IN THE SUPREME COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL	)	**Civil Action 2016-121**
Plaintiff-Appellant	)	**S.CT CIVIL ACTION 2018-001**
	)	
VS	)	
ROBSON YASIWO ALMEN in his capacity as Chief Electoral Officer,	)	**APPELLEE CEO**
MINISTRY OF INTERNAL AFFAIRS	)	
GOVERNMENT REPUBLIC OF THE MARSHALL ISLANDS	)	**ANSWER BRIEF**
	)	
Defendant-Appellees	)	
	)	

OPENING BRIEF

FOR APELLEE CEO AND THE GOVERNMENT

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REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL **Plaintiff-Appellant** **VS** **ROBSON YASIWO ALMEN** in his capacity as Chief Electoral Officer, **MINISTRY OF INTERNAL AFFAIRS** **GOVERNMENT REPUBLIC OF THE MARSHALL ISLANDS** **Defendant-Appellees**	**H.CT Civil Action 2016-121** **S.CT CIVIL ACTION 2008-001** **DEFENDANT-APPELLEE CEO** **ANSWER BRIEF**

INTRODUCTION

Appellant Samuel in this matter, is appealing the Order of the High Court in Civil Action 2016-121, dismissing his motion for Summary Judgment, and granting Appellee CEO's motion to dismiss. The Appellant is seeking an Order from this Honorable Court to reverse the said High Court Order, and that judgment should be entered in his favor, with concomitant direction that he be seated as Mayor, forthwith. Defendant-Appellee CEO disagrees, and moves this Honorable Court to dismiss the appeal, and to uphold the decision of the High Court denying his motion for summary judgment, and dismissing his action.

STATEMENT OF JURISDICTION

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This Court has jurisdiction in this case, in accordance with Article VI Section 2 (2) (a) of the Constitution of the Republic of the Marshall Islands, and as set out under Section 207 of the Judiciary Act 1983.

STATEMENT OF THE CASE

The dispute herein pertains to the election of the Majuro Atoll Local Government Mayor, in the 2015 General Elections – where both Jack and Samuel were candidates for the Mayor's seat. Samuel was the incumbent Mayor on the date of the election and Appellee Jack, the challenger. The sequence of relevant events that led up to this appeal were aptly summarized in the High Court's Order of December 14, 2017, dismissing appellant's motion for summary judgment, and granting appellee CEO's motion to dismiss his action.

Prior to the announcement of the unofficial results of the election, Appellant submitted an informal re-count petition on November 26, 2015. This informal re-count petition was denied by appellee CEO on December 10, 2015, after the announcement of the unofficial results on December 4, 2015. On December 14, 2015 Appellant filed a formal re-count petition, appealing the rejection of his informal petition for recount. On December 18, 2015 Appellant filed a second action (Civil Action 2015-234) seeking to prevent the CEO from certifying the results, to declare the election void, and to require a new election, but failed to take further action when this request was denied. Civil Action 2015-234 was however dismissed by the High Court on October 28, 2016, for the failure of the appellant to comply with certain orders of the High Court, following an Order to show cause. The said action was dismissed pursuant to the Marshall Islands Rules of Civil Procedures, Rule 41(b). On December 22, 2015, Appellee Jack was sworn into Office as the new

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Mayor for Majuro Atoll Local Government. The Appellant meanwhile, following the certification of the election results, voluntarily vacated the Office of the Mayor. On June 16, 2016, a clear six months after Appellee Jack was installed as Mayor, Appellant filed Civil Action 2016-121, seeking the removal of Jack from office, and his installation as *hold-over* Mayor. In December of 2016, the High Court ordered Civil Action 2016-121, abated. Notwithstanding, on February 17, 2017 appellant filed for partial summary judgment, again, seeking the ouster of Appellee Jack from Office, and his *return* to office as hold-over Mayor.

In response, Appellee CEO moved to deny the motion for summary judgment and sought abatement, and or dismissal of the case. On December 14, 2017 the High Court dismissed the motion for summary judgment, and granted the Appellee CEO's motion to dismiss Civil Action 2016-121. The Appellant's attempts to seek a reconsideration of the dismissal by the High Court was denied, and thus this appeal.

STANDARD OF REVIEW

Conclusions of law are reviewed *de novo* standard [*Gushi Brothers v Kios et. al MILR 127*]. The appeal herein involves mixed questions of law and fact, and as such, the standard of review to be applied by the Supreme Court in this matter is, *de novo.*

ARGUMENT

Introduction.

In his opening brief the appellant identifies three main arguments. First, that the Appellee-CEO had no authority to certify the results of the election on December 19, 2015, second, that the High

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Court did not apply the correct rules of constitutional interpretation in interpreting the Majuro Atoll Local Government Constitution (MALGOV Constitution), and thirdly that the High Court erred in dismissing the remaining *issues* and *inconsistencies* he identified in the brief in paragraph C sub-paragraphs 1-7 on pages 4 and 5 of the brief. The appellant then presents two questions for the consideration of this Court. However, before turning to the true issue in this case, Appellee CEO avails himself of this opportunity to address certain unfounded allegations of unethical levelled by the Appellant in the opening paragraphs of his brief.

ALLEGATIONS OF UNETHICAL CONDUCT UNFOUNDED

Claims of Unethical Conduct Refuted

Rather than assisting this Court in addressing the pertinent issues herein, the Appellant chose to dedicate a substantial number of pages in his opening brief to assert unfounded allegations of unethical conduct – effectively arguing in this forum, issues that are pending before the High Court in Civil Action 2017-037. Notwithstanding, Appellee CEO rejects these allegations, and moves this Honorable Court to act likewise, and to dismiss this appeal in its entirety.

Appellee CEO rejects the Appellant's claims of a clandestine meeting and other alleged and unfounded claims of unethical conduct. Appellee CEO submits that these claims are unfounded and mere conjecture, and without basis. This Court will note that these claims were originally introduced in Civil Action 2015-234, which was dismissed for the failure of Appellant to comply certain orders of the Court – pursuant to Rule 41(b) of the Marshall Islands Rules of Civil

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Procedures. On the basis that the dismissal did not state otherwise, the dismissal operated as a final adjudication of the merits of those claims. As such, Appellee contends that Appellant cannot re-litigate these issues before this Court under the equitable principle of *res judicata*.[1] Further, these unfounded and false allegations and assertions were indeed vehemently denied by the Appellee CEO in this instant, and in the companion cases under Civil Action 2015-233, Civil Action 2013-234 and 2017-037. The Appellant's persistence in this direction is not founded on the basis of the record, and Appellant clearly insists on relying on mere allegations, unfounded insinuations, and conjecture, to mislead this Court. As alluded to earlier, these are issues that are deemed to have been adjudicated in favor of Appellee CEO by the dismissal of that action pursuant to Rule 41(b) of the Marshall Islands Rules of Civil procedures, issues vehemently denied by the Appellee CEO, and issues rejected by the High Court in Civil Action 2017-037 as part of the record of appeal.

Argument Not Relevant to the Issue

Additionally, Appellee CEO insists that these unfounded allegations are not relevant to the issue in the case of the instant, and this Honorable Court should therefore disregard the Appellant's tirade, and attempts to cloud this Court's judgment. The issues in this appeal –as noted, are contained in the two questions submitted by the Appellant, and the unfounded allegations about a meeting between Appellees CEO and Jack, and other unfounded allegations of unethical conduct must be disregarded by this Court on the basis of relevance. The Appellant is in effect, attempting to litigate the issues in Civil Action 2017-037 before this Court. The true issue in this appeal is whether or not Appellant is entitled to be returned to the Mayor's Office, as *hold-over* Mayor. The

[1] MIRCP Rule 41(b).

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question of whether the Appellee CEO's denial of the petition for recount was undertaken in accordance with the ERA, is a matter properly with the High Court in Civil Action 2017-037. In that case, the High Court had found that there were no constitutional questions to be referred, and secondly, the Court in that instant had denied Appellant's attempts to sneak into the record of Appeal in that matter, the unfounded allegations about a so-called clandestine meeting between the Appellees. On the same reasoning, the Appellee CEO respectfully requests that this Court reject these claims as not relevant to the issue herein, and dismiss this appeal in its entirety.

Second Bite at the Apple and Forum Shopping

Appellee CEO further contends that by introducing the argument on these unfounded allegations and questioning the conduct of the elections, in this particular case, it is evident that the Appellant is attempting to have a second bite at the apple. More seriously, it is evident that the Appellant is embarking on a case of '*forum shopping*' – noting that these unfounded allegations had been determined in favor of Appellee CEO – or a currently before the High Court in Civil Action 2017-037. By sneaking in these claims in this current appeal – claims which the Appellee CEO is preparing to argue in Civil Action 2017-037 is not only deceptive, but with full knowledge that these very issues had been determined not to form of the record of appeal in that case, and that the High Court in Civil Action 2017-037 had ruled that there were no constitutional questions to be referred, the Appellant is attempting to re-litigate these very same issues again before a different forum-and hoping for a favorable consideration. Appellant had attempted to file a Supplement in Civil Action 2017-037 [February 13 2017 Supplement] to the Record of Appeal, which contained these unfounded allegations. The Court in that instance rejected the attempt and ruled that the

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Supplement could not be part of the record of Appeal as that was not before the Appellee CEO when considering the petition for recount, and further – on the grounds of failure of the Appellant to comply with certain orders of that Court[2]. Appellant is in effect embarking on *forum shopping* – and an attempt at a second bite of the apple, by introducing these unfounded allegations and the question of referral of issues in this case. This conduct must be frowned upon by the Court – and these claims dismissed on the basis of the argument above.

Claims Barred By Res Judicata

Third, the Appellee CEO contends that the Appellant is prevented under the equitable principle of *res-judicata* from re-arguing these unfounded allegations in the case of the instant.[3] The Appellee CEO contends so, on the basis that Civil Action 2015-234 in which these unfounded allegations were first raised, was dismissed by the High Court pursuant to Rule 41(b) of the Marshall Islands Rules of Civil Procedures, on the account of the Appellant's failure to comply with certain Orders of that Court. MIRCP Rule 41(b) reads:

(b) ***Involuntary Dismissal****; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, the court upon its own or upon motion by the defendant may dismiss the action or any claim against the defendant. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.*

Noting that the dismissal Order in Civil Action 2015-234 did not state otherwise, the Appellee CEO submits that the dismissal constituted an adjudication on the merits of the claims relied upon

[2] See Court Order Civil Action 2017-037 confirming Record of Appeal.
[3] Tawes v Waugh Customs Homes Inc, 135 So 3d 294 (Florida First DCA 2014)

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by the Appellant in that case –which claims included the allegations of a clandestine meeting between the Appellees, and unsupported allegations of unethical conduct. As a consequence of the dismissal, the claims by Appellant are deemed to have been adjudicated on the merits – and rejected by that Court. Accordingly, Appellant is barred under the doctrine of *res judicata* [and or issue preclusion] from pursuing these very same allegations in this case.[4]

Res judicata and issue preclusion are principles that ensure that when a person goes to court, that he or she only has one bite at the apple, and not be allowed to re-litigate the same issue over again.[5] 'The doctrine of *res judicata* gives conclusive effect to a former judgment in subsequent litigation between the same parties, involving the same cause of action, and prevents re-litigation of the same cause of action in a second suit between the same parties and those in privity with them.[6] It bars the filing of claims in a second suit that are "based on the same cause of action" as in the earlier action.[7] "The application of the defense is satisfied if; (a) there has been a final judgment on the merits in a prior suit; (b) the prior suit involves the same parties or their privies; and (c) the causes of action are the same as in the prior suit, and the defense must have been pleaded by the moving party.[8] The defense further prevents parties from re-litigating the same claim that was previously available in a prior proceeding between them, regardless of whether the claim was asserted or determined in the prior proceeding."[9] (Jalley v. Mojilong). The doctrine was further affirmed in a

[4] Jalley v Mojilong, 3 MILR 107, 110 (2009)). See also *Ueno v. Abner and Hosia, et al.*, 3 MILR 29, 31 (2007))
[5] Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 896 (2002).)
[6] 4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, §§ 147–148, pp. 3292–3293.
[7] Federation of Hillside & Canyon Assns. v. City of Los Angeles, 126 Cal. App.4th 1180, 1202 (2004)
[8] *2 MILR 120, 123* (1998). Gushi Bros Co. v Kios, et al.)
[9] Above, note 1.

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more recent case, in Civil Action 2016-026, where the High Court found that a "*...hearing on the merits is not a prerequisite to the application of res judicata...*," and citing this Court's decision, the High Court concluded that even "*...a stipulation of a dismissal with prejudice of an earlier action, without court involvement, barred the subsequent action presenting the same claim based on res judicata.*"[10] Appellee CEO argues that the dismissal of Civil Action 2015-234 Pursuant to Rule 41(b) operates as an adjudication on the merits – in favor of Appellee CEO.[11] On account of the said dismissal, the Appellant is prevented under the doctrine of *res judicata* [and or issue preclusion] from re-litigating these claims in the case of the instant. Accordingly, these claims should be denied and rejected by this Honorable Court, and the appeal dismissed

Attempt to Sneak Claim onto the Record of Appeal Rejected

It must also be highlighted before this Court that the Appellant's attempts to sneak into the record of appeal in Civil Action 2017-037 were correctly thwarted and rejected by the High Court in that case. Appellant attempted to file a February 13, 2017 Supplement – as part of the record of appeal in that case, with the purported supplement again containing these very same unfounded allegations. The High Court in that instant denied the Appellants attempt to do so, and rejected the Supplement – again on account of the failure of the Appellants to comply with certain orders of the Court.[12] Accordingly this Honorable Court must find the argument by the Appellant in this regard wanting, and that there is no legal justification to reverse the High Court

[10] Asignacion v Rickers IBID.,
[11] MIRCP Rule 41(b)
[12] Appellant and Counsel both failed to appear at a Scheduled Status Conference April 26, 2017. See Court Order filed April 27, 2017.

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decision on the basis of these unfounded allegations and conjecture.[13] On the basis of the above, Appellee CEO humbly requests that this Honorable Court reject the Appellants claims in this regard – and to dismiss this appeal in its entirety.

TERM OF OFFICE, HOLD-OVER AND INTERPRETATION

Introduction

Turning to the true issue in this appeal, it is noted that this appeal is seeking the ouster of Appellee Jack from Office – and his *return* as *hold-over* Mayor, pending the outcome of the substantive re-count case in Civil Action 2017-037. As also evident from the events in this case, the undisputed facts are that; Appellee Jack and Appellant Samuel were candidates for the Majuro Atoll Mayors race in the November 16, 2015 General Elections. Appellant was at the date of the elections, the incumbent – and Appellee Jack the challenger. On December 19, 2015, the Appellee CEO certified the results in favor of Appellee Jack. On December 22, 2015, and Appellee Jack was sworn in as the Mayor for MALGOV. It is also not disputed that in the meantime, following the certification of the results of the elections, the Appellant vacated the Office of the Mayor. Appellee Jack took office and began to discharge the duties and responsibilities of the Office of the Mayor immediately following his Oath, on or about December 22, 2015. Approximately six months following the entry by Appellee Jack into Office, Appellant filed this action seeking to oust Appellee Jack from Office, on the grounds that he (Appellant) as the incumbent, was by right,

9.'To the extent these were indeed irregularities no assertion was made that they occurred at Arno or how they affected, if at all, the votes tallied or omitted from tallying either for the plaintiffs or the winning candidates.' Clanton vs CEO.

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entitled to remain in Office as hold-over Mayor, until the Court had disposed of the challenge. In his motion for summary judgment, Appellant had also argued that he was also entitled to retroactive and future salaries pending the outcome of the challenge, citing the *Chutaro* case, in support of his argument. Appellee CEO disagrees with the Appellants claims and sets forth below, argument that displaces Appellant's claims. The Appellee does so on the basis of the High Court's Order and interpretation of the MALGOV Constitution, clear authority and precedent on hold-over principle, and equitable principle of laches. On the basis of these points, it is Appellee CEO's line of reasoning that this Appeal should be dismissed.

MALGOV Constitution Section 8(1)(a)(b)

In dismissing the Appellant's motion for summary judgment and the motion for reconsideration, seeking his (Appellant) reinstatement as *hold-over* Mayor, the High Court held that Appellee Jack took Office when the results were certified, pursuant to Section 8(1) (a) and (b) of the MALGOV Constitution. The High Court denied the Appellant's attempts to read into Section 8 (1) (a) and (b) of the MALGOV Constitution, language that was not there.[14] The Appellant had argued that the Court should have employed a different rule of construction, as he argued, to avoid an unreasonable and an absurd result. The High Court however pointed out that there was indeed a superior rule of statutory construction, *i.e,* that where the law is unambiguous, all creative construction should cease, and that the Court should apply the law as it is written. It emphasized that '*the pre-eminent canon of this statutory interpretation requires Courts to presume that the*

[14] See Order Dismissing Motion for Summary Judgment and Order Denying Reconsideration.

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legislature says in a statute what it means, and means in a statute what it says.[15]' The Appellee CEO could not agree more with this approach. Statutory interpretation must begin with the statutory text, and if the statutory text is unambiguous, and the statutory scheme is coherent and consistent, judicial inquiry must cease.[16] In the *Niedenthal* case, the High Court stated that '*under no circumstances shall the Constitution be interpreted to contain language or provisions that it does not contain.*[17] Furthermore, in the *Matter of the Nitijela Constitutional Regular Session*, the Supreme Court held, that '*in the absence of some textual or logical support, the Supreme Court will not read into the Constitution a provision not contained therein.*[18] In yet, another decision on a dispute regarding the MALGOV Mayor's term, this Court clearly affirmed this pre-eminent rule of construction when it held – '*In examining constitutional provisions, the court's task is to give effect to the clear, explicit, unambiguous, and ordinary meaning of language. If the language of a provision is unambiguous, it must be given its literal meaning and there is neither the opportunity nor the responsibility to engage in creative construction. The duty and function of a court is to construe, not to rewrite, a constitution.*[19]

The Appellee CEO agrees with the High Court's approach in employing this pre-eminent canon of construction, and rejects the Appellant's attempts, to read into the MALGOV Constitution, words that are not there. Appellee CEO contends that the High Court interpretation was the correct approach, and is supported by law and entrenched RMI Supreme Court jurisprudence on the

[15] Ibid.,
[16] Lekka v Kabua 3 MILR 167, 171 2013.
[17] High Court Civil Action No 2014-263.
[18] In the Matter of the 19th Nitijela Const. Reg. Ses., 2 MILR 134, 140 (1999))
[19] In the Mat. of the Vacancy of the Mayoral Seat, 3 MILR 115, 118 (2009)

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question of interpretation and rules of constitutional interpretation.[20] The High Court's ruling, in the view of Appellee CEO, is consistent with long standing authority and relies on clear RMI Supreme Court precedent. Appellee CEO agrees that there is a superior rule of construction and that is – where the law is unambiguous, the Court should not interpret the law, but apply should apply the law as it is written.[21] The *plain* or *literal* meaning rule, is underpinned by the presumption that the legislature says in a statute what it means, and means what it says in a statute. The Appellant's claims to contrary are misguided, and the Appellee CEO respectfully moves this honorable Court uphold the interpretation by the High Court in this matter, and to dismiss this appeal.

APPELLANT NOT ENTITLED TO HOLD-OVER

Introduction

With particular regard to the Appellants claims to be re-instated as hold-over Mayor, and retrospective and future salaries, the Appellee CEO rejects these claims, for the following reasons. First, there are no express provisions in the Constitution and or other relevant Statute granting incumbents the authority to hold-over, after expiry of term. Secondly, even if case law supports and recognizes the application of the hold-over principle, the Appellee CEO objects to the Appellant's claims on the basis that the Appellant himself vacated the Office of the Mayor at the end of his term, and as such has no *tenure* to hold-over as he claims. In other words, the hold-over principle has no application to him, under these circumstances. Thirdly, Appellee CEO further

[20] See citations above.
[21] Lekka v Kabua; In the Matter of the Vacancy; etc above.

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rejects the Appellant's claims on the basis of the equitable principle of laches. Appellee Jack, having being certified as the winner of the election, and sworn into Office, can, and should remain in Office – *de jure*, or *de facto*, pending the outcome of the case in Civil Action 2017-037, in the public interest.[22]

No Express Constitutional nor Statutory Authority to Hold-over

The question posed by the Appellant as reproduced above-herein, is misleading. The question should really be re-phrased to ask the question, *whether the Appellant was entitled to be returned to Office as hold-over Mayor, after vacating office at the end of his term, and after Appellee Jack had assumed the reigns of the Office of the Mayor*? A review of the relevant Constitution and statutes reveal no express provisions authorizing the incumbent in the Office of the Mayor for MALGOV to hold-over, at the expiry of a term, and to continue to discharge the functions of the Office until the successor is duly qualified to take office. Even the common law position on hold-over tenures *without* express constitutional and statutory authority is not settled. We note however that American jurisprudence appears to have accepted that an incumbent in an elective and or appointed office, barring any express prohibitions to the contrary, may continue to discharge the duties of Office until the successor has duly qualified.[23] In some Constitutions, legislatures have incorporated specific language to that effect, to avoid any doubt and future challenges to the authority of a hold-over. In others, Legislatures have provided for the appointment of another Officer to serve the functions of an officer whose term has expired, until such office is properly

[22] See *Chutaro*
[23] State v Thompson 38 No 192

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filled, thereby avoiding the *hold-over* question, and the challenges associated with the authority of a hold-over. Section 115 of the *Local Government Act* provides that the term of a Mayor is fixed at 4 years as follows: *'Unless the appointment is an ex officio one, the term of office of the head of a local government shall not exceed four (4) years.* More specifically, Section 8(1) (a) and (b) of the MALGOV Constitution provides to the effect that the term of the Mayor is fixed at 4 years, and commences on the day after the day his election or appointment is certified.

Although we find no express hold-over provisions in the Constitution and the Statutes referred to above, it is recognized that in some cases, the Courts have agreed that even in the absence of express language authorizing a hold-over, public interest dictate, and the law implies, that an incumbent serves in office, until the successor is duly qualified to take office, barring any Constitutional or statutory prohibitions. It is recognized that that even the common law position on the authority to hold-over, in the absence of express constitutional and or statutory authority, is not settled. In this particular case, the Appellee CEO reiterates the discussions on the rules of constitutional and statutory construction highlighted immediately above. In particular the application of the *plain* and *literal* rule of interpretation when the text is unambiguous. To this end, Appellee CEO, supported by the precedents alluded to above, is confident that the MALGOV Constitution and the Statutes referred to above – do not authorize a hold-over in the Office of the Mayor. Notwithstanding, even if this Court adjudges that, implicit in the language of Sections 115 of the Local Government Act and Section 8 (1) (a) and (b) – fixing the term of the Mayor at 4 years - lies the implicit authority to hold-over, the Appellee CEO contends, that the circumstances

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of this case do not qualify for the hold-over consideration on the reasons submitted herein, and that this Honorable Court should reject the Appellant's hold-over claims.

Appellant Has No Term, Tenure, nor Office to Hold-Over

The *term* of office, is the period fixed by Statute or Constitution, and such period cannot be shortened or lengthened without Constitutional or statutory authority. A *term* remains fixed regardless of tenure of an incumbent – and there could possibly be a number of different tenures within a term of Office.[24] Tenure could be shortened by resignation, or extended by a *hold-over* authorized by statue or Constitution - to ensure that the functions of the Office continue to be discharged, in the public interests.

First, the Appellant's *term* in Office pursuant to Section 8 (1) (a) and (b) of the MALGOV Constitution and Section 115 of the Local Government Act, ended when the results of the election were certified. Second, his (Appellant) *tenure* in Office ended, when he legally, and as a matter of fact, packed his personal belongings and vacated office following certification of the results – and the entry into Office of Appellee Jack. The Appellant's claims that he is entitled to be returned to office as hold-over Mayor therefore lacks credibility, and this Honorable Court must reject these claims. A *hold-over*, as the term itself implies, means that the incumbent is still in *actual possession* of Office, following expiry of his or her term. In this case however, the Appellant had vacated office – at the expiration of his term, and no longer has tenure to *hold-over* as he claims.

[24] State v Young (La.) 68 So. 241

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The fact that the Appellant had voluntarily vacated office following the certification of the results disentitles him to any claims to be returned to Office as *hold-over* Mayor. *Where the (incumbent) surrendered the incumbency of the Office upon the apparent election of his successor – and he (incumbent) cannot thereafter resume the functions of Office on the grounds the successor was found not to be qualified, – after the successor had entered the duties of Office.*[25] If in the event that the appropriate tribunal finds that successor's election to be null and void – a vacancy is then created, which could be filled by the executive, until new elections are held to fill the Office.[26]

The Appellee CEO adopts this argument, and submits on the basis of precedent, that the Appellant's claims that he be reinstated as hold-over Mayor, hold no water. Hold-over as stated above, implies that the incumbent remains in *actual* possession of the Office after the term expires, and continues to discharge the duties of the said Office. However, having vacated Office following the certification of the election results of the Mayor's race, consideration of the hold-over no longer applies to the Appellant, as his *tenure* in Office terminated when he vacated Office following certification of the results, and the entry of Appellee Jack into Office. On the basis of the argument above, if for some unforeseen reason Appellee Jack's election to the Office is later found by the Courts to be null and void – a vacancy is then created,[27] and that the Majuro Atoll Local Government Council Executive may, pursuant to Sections 19 and 24 of the MALGOV Constitution, appoint an interim Mayor to discharge the functions of the Mayor, until such time

[25] B. Benson, *The Virginia Law Register* New Series, Vol. 1, No. 6 (Oct., 1915), pp. 415-429
[26] Ibid.,
[27] People v Rodgers 118 Cal 393

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that the Office is filled in a special election. The Appellant has no right to return to Office as hold-over Mayor – as he is currently not in *actual* possession of the Office of the Mayor, and as such, the question of hold-over is no longer applicable to him under the circumstance. In contrast, it is Appellee Jack that is currently in *actual* possession of the Office of the Mayor, having being installed as such, following the 2015 elections. Appellee Jack has now been in Office for a period of over two years, and is therefore entitled to remain in Office as Mayor (*de jure)* and even *de facto,* having being installed into Office by virtue of the 2015 General elections. The Appellant therefore has no term to hold-over, no tenure to hold-over and no office to hold-over, since vacating the Office in December of 2015. If for some reason Appellee Jacks election is nullified by the Courts, a vacancy is then created, to be filled temporarily by the MALGOV Executive, until a special election is conducted to elect the Mayor. In the meantime, under *Chutaro,* and noting the dictates of public interest, it is Appellee Jack, rather than Appellant that should remain in Office, *de jure* or *de facto* –pending the disposition of the substantive re-count case. On this basis, this Honorable Court must see fit to reject the Appellant's hold-over claims, and this appeal in its entirety.

Chutaro Decision supports Appellees CEO and Jack

Finally, Appellant had also cited the *Chutaro*[28] case in support of his argument on the *hold-over* and salary claims. However, upon analysis of the decision in that case, we discover that the *Chutaro* decision reads very much in favor of the Appellee Jack's position rather than his own.[29]

[28] Chutaro vs The Election Commissioner of the Marshall Islands 8TTR 209 (A.D 1981)
[29] Chutaro case: *Alik will not be entitled to remain in the seat on the Nitijela. However, defendant has served on the Nitijela for the prior two years since the election and can be considered a de facto member of the Nitijela, therefore*

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Even though the Court in that case found that defendant Alik's election was null and void, and ordered him to vacate the seat, the Court further found that, for the two years that defendant Alik served in Office, that he (Alik) was in effect the *de facto* representative, and was thus, entitled to the salary and benefits that accrued to that Office for that period. The Appellee Jack today continues to serve as Mayor (*de jure)*, as no Court has determined that his entry into Office is null and void. Appellee Jack can, and should remain in Office under these circumstances, for the same public policy interest reasons that underpin the hold-over principle, and should be allowed to so as Mayor *de jure* or Mayor *de facto*. No Court has determined that Appellee Jack's election is null and void, and as such he serves in the Office of the Mayor today, *de jure*. If indeed his election is later determined under Civil Action 2017-037 to be null and void, the Mayor's position then becomes vacant – until it is filled in a subsequent election. [30] The *Chutaro* decision dispenses with

Appellant's claim to retrospective and future salaries and to his claim to re-instatement, as the hold-over Mayor for Majuro Atoll Local Government. In *Griffin*[31] the Supreme Court of Virginia elaborated on the dichotomy between officers *de jure, de facto, and mere usurpers*. It stated to the effect that – *'a de facto officer is one who comes in by the power of an election and or appointment, but in consequence of some informality, or want of qualification or omission, or by reason of the expiration of his Office, cannot maintain his position when called upon to show what authority he has in holding office.' He is one who exercises office under claim and color of title–distinguished*

entitling him to retain any salary paid to him as a member. (See also Campbell v. Santa Clara County, 93 P. 1061, 26 Am. Jur. 2d Election Section 357 at page 173, re entitlement to office until election).

[30] **MALGOV** Constitution Sections 19 and 24

[31] Griffin v Cunningham 20 Gratt 31, 43

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from a mere usurper'. This reasoning was supported in *McGregor*[32] –where the Court said, '*an officer de facto is defined as one who comes in by the form of an election but in consequence of some informality or want of qualification is incapable of holding Office.*

Appellee Jack, having being certified as the election winner, and taking office after being sworn in, is no *intruder* nor a *usurper*, and regardless, that he is authorized to remain in office, pending the outcome of the substantive case, even as *de facto* Mayor, and he would be authorized to continue to discharge the functions of the Office until he is either confirmed as Mayor, or he is replaced as Mayor, in a special election. Therefore, if the decisions in *Chutaro*, *Griffin* and *McGregor* were applied to the facts in this case, it is evident that Appellant cannot be re-instated as hold-over Mayor, and to the contrary, it is Appellee Jack, that has the right to remain in Office *de jure* and even *de facto*, until the final disposition of the claims under Civil Action 2017-037. Accordingly, Appellee CEO moves that this Honorable Court, dismiss Appellant's hold-over claims, find that in any event, Appellee Jack, having come into Office under color of office and title, is authorized to remain in Office – even as *de facto*, until the re-count case has been fully disposed, and to dismiss this appeal in its entirety.

Appellant Claim to Hold-over Prevented by Laches

In addition to the above, although plaintiff complains in his motion about the pace of this case, it is noted that this particular action was filed on June 16, 2016, a clear 7 months following the certification of the results and the installation of Appellee Jack in the Mayor's Office. Under these

[32]McGregor v Balch 14 Vt 428, 436, 39 AM Dec 231

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circumstances, Appellee CEO submits that the Appellant is barred from pursuing the hold-over claims under the equitable doctrines of *laches*, for the lack of diligence in taking timely action to preserve a legal interest, if his claim was indeed a credible one. Bringing this suit at the 11th hour not only prejudices the voters and people of Majuro Atoll, but also to Appellee Jack and the Majuro Atoll and the Local Government Council, who on December 22, 2015, set in motion the wheels of governance of the Majuro Atoll Local Government, making executive appointments, entering into agreements, enactment of ordinances, and establishment of the administrative apparatus. Under equity, the defense of laches must be sustained where the moving party has unreasonably 'slept on his rights' in asserting a legal claim, and thereby causing prejudice to the non-moving party.[33] To be successful as a defense, the party asserting the defense must show that (a) there was a delay; (b) the delay was unreasonable (c) and prejudice to the defendant. As the facts stand, there is no doubt that the Appellant, through his own negligence and inaction failed take any form of action to preserve his claim to the hold over Mayor position, if it were indeed a credible one, for a period of approximately six months, even though he was fully aware that Mayor Jack was installed as the duly elected Mayor of Majuro Atoll in December 2015. Even when his initial action to decertify the results was rejected by the High Court, the Appellant failed to consider and to take further proceedings to that end – and instead, vacated the Office of the Mayor, following certification of the election results. After sleeping on his 'perceived' rights for a period of almost six months, Appellant filed Action in June 2016 to assert his claims as hold-over Mayor. In the meantime upon coming into Office, Appellee Jack and the MALGOV immediately put the wheels of

[33] See Clanton

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Government into motion, approving executive appointments, hiring employees, signing agreements, passing ordinances, for instance. To allow the Appellant at this very late hour to proceed with this claim is prejudicial, not only to the Office of the Mayor, but the people and the Local Government of Majuro Atoll, as the wheels of the new Local Government Administration were set in motion in December 2015. In equity, we are reminded of the maxim '*Equity aids the vigilant, not those who sleep on their rights'*. In the *Perry, Gingrich and Huntsman case*,[34] the US Court of Appeals (Fourth Circuit) upheld that the District Court decision barring the plaintiffs' action on the equitable principle of laches. In this case, plaintiffs failed to obtain petition signatures on time, and therefore did not appear on the ballot for the Virginia Republican Primary for the 2012 United States Presidential Election. Plaintiffs filed a complaint alleging unconstitutionality of certain restrictions after the deadline of December 22, 2011. The District Court however found that the plaintiffs could have acted earlier, rather than wait till after the deadline to challenge the constitutionality of the restrictions, and were therefore barred by laches. In upholding the decision of the District Court, the Appeals Court opined that the action would have been successful, if the plaintiffs had acted in a timely fashion. The prejudice, it was determined, was caused to defendants because *the Board's had already put in place an orderly schedule for printing and mailing absentee ballots, and that to grant the relief would throw the administrative arrangements into chaos.* Appellee CEO argues that the decision of the Court of Appeal in *Perry* applies to the facts in this case, and to allow Appellant to return to Office as hold-over Mayor, could throw the MALGOV

[34]United State Court of Appeals for the Fourth Circuit, The Honorable Rick Perry, Plaintiff-Appellant-Movant, The Honorable Newt Gingrich, The Honorable Jon Huntsman, Jr., and the Honorable Rick Santorum, Intervenor-Plaintiffs, v. Charles Judd, Kimberly Bowers, and Don Palmer, members of the Virginia Board of Elections, in their official capacities, Defendants-Appellees-Respondents, Proceeding No. 12-1067" (PDF). ca4.uscourts.gov. (January 17, 2012)

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administrative arrangements thus far established, into chaos. Consistent with the decision in *Perry, Gingrich and Huntsman,* the Appellee CEO moves this Honorable Court dismiss the hold-over claims, and this appeal in its entirety, under the equitable doctrine of laches.

Appellant Not Entitled to Prospective and Future Salaries

Appellant in his motion for summary judgment had made a claim of entitlement to retrospective and or future salaries pending the outcome of the action under Civil Action 2017-037. The Appellee CEO submits that the Appellant's claims are without legal basis and should be rejected. The Appellant does not have a private or property claim to the Office of the Mayor, nor to the benefits that accrue to the position. Perhaps he may have received sympathy in the Courts of medieval England, where public offices were often designated as incorporeal hereditaments, and capable of being sold and transferred like any other property.[35] Unfortunately for the Appellant, that this is not the case under the Constitution and Statutes of the Republic. The Office of the Mayor of Majuro Atoll Local Government, is a public office established under the Local Government Act, and the MALGOV Constitution. The Office of the Mayor is a public trust, created for the benefit of the people of Majuro Atoll.[36] By law, the Office is an elected office, and may be filled by any person who is eligible to contest the seat, in accordance with the eligibility criteria under Statute. As such, no private interest, nor property rights to the Office nor benefits derived from the Office could possibly attach personally to the occupant of such offices as private interests.[37] The Appellant's claims to retrospective and future salaries pending the disposition of

[35] B. Benson, *The Virginia Law Register* New Series, Vol. 1, No. 6 (Oct., 1915), pp. 415-429
[36] Local Government Act Section 142
[37] T. B. Benson, *The Virginia Law Register* New Series, Vol. 1, No. 6 (Oct., 1915), pp. 415-429

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the matter in Civil Action 2017-037 is therefore misguided, and this Honorable Court should reject these claims.

Civil Action 2016-121 to Remain Abated

The High Court in this case, had on December 1, 2016, ordered the abatement of this action, on the grounds of judicial economy and efficiency, given the parallel proceedings in Civil Action 2015-233 (now Civil Action 2017-037). As the Court had indicated in its Order, '*the outcome of the proceedings in Civil Action 2015-233 have the substantive potential to resolve the issues in this action*'[38]. The Appellee CEO agrees with this premise, and on the very remote chance that this Court will accept the Appellant's claims and reverses the High Court decision, that the Appellee CEO respectfully moves that this Court enforce the Order of the High Court of December 1, 2017, abating this action, for the reasons set forth herein above.[39] In *Clanton*,[40] this Court held that 'a second suit will be abated by a first suit if the parties are the same, the rights asserted are the same, and the relief prayed for is the same. As noted above, the term same as used herein, does not mean 'identical' but that the 'essential basis' of the action must be the same, and that the relief prayed for is aimed at the same target.[41] This, in the opinion of the Appellee CEO, is in fact the case at hand, and as such this action should remain abated in the interest of judicial economy and efficiency, and pending resolution of Civil Action 2017-037.[42]

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[38] See Court Order
[39] Clanton ibid.,
[40] Clanton ibid.,
[41] Clanton ibid.,
[42] see also *U.S. v. Oregon State Medical Soc.*, [1952] USSC 54; 343 U.S. 326, 96 L.Ed. 978, 72 S.Ct. 690 (1952)

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NO OBLIGATION TO REFER UNDER SECTION 188 OF ERA

Introduction

At the beginning of this brief, Appellee CEO took the liberty to address the unfounded accusations, allegations and conjecture relied upon by Appellant as justifying a referral of these matters to the High Court pursuant to Section 188 of the Elections and Referenda Act. The Appellant made this argument in all of the companion election cases. It is to be noted that in Civil Action 2017-037, the High Court had ruled, when confirming the record of appeal, that there were no constitutional questions for referral.[43] The Appellant is clearly embarking on a case of *forum shopping* – his claims having being dismissed or disregarded as not credible in another Court, and he is now attempting to litigate same at this forum. For instance, Civil Action 2015-234 having being dismissed pursuant to Rule 41(b) of the Marshall Islands Rules of Civil Procedures, operates as an adjudication on the merits of the claims asserted therein by Appellant, which included all of the unfounded allegations repeated here. Appellant is therefore, under the doctrine of res judicata, prevented from attempting to re-litigate these issues.

Issues and Inconsistencies Not referable Under Section 188 of ERA

The obligation of the Appellee CEO to entertain referrals under Section 188 (1) and (2) are specific to voters and voting rights,[44] and the Court will not entertain any *referrals* under Section 188(2) which the Appellant had failed to timely raise, and is now attempting to do so, in the guise of an

[43] See Order of the High Court 2017-037 confirming Record of Appeal
[44] Clanton v Marshall Islands Chief Electoral Officer (1) [1989] MHSC 22; 1 MILR (Rev) 146 (2 August 1989)

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appeal. In his petition, the Appellant had alleged certain 'inconsistencies and issues', including alleged constitutional issues, and sought the referral of those matters to the High Court under Section 188(2) of the ERA – which he repeated in his motion for Summary Judgment in this case. The Appellee CEO submits that the purported request for referral of the 'inconsistencies and issues' and constitutional issues by the Appellant is misguided, and must be denied.

First, the CEO's obligation to refer questions to the High Court under Section 188 of the ERA is limited only to two issues, as follows; (a) where a person whose claim to a right to vote in an election has been rejected by an election official, such person may require the CEO to refer the matter to the High Court; and second, (b) any question concerning the right of a person to vote, may be referred by the Appellee CEO to the High Court for resolution. In other words, referrals under Section 188(2) of the ERA, relate only to the question of voter qualification and a person's right to vote. Section 188 in the view of the Appellee CEO, does not anticipate the referral of any other questions to the High Court, except as set out clearly under subsections (1) and (2) of that

Section. In light of this reading of Section 188, it is clear that the matters designated by the plaintiff as 'inconsistences and issues' for referral by Appellee CEO to the High Court under Section 188 of the ERA do not qualify for referral under the Section. As such, the CEO has no obligation under Section 188, to refer the purported 'issues and inconsistencies' designated by the Appellant, on the grounds that the purported issues do not concern voters and voting rights, and importantly, the

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purported referral does not relate to any particular and identified voter.[45] It is established Marshall Islands Supreme Court precedent, that a request for referral, must relate to a voter who is identified and certain, and Section 188 does not anticipate vague questions and bare assertions referring to 'voters' who are not certain and not identified.[46] As evident in his petition as well as in the contents of counterpart cases, including the case of the instant, the Appellant's iterations constitute bare assertions about voter and voting irregularity, without identifying with certainty, the voters purportedly affected by the decision of the CEO[47]. As this Court had held on numerous occasions, Section 188 (2) was intended to provide remedy to voters who are identified and certain,[48] and not bare assertions of the right of 'voters' who are not identified and not certain. In the words of this Court, '*The Nitijela did not intend to give a different interpretations to Section 188(1) and (2), and as such, referrals under Section 188(2) must relate to a voter who is identified and certain*.[49] Accordingly, the plaintiff's attempts that these matters, including the constitutional issues raised

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[45] Section 188 and see also Clanton

[46] **Clanton v Marshall Islands Chief Electoral Officer (1) [1989] MHSC 22; 1 MILR (Rev) 146 (2 August 1989)**

[47] '**whether** the confined votes were valid, raising the issue of denial of the right to vote and equal protection under the Constitution; **whether** the alleged secret opening of the postal ballots and the rejection of ballots was valid; **whether** the Office of the CEO violated the ethical conduct under the Constitution; **whether** the alleged segregating of voting and ballot box area from poll watchers in Woja ward violated ethical conduct; **whether** the rejection of postal ballots for irregularities relating to postal voters affidavits violated equal protection under the Constitution, as allegedly some voters were allowed to vote without signing the voter list; **whether** the private opening and screening of postal ballots outside of public scrutiny violated open and transparent policy of the counting process and ethical conduct provisions under the Constitution; **whether** the alleged failure of elections officials to mark voters with indelible ink may have possibly inflated the number of voters;

[48] **Clanton v Marshall Islands Chief Electoral Officer (2) [1989] MHSC 23; 1 MILR (Rev) 156 (2 August 1989)**

[4] In their plain meaning, "any person" and "a person" both refer to a single individual. One who has been denied the right to vote is, under subsection (1), a single, identified individual. The ordinary meanings of "a person," under subsection (2), and "any person" under Article IV, § 9, whose right to vote has given rise to any question, would also refer to a single, identified person. Neither the language of 2 MIRC Ch. 1, § 88 nor reason suggest that the Nitijela intended an identified person under subsection (1) and unidentified persons, or a class of voters, under subsection (2), nor does the language of Article IV, § 9, which encompasses the situations covered by both subsections (1) and (2), suggest any such differentiation

[49] Clanton ibid.,

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there within, be referred to the High Court pursuant to Section 188(2) must fail, as the purported referral fails to qualify in accordance with Section 188 of the ERA. The Appellant's remedy then was exclusively within his own hands, and he could have chosen to file proceedings to halt the voting and the counting process, if there were indeed as he alleged, issues or violations of the ERA and the Constitution. Instead plaintiff again, slept on his rights, and failed to take timely action to preserve those interests. The voting is over, the ballots have been counted, and he cannot now, in the pretext of an appeal, or a referral under Section 188, attempt to bring forth to this court, interests he failed to preserve on a timely basis. [50] Furthermore, on the basis that Civil Action 2015-234 was dismissed pursuant to Rule 41(b) of Marshall Islands Rules of Civil procedures – these claims are deemed to have been denied – and the Appellant is barred under the doctrine of *res judicata* from re-asserting these unfounded allegations. Given the nature of the so called *inconsistencies* raised by the Appellant, coupled with the fact that the alleged issues and inconsistencies did not relate to a voter who is certain and identified, it is the Appellee CEO's contention that he has no

obligation under Section 188 of the ERA to make such referral, and that the Appellant had he not slept on his rights, had the opportunity to file proceedings on his own to preserve these interests in a timely fashion. Having failed to do so, Appellant should not be permitted at this juncture, to remedy his failure to preserve his interests – under the pretext, and in the guise of an appeal. On this basis, Appellee CEO contends that the High Court was absolutely correct in dismissing these

[50] Ibid.,

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claims, and therefore respectfully submits that this Honorable Court likewise rejects these argument, and to dismiss this appeal in its entirety.

CONCLUSION

In conclusion, Appellee CEO submits that that the High Court decision to dismiss Civil Action 2016-121 was based on sound precedent, and that the Appellant had failed to show that he is indeed entitled to re-instatement as hold-over Mayor. Appellee Jack's election has not been adjudged by any Court to be null and void at this juncture, and as such Appellee Jack should remain in Office as Mayor *de jure* and depending on proceedings and precedent, even as *de facto*, in the public interest. The Appellants purported referrals do not qualify for referral under Section 188 of the ERA, and therefore the Appellee CEO has no obligation to refer these matters. The Appellant, had he been awake, could have chosen to file proceedings on his own, to timely preserve his interests, and cannot therefore come before this Court and purport to litigate interests he failed to timely preserve under the pretext of this appeal. Accordingly, it is the Appellee CEO's respectful submission that this Honorable Court; (a) uphold the dismissal of Civil Action 2016-121; and (b) dismiss this Appeal in its entirety.

Dated this 14th day of June 2018

Respectfully Submitted:

Filimon M. Manoni
Office of the Attorney
General – For Appellee CEO

INDICES

1. **Statement of Related Cases:** There are no related cases.

2. **Relevant Provisions of the Constitutions, Statutes, and Rules:**

a. Constitution of the Republic of the Marshall Islands:

Article V Section 9:

- **Determination on Questions of Membership of the Nitijela.**

'Any question that arises concerning the right of any person to vote at an election of a member or members of the Nitijela, or to be or to remain a member of the Nitijela, or to exercise the rights of a member, or concerning the conduct of any person in relation to any election of a member or members of the Nitijela, shall be referred to and determined by the High Court.'

b. Constitution of Majuro Atoll Local Government

- **Section 6 Membership and Elections:**

(1) The Council shall consist of 16 members being:

(a) The 13 members elected by the wards as specified in Section 4;
(b) Two iroij voting members;
(c) 1 Mayor

- **Section 8 – Term of Office**

(1) The term of Office of a member referred to in Section 6 (1) (a), (b) and (c) is 4 years and –

(a) commences on the day after the day after the day on which his election or appointment is certified; and
(b) terminates (unless the seat of the member becomes vacant earlier under Section 9) on the day before the new member takes office.

- **Section 9 - Vacation of Office**

(1) The seat of a member of the Council becomes vacant if and only if:

(a) his term of office terminates in accordance with Section 8; or
(b) he ceases to possess the qualifications for election that he was required under Section 7, to have at the time of his election or appointment; or
(c) he dies;
(d) He resigns his seat by notice in writing to the Local Government;
(e) He is removed from Office under Subsection (2);

- **Section 19. Acting Head of the Local Government.**

(1) In the event of the absence or incapacity of the Mayor, his functions shall be performed by a member of the Executive Committee appointed by him or in default, the Executive Committee.

(2) For the purpose of performing any function of the Mayor that a member of the Executive Committee authorized to perform by virtue of Subsection (1), the member shall be deemed to be the Mayor and any references to the Mayor in any law or any rules and procedures of the Council to the Mayor shall be read as including a reference to that member, accordingly.

(c) Elections and Referenda Act Section 185

§185. Declaration of the result.

(1) If after an election in an electorate no petition for a re-count is received, within the period allowed by Section 180(3) of this Chapter for the filing of petitions, the Chief Electoral Officer shall, on the day after the end of that period, publicly announce the unofficial result already announced under Section 178(4)(b) of this Chapter as the official result of the election.

(2) If after an election in an electorate a petition for a re-count is received within the period allowed by Section 180(3) of this Chapter for the filing of petitions, the Chief Electoral Officer shall publicly announce the unofficial result already announced under Section 170(4)(b) of this Chapter on the original count, or under Section 182(3)(b) of this Chapter on the re-count, as the case requires, as the official result of the election:

(a) if he grants the petition, on the day after he receives the certified result of the re-count under Section 1 82(3)(a) of this Chapter;

(b) if he rejects the petition and no appeal is made to the High Court within the period allowed by Section 181 of this Chapter for appeals, on the day after the end of that period; or

(c) if he rejects the petition and an appeal is made to the High Court within the period allowed by Section 181(1) of this Chapter for appeals, then:

(i) if the appeal is upheld, on the day after he receives the certified result of the recount by the court in accordance with Section 182(3)(a) of this Chapter; or (ii) if the appeal is rejected, on the day after the court announces its decision.

(3) The Chief Electoral Officer shall give notice of the official result of an election in the same manner as that in which notice of the holding of the election was given under Section 142 of this Chapter.

(4) In order to assure that each electoral district is represented in the Nitijela, and to assure compliance with Section 10(1) of Article IV of the Constitution of the Marshall Islands. the Nitijela may, pending the declaration of the official result of the election, seat those candidates named as successful candidates in the unofficial results.

(a) if he grants the petition, on the day after he receives the certified result of the re-count under Section 1 82(3)(a) of this Chapter;

(b) if he rejects the petition and no appeal is made to the High Court within the period allowed by Section 181 of this Chapter for appeals, on the day after the end of that period; or

(c) if he rejects the petition and an appeal is made to the High Court within the period allowed by Section 181(1) of this Chapter for appeals, then:

(i) if the appeal is upheld, on the day after he receives the certified result of the recount by the court in accordance with Section 182(3)(a) of this Chapter; or

(ii) if the appeal is rejected, on the day after the court announes its decision.

(3) The Chief Electoral Officer shall give notice of the official result of an election in the same manner as that in which notice of the holding of the election was given under Section 142 of this Chapter.

(4) In order to assure that each electoral district is represented in the Nitijela, and to assure compliance with Section 10(1) of Article IV of the Constitution of the Marshall Islands. the Nitijela may, pending the declaration of the official result of the election, seat those candidates named as successful candidates in the unofficial results. **[P.L. 1980-20, §77, this Section has been re-numbered; amended by P.L. 1992-9, §11.]**

d. Marshall Islands Rules of Civil Procedure Rule 41(b):

Rule 41 (b):

(b) **Involuntary Dismissal**; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, the court upon its own or upon motion by the defendant may dismiss the action or any claim against the defendant. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

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IN THE SUPREME COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL **Plaintiff-Appellant** **VS** **ROBSON YASIWO ALMEN** in his capacity as Chief Electoral Officer, **MINISTRY OF INTERNAL AFFAIRS** **GOVERNMENT REPUBLIC OF THE MARSHALL ISLANDS** **Defendant-Appellees**	**H.CT Civil Action 2016-121** **S.CT CIVIL ACTION 2018-001** **CERTIFICATE OF SERVICE**

I FILIMON M. MANONI hereby certify that I served a true Copy of the Appellee CEO's ANSWER BRIEF on Counsel by email at: chikamotr001@hawaii.rr.com and at awelbon.esq@gmail.com on the 14th day of June 2018. I have since inserted the correct assigned Supreme Court Civil Action Case No (2018-001). Except for insertion of the correct case number, the document served on Counsel is a true copy of the Appellee CEO's ANSWER BRIEF.

Filimon M. Manoni