

FILED

JUN 20 2018

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT
OF THE
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 of)
of the Republic of the Marshall Islands)
and Ladie Jack)
Defendant-Appellees)

High Court Civil Action 2016-121
Supreme Court Civil Action 2018 -001

Reply Brief for Defendant Jack

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)	Supreme Court Civil Action 2018 -001
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VS)	
ROBSON YASIWO ALMEN in his)	
capacity as Chief Electoral Officer,)	APPELLEE JACK
Ministry of Internal Affairs, Government)	ANSWER BRIEF
of the Republic of the Marshall Islands)	
and Ladie Jack)	
)	
Defendant-Appellees))	

JURISDICTIONAL STATEMENT

On December 14, 2017 the three motions and rulings are as follows 1) Plaintiff-Appellant Samuel motion for Summary Judgment was DENIED; 2) Defendant –Appellee CEO Almen motion for Dismiss was GRANTED; and 3) Defendant – Appellee Jack Motion to Vacate was DENIED. In Granting Defendant - Appellee’s motion the dismiss Plaintiff - Appellant Samuel then appealed that decision to this Court.

STATEMENT OF THE CASE

Defendant-Appellee Jack and Plaintiff – Appellant Samuel ran the Mayor Seat for Majuro Atoll Local Government, Defendant Appellee came out victorious. Plaintiff – Appellee Samuel then challenged the process in three different Civil Actions stating that 1) the certification of election results were invalid because a) Defendant – Appellee CEO Almen did not follow the Election Referenda Act and b) there was secret meeting between Defendant – Appellee Jack; and

2) because the certification of elections was 'illegal' Plaintiff – Appellant Samuel should 'holdover' the office.

In this case, H Ct CA 2016 – 121 and Sc CA 2018 – 001, the Trial Judge dismissed all of Plaintiff – Appellant. Defendant – Appellee agrees with the Trial Court ruling and will submit arguments in support herein.

In summary, the Plaintiff- Appellant allegations of 'illegal certification due to irregularity of election procedure are still in the docket of the High Court in Civil actions HC CA 2015 – 233 and HC CA 2017 - 037 A and b) the allegation of the secret meeting between Defendant – Appellees is baseless, false and inaccurate.

Secondly, the ideology and principle of "holdover" is void, empty and non-existence in the Constitution of the Majuro Atoll Local Government, for the Trial Judge to include such interpretation would blatantly deviate from the letters and spirit of the Constitution. Further Appellant seems to urge the Trial Judge to make a new interpretation of the Constitution, something that counsel for Appellant did not try to entertain, Appellee Jack is the Mayor of Majuro Atoll Local Government, and counsel Chikamoto was the attorney for MALGov however did not continue his service under the so called "holdover" clause they covet¹.

¹ See Affidavit of Defendant Jack Filed April 28, 2017

STANDARD OF REIVEW

Matters of law are reviewed *de novo* standard.² The appeal herein involves questions of mixed question of law and fact, and as such, the standard of review to be applied by the Supreme Court is this matter is, *de novo*.

ARGUMENT

It is Appellee Jack submission that the Trial Judge was correct in dismissing the case and that his reasons to dismiss the case were legally sound. What the Appellant seeks to the Court to do, holdover, does not exist in the Constitution of Majuro Atoll Local Government.

Appellee Jack will address in his response answer on a two tier submission, why the Appellant allegation of non-compliance to the Election Referenda Act by Appellee Almen should not be considered by this honorable Court and secondly the appellant's request for holdover is unconstitutional.

Allegations against Appellant Almen

Repetitive and Waste of Time

Appellant bases his case on the argument that Appellee Almen failed to comply with ERA alleging that allowed illegal and unlawful opening of postal ballots, the Rita Ward recount had a net gain for Appellant, the informal and formal petition for recount should have prevented the Appellee Almen from certifying the results.

These legal issues raised by Appellant are not new for the Trial Court to address, in fact they were also raised in CA 2015 – 233 that is remanded and still in the High Court's Docket and CA 2017

² *Jack v. Hisaia*, 2 MILR 206, 209 (2002); *Lobo v. Jejo*, 1 MILR (Rev.) 224, 225 (1991); *Pierce v. Underwood*, 487 U.S. 552, 584 (1988).

– 037 that is still in High Court’s Docket. Appellant have ample time to address these legal issues at Trial Court level and need not the Supreme Court to address these issue simultaneously. This will waste both Courts time and energy.

Another important point to consider is CA 2015 – 234 has been dismissed, it is noteworthy to state the most of these issues in this appeal, and the CA 2015 – 233 and CA 2017 – 037. are also in this appeal.

One issue however raised in this appeal, that is unlike the other High Court Civil action mentioned above is the ‘secret’ meeting between Appellees.

Clandestine Meeting, Baseless Claim

Appellant claims that there was a meeting between Appellees and that this meeting caused the illegal certification. This claim is unfounded and was dismissed in HC CA 2015 - 233, HC CA 2016 – 121 this issue was not address as much as ‘holdover’ argumentations. It is Appellee Jack Position that such meeting did not exist. Further CA 2015 – 233, where the allegation of clandestine meeting took place has been dismissed. Therefore Appellee Jack strongly deny appellant arguments on Clandestine meeting.

Because the allegations above are still with the High Court, it is only reasonable for this Court to allow the Trial Court to adjudicate these allegations, this appeal must be dismissed in its entirety.

HOLDOVER ARGUMENT, UNCONSTITUTIONAL, DECEPTION

Appellant is adamant in stating that the Certification by Appellee Almen was illegal and therefore appointment and installment of Appellee Jack is illegal. And because Appellee Jack is on his office

by an illegal Certification, then appellant, being the incumbent, must remain in office until the election is certified.

Interpretation of Section 8 (1)

Appellee Jack agrees with the Trial Judge and wish not to add or delete to the HC CA 2019 - 121 December 14, 2017 Order.

Double Standard

There are two individuals that are presenting double standard submissions to this honorable Court, the Appellant and the Appellant's Counsel.

Appellant after being informed of the certification of the election naming Appellee Jack as the Mayor Elect, Appellant then voluntarily vacated the Majuro Atoll Local Government Office – packing his bag and vacating the office; like a dog, putting his tail between its leg and leaving. After seven (7) months, appellant filed CA 2016 121 and then started to argue claiming holdover. Appellant Samuel surrendered his capacity as Mayor 7 months prior, why did it took Appellant seven (7) months later to seek holdover? The answer is uncertain, but one cannot rule out Appellant's Counsel, the second double standard individual.

Appellant counsel Mr. Chikamoto was the legal counsel for Majuro Atoll Local Government and have represented Majuro Atoll Local Government in among others, High Court cases CA 2015 025, CA 2014 – 201, CA 2012 - 001, CA 2006 – 057, CA 2012 - 130. After the certification and the inception of Appellee Jack as Mayor Elect for Majuro Atoll Local Government, Mr. Chikamoto

addressed Appellee Jack as Mayor and pursue Appellee Jack's guidance and advice in his (Chikamoto) legal representation to MALGov in abovementioned cases, not Appellant.³

Being attorney for MALGov for many years, Mr. Chikamoto must be versed and aware of the Constitution of Majuro Atoll Local Government⁴. Mr. Chikamoto did know Appellant was the Mayor for MALGov by holdover did not go for Appellant for approval but rather seek the approval and blessing of Appellee Jack to continue its representation on the above-mentioned Civil Action. After Appellee Jack recused Mr. Chikamoto, Mr. Chikamoto voluntarily made motion for substitution of counsel for MALGov's pending civil action, and after all the dust were settled, (7) seven months later, Mr. Chikamoto then filed a new Election case and then inserted Appellee Jack as co-defendant now claiming holdover; clearly double standard.

Appellant on December 2015 surrendered his Mayor capacity to Mayor Elect Appellee Jack, pursuant to MALGov Constitution. Mr. Chikamoto understood this fact and deemed Appellee Jack as Mayor Elect. If Mr. Chikamoto did not seek appellant Samuel's approval and blessing to continue his legal representation under appellant argument of holdover in this appeal, then why should the Trial Court make that error? There is, but one answer, the principle of Holdover does not exist in this instance, evidencing double standard, blatantly making false and misleading issues for the Courts to consider.

³ See Affidavit of Defendant Jack Filed April 28, 2017

⁴ Section 8 of Majuro Atoll Local Government

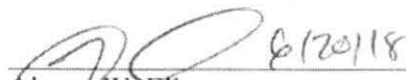
CONCLUSION

For all of the foregoing reasons, Appellee Jack respectfully submits that the Trial Judge and High Court decision was legally sound and based on RMI Jurisprudence. Therefore it is Appellee Jack's respectful submission that this Honorable Court 1) uphold the finding and judgment of the High Court and 2) Dismiss this appeal in its entirety and 3) such other and further relief as may be deemed just and proper.

STATEMENT OF RELATED CASES


There are no related cases in this matter.

Dated: June 20, 2018


Alanso W. Elbon
Counsel for Defendants- Appellee

CERTIFICATE OF SERVICE

I certify that copies of the foregoing were served on opposing counsel and appellee CEO Almen; respectively. E-mails was sent on this date or soon thereafter to Roy T. Chikamoto at chikamotr001@hawaii.rr.com and Dr. Filimoni Manoni at manoni.filimon@gmail.com.


Alanso W. Elbon

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Relevant Provision of Constitution, Statues and Rules:

- i. Majuro Atoll Local Government

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 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.