

LIB

FILED^{A.A}

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION 2023 FEB 17 AM 11: 23

SUPREME COURT
OF THE
REPUBLIC OF PALAU

ISAO SINGEO, SHALLUM ETPISON, PETER NAPOLEON,
POSTOL REMELIHK, DONALD HARUO, EUFRASIA N.
REMELIHK, JERRY N. SINGEO
Appellants,
v.
BILLY REKEMEL, GODWIN SADAQ, UMEDIP RIDEP,
ALEX NGIRAINGAS, WILLARD SMAU, JOEL OKADA,
SALII REKEMEL, BATROS BASILIO, KOKICHI
NGIRAINGAS
Appellees.

Cite as: 2023 Palau 8
Civil Appeal No. 22-013
Appeal from 22-003

Decided: February 17, 2023

Counsel for Appellants Raynold B. Oilouch
Counsel for Appellees Brien Sers Nicholas

BEFORE: FRED M. ISAACS, Associate Justice, presiding
KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,
presiding.

OPINION¹

PER CURIAM:

[¶ 1] This case asks us whether members of the 14th Peleliu State Legislature (“14th PSL”) had a sufficient quorum to transact business during their installation session on January 1st, 2022. Specifically, Appellants argue that the installation session violated the Rules of Procedure and that there was no quorum to seat Kokichi Ngiraingas as *Adelkeroi*, Chief of Ngerkeukl Hamlet.

[¶ 2] Because the Trial Division correctly found that Kokichi became a member of the Legislature on January 1st, 2022, and that as such, the 14th PSL had the majority and quorum to transact business, we **AFFIRM**.

BACKGROUND

[¶ 3] The Peleliu State Legislature is composed of 15 members: five members elected at large, five hamlet chiefs, and five members elected by each hamlet and representing such hamlet. *See* Peleliu State Const., Art. VIII, § 3. The term of the previous 13th Peleliu State Legislature (“13th PSL”) came to an end on January 1, 2022, and was immediately followed by the 14th PSL.

[¶ 4] Appellees constitute a group of seven of the elected members during the 14th PSL (Billy Rekemel, Godwin Sadao, Umedip Ridep, Alex Ngiraingas, Willard Smau, Joel Okada and Salii Rekemel) and two hamlet chiefs (Batos Basilio claiming the seat of *Obaklechol* and Kokichi Ngiraingas² claiming the seat of *Adelkeroi*). Appellants are a group of five hamlet chiefs (*Obakeldelolk* Isao Singeo, *Ulchesias* Shallum Etpison, Peter Napoleon claiming the seat of *Obaklechol*, Postol Remeliik claiming the seat of *Adelkeroi*, and Donald Haruo claiming the seat of *Renguul*), who held their seats until the end of the 13th PSL, and two elected members of the 14th PSL (Eufrasia N. Remeliik and Jerry N. Singeo).

¹ Although Appellee requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

² Also referred to as Kokichi Ingas.

[¶ 5] The seat for *Adelkeroi* has been claimed by both Postol Remeliik and Kokichi for several years, and this dispute was the subject of a court case. In *Kebliil ra Uchelkeiykl, et al., v. Ngiraingas, et al.*, Civil Action No. 14-106, at 1 (Tr. Div. Dec. 6, 2017), the Trial Division found that Kokichi is the proper and rightful holder of the title *Adelkeroi* in Ngerkeukl Hamlet, and not Postol Remeliik.

[¶ 6] During the 13th PSL, two sets of Rules of Procedure for the PSL were adopted: a first version on January 1st, 2019 (“the 2019 Rules”) and a second version on December 27, 2021 (“the 2021 Rules”). Critically, the 2021 Rules were adopted after the election results for the 14th PSL were released and certified on December 22, 2021, and made substantive changes regarding the transition period between legislatures. Amongst these changes, the 2021 Rules provided that the oldest female member-elect would call the Legislature to order and serve as Temporary Speaker, where the 2019 Rules provided that the most vote-getter would get the Legislature to order and the Temporary Speaker would be elected by majority. Additionally, the 2021 Rules stated that:

any Chief whose credentials were accepted by the previous Legislature and who was duly seated as a member of the previous Legislature and had not been removed from his seat, shall be deemed qualified to be a member and thus, automatically takes his seat as member of the newly installed Legislature without being subjected to the scrutiny of the Credentials Committee.

[¶ 7] In practice, the 2021 Rules ensured that Appellants, members of the 13th PSL, remained in power during the 14th PSL.

[¶ 8] On January 1, 2022, Appellants and Appellees gathered at the Peleliu State Legislature Building for the purpose of installing and organizing the 14th PSL. It has been standard practice in the past installations of the Peleliu State Legislature to adopt the Rules of the preceding Legislature as Temporary Rules for the installation of the new Legislature.

[¶ 9] The transcript shows that Appellee Godwin Sadao, as the most vote-getter, opened the session thirty minutes early, then appointed Appellee Billy Rekemel as Temporary Speaker. Appellants protested that Appellees were not following the 2021 Rules. Over these protests, Appellees took a roll call for attendance. Only the eight Appellees confirmed their attendance. While Appellants were present at the installation session, they did not answer the attendance roll call. The Temporary Clerk then took a roll call to adopt the 2019 Rules as Temporary Rules. All eight Appellees voted to adopt the 2019 Rules, including Kokichi Ingas as Chief *Adelkeroi*. Appellees then proceeded to select the members of the Credentials Committee, including Kokichi as *Adelkeroi*. Appellants walked out of the session. The Credentials Committee looked at the credentials of the newly elected legislators and the hamlet chiefs. The Credentials Committee, through Alex Ngiraingas, determined that according to the court judgment from 2017, Kokichi had the title of *Adelkeroi*. Appellees adopted the Credentials Committee report with eight votes, including one from Kokichi. Finally, the session adopted the 2019 Rules as Permanent Rules.

[¶ 10] Because Appellants' objections to the proceedings at the installation session were not resolved, they filed suit seeking to invalidate the session and all the business conducted during it. On June 6, 2022, the Trial Division heard cross-motions for summary judgment, and granted the motion in favor of Appellees. The Trial Division found that "[w]hile it is undisputed that Postol Remeliik was seated as a member of the 13th PSL, . . . Kokichi Ingas is the proper and lawful *Adelkeroi*, Chief of Ngerkeukl Hamlet and is the rightful member of the 14th PSL." The Trial Division concluded that Appellees had the majority and quorum to conduct business on January 1, 2022. Appellants appeal this judgment.

STANDARD OF REVIEW

[¶ 11] "Conclusions of law are reviewed *de novo*, factual findings are reviewed for clear error, and exercises of discretion are reviewed for abuse." *Idid Clan v. Koror State Pub. Lands Auth.*, 2019 Palau 22 ¶ 14 (citing *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 2019 Palau 7 ¶ 7).

[¶ 12] We review a lower court's grant of summary judgment *de novo*. *Akiwo v. Republic of Palau*, 6 ROP Intrm. 105 (1997). Drawing all inferences

from the evidence in favor of the non-moving party, the Appellate Division evaluates whether there were no genuine issues of material fact and whether the moving party was entitled to judgment as a matter of law. *Koror State Pub. Lands Auth. v. Wong*, 21 ROP 5, 7 (2012).

DISCUSSION

[¶ 13] Appellants argue that the installation session on January 1st, 2022 was unconstitutional and null and void because (1) Appellees did not adopt the 2021 Rules at the beginning of the installation session and (2) that there was no quorum to seat Hamlet Chiefs Kokichi Ingas and Batros Basilio. Because these assignments of error closely concern the affairs of the Peleliu State Legislature, we determine their justiciability before considering them on the merits.

I. Justiciability

[¶ 14] As a preliminary matter, we ask ourselves whether the subject matter of this case is appropriate for judicial consideration. Courts will not make a judicial determination of purely political questions. *See Fritz v. Republic of Palau*, 4 ROP Intrm. 264, 270 (Tr. Div. 1993) (citing 6A Moore's Federal Practice at ¶ 57.14.). For this purpose, this Court has recognized and applied the test established by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962), which articulated six different ways a case might trigger the application of the “political question” doctrine. *Fritz*, 4 ROP Intrm. at 272. As such, a controversy is nonjusticiable—i.e., it involves a political question—where there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it. . . .” *Baker*, 369 U.S. at 217; *see also Obeketang v. Sato*, 13 ROP 192, 195 (2006); *Francisco v. Chin*, 10 ROP 44, 49 (2003).³

³ In *PCSPP v. Udui*, 22 ROP 11, 15 n. 5 (2014), we expressed that although *Fritz*, following *Baker*, actually recognized six discrete categories of political questions, modern United States political question jurisprudence has focused exclusively on textual constitutional commitment and a lack of judicially manageable standards, treating categories three through six as examples of or mixed questions of the first two. *See Nixon v. United States*, 506 U.S. 224, 228 (1993).

[¶ 15] The adjudication of the qualifications of legislature members is an issue that has been constitutionally committed to the Peleliu State Legislature. *See* Peleliu Const. art. VIII, § 4 (“The State Legislature shall be the sole judge of the qualifications of its members.”). This clause parallels “the sole judge clause” of the Palau National Constitution, which this Court has interpreted to allow legislative discretion in determining which candidates were elected and qualified, but left any constitutional interpretation issues to the Court. Palau Const. Art. IX, § 10; *Francisco v. Chin*, 10 ROP 44, 49 (2003) (reserving to the Court the right to interpret the term “resident,” as it applies to eligibility for a Senate seat). In *Francisco*, the court found that it had the obligation to define constitutional terms relating to a candidate’s eligibility for the Senate, but did not have the authority to apply those terms and rule on the candidate’s eligibility because the sole judge clause put that responsibility in the hands of the Senate. 10 ROP at 52; *see Tudong v. Sixth Kelulul A Ngardmau*, 13 ROP 111, 115 (2006) (describing and applying the *Francisco* holding “that where the constitution empowers the legislature to make a factual determination, the interpretation of a constitutional term may raise a justiciable issue; however, the factual determination as to whether the facts of a particular case satisfy that constitutional term, once defined, is non-justiciable and lies with the legislature.”).

[¶ 16] Thus, Sole Judge Clauses allow legislative discretion in determining which candidates were elected and qualified, but leave any constitutional interpretation issues to the Court. *Louis v. Nakamura*, 16 ROP 144, 147 (2009). As a result, the political question doctrine does not prevent the judiciary from determining if the necessary quorum is present when seating a member of the legislature. *Singeo v. Rekemel*, 2016 Palau 12 ¶ 16. Indeed, this is a matter of constitutional interpretation as it requires us to interpret the term “quorum” in the Peleliu Constitution. Therefore, we can decide Appellants’ assignments of error.

II. Merits

[¶ 17] Appellants argue that the installation session is unlawful because Appellees did not adopt the 2021 Rules at the beginning of the session and did

Like we did in *Udui*, we express no opinion today on whether a question could fall within only one of the latter categories and still be nonjusticiable in this Court.

not have a quorum to seat Kokichi. According to Appellants, Kokichi could not be counted towards the quorum, as he is not the *Adelkeroi* for Ngerkeukl Hamlet.

[¶ 18] Although it is standard practice in the Peleliu State Legislature to adopt the previous Rules of Procedure as Temporary Rules to govern the transition between legislative sessions, nothing in the Constitution requires the Legislature to do so. Thus, we cannot find unconstitutional Appellees' failure to adopt the 2021 Rules as the Temporary Rules at the beginning of the session. Our reasoning centers on the only justiciable issue in this case: whether Appellees had a quorum to transact business on January 1st, 2022.

[¶ 19] 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. 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). This principle is widely recognized with respect to all official decision-making bodies, including legislatures. *See Singeo v. Rekemel*, 2016 Palau 12 ¶ 14, *see also, 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 . . .”). As a result, where 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. *Id.* at ¶ 18.

[¶ 20] The Peleliu State Legislature Rules of Procedure further establish what a quorum is. Under Rule 5, “a majority of the members of the Legislature shall constitute the quorum for the transaction of business of which quorum a majority vote shall suffice, unless otherwise provided by these Rules or by law.” This Rule appears in every version of the Rules of Procedure, whether adopted in 2019 or 2021.

[¶ 21] Because the Peleliu State Legislature contains fifteen members, a quorum to transact business is reached whenever eight members are present. Appellants' argument that Kokichi cannot be counted toward this quorum fails because his seat is undisputed. *See Singeo*, 2016 Palau at ¶ 18 (“[W]here 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.”) (emphasis added).

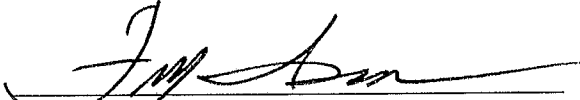
[¶ 22] We leave the question of what constitutes a disputed seat for another day. Nonetheless, we can affirm that a seat is no longer disputed once a final judgment conclusively settles the rightful holder of the chief title. The Trial Division has previously decided in *Kebliil ra Uchelkeiykl, et al., v. Ngiraingas, et al.*, Civil Action No. 14-106, at 1 (Tr. Div. Dec. 6, 2017) that Kokichi is the proper and rightful holder of the title *Adelkeroi* in Ngerkeukl Hamlet. Because a final judgment has resolved the issue of the title bearer, the title of *Adelkeroi* is no longer in dispute, and the qualifications of the seven elected Appellees were not disputed. As such, the seven Appellees could properly rely on Kokichi’s presence to form a quorum of eight and transact business.

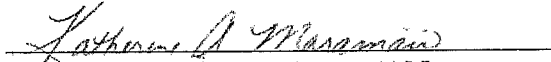
[¶ 23] Because they had a proper quorum, Appellees were entitled to adopt the original 2019 Rules, first as Temporary Rules governing the transition between legislative sessions, then as Permanent Rules for the 14th PSL. We find no constitutional authority that would require Appellees to ignore the rules that had governed the previous legislative session in favor of those last-minute changes.


CONCLUSION

[¶ 24] Therefore, the installation session on January 1st, 2022 was constitutional and the Trial Division did not commit an error in granting Appellees’ motion for summary judgment. We **AFFIRM** the Trial Division’s judgment.

SO ORDERED, this 17th day of February, 2023.


FRED M. ISAACS
Associate Justice, presiding


KATHERINE A. MARAMAN
Associate Justice


DANIEL R. FOLEY
Associate Justice