intended to be inclusive, so as to address all the elements of a local government. Subsection 1(1) refers to the right of the people of a specific atoll or island to a system of local government, that is, an inclusive government for that atoll or island that combines all the elements of local government into a whole. That local government must “operate,” i.e., perform its local governmental functions, in accordance with any applicable law. While the local government is given broad authority, it must operate in accordance with any law of the Nitijela that applies to any of the local government functions incorporated into the system of local government. Far from being the narrow, constricting authorization of Nitijela power that plaintiff infers, the provision establishes broad discretion for the Nitijela to adopt laws applicable to the operations of a system of local government.

This interpretation of Article IX, Section 1(1) is consistent with the interpretation of the Trust Territory High Court Appellate Division in *Joash v. Government of the RMI*. The High Court discussed Article IX, Section 1(1) in a case dealing with the forced consolidation of two municipal governments in Majuro:

Subsection (1) states clearly that the operation of local governments shall be "in accordance with any applicable law." Applying the natural, obvious and ordinary meaning of this phrase to the present case, the applicable law refers to those acts promulgated by the legislature. In the trial division, the judge stated that the legislative authority of the government was properly vested in the Nitijela. The Nitijela, therefore, is empowered to enact legislation which is necessary and proper to carry out any powers vested to it by the Constitution. The law on local government is one of them. This court finds that the intent was for there to be a right to a system of local government specifically made subject to legislation passed by the Nitijela. Thus, the Nitijela may legislate with broad discretion, provided that the right to a system of local government is not violated. *Joash v. Government of the Marshall Islands*, 8 TTR 498 at pp 504-505 (1985).

In the first sentence, the court did not distinguish between "system of local government" and "local government." It did not limit "applicable law" to those dealing with the structure of local government or with the "system of local government" as a collective. Rather, it stated "the applicable law" mean those acts promulgated by the Nitijela. The court determined the legislature had broad discretion in promulgating acts which apply to the operation of local governments.

The only limitation the court found was that such laws may not violate the right to a system of local government. However, the provision in the MIMRA Act at issue here does not violate the right to a system of local government. It may limit the operation of the local government, but that does not constitute a violation of the people's right to a system of local government. The Majuro Atoll Local Government has operated within the context of the MIMRA Act for years. Its existence is not threatened thereby. The people's right to a system of local government is not violated by the Act.

While the local government may have the authority to manage local fisheries within its

jurisdiction, it must operate subject to any applicable law. The Nitijela, acting within its broad discretion, adopted the Act. The Act, and in particular its grant of exclusive power to MIMRA to manage fisheries within the Fishery Waters which include the Majuro lagoon, applies to the operation of any local governmental function to manage such fisheries. The local government must operate in accordance with that applicable law.

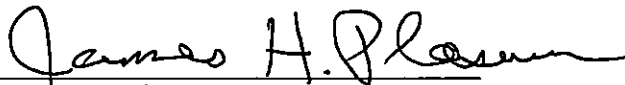
IV. CONCLUSION

Accordingly, the court finds the provision of the Act granting to MIMRA the exclusive authority over the Majuro lagoon for the purposes of that Act does not violate the constitution as charged by plaintiff.¹

ORDER

Based upon the forgoing, plaintiff's motion for summary judgment is DENIED.

Entered: November 23, 2015.


James H. Plasman
Acting Associate Justice, High Court

¹Plaintiff in its May 15, 2015 Memorandum in Support (p. 6-7) asked the court to indicate what factual issues are subject to further proof. Based upon the filings, the court agrees with plaintiff that the matter could be disposed as a matter of law and if defendant had filed a cross motion for summary judgment, the court would have been inclined to grant defendant's motion.