

FILED

JUN 12 2017

**IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

**ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS**

<p>HIROSHI V. YAMAMURA, Plaintiff, v. JOHN T. KAIKO, et. al., Defendants.</p>	<p>CIVIL ACTION 2017-032 ORDER OF DISMISSAL WITH PREJUDICE</p>
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Hiroshi Yamamura, plaintiff
Witten Philippo, counsel for defendants

INTRODUCTION

Plaintiff alleges that defendants are unlawfully subsidizing the salaries of Utrik Local Government officials and employees with 177 trust fund proceeds. Defendants claim that plaintiff's complaint fails to state a claim upon which relief can be granted and that the High Court lacks subject matter jurisdiction. I find that the High Court does not have subject matter jurisdiction. Consequently, I dismiss plaintiff's complaint with prejudice.

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution, Article VI, Section 1(1)

The judicial power of the Republic of the Marshall Islands . . . shall be vested in . . . a High Court . . . possessing such jurisdiction and powers . . . as may be prescribed by law consistent with the provisions of this Article.

Constitution, Article VI, Section 3(1)

The High Court [has] general jurisdiction over controversies of law and fact [including] original jurisdiction over cases duly filed in the High Court

27 MIRC §211(1)

The jurisdiction of the High Court is as provided in:

(a) Article VI, Section 3 of the Constitution of the Marshall Islands (general jurisdiction);

* * *

(f) this Chapter; and

(g) any other law of the Republic.

42 MIRC §104

The [Nuclear Claims] Tribunal is established . . . to render final determination upon:

* * *

(b) disputes arising from distributions under Articles II and III of the Section 177 Agreement; and

(c) any funds that are provided under Section 177 of the Compact of Free Association shall remain available in perpetuity for the full payment of claims.

42 MIRC §106(3)

* * * Pursuant to Article VI, Section 3(1) of the Constitution, final determinations and orders by the [Nuclear Claims] Tribunal or Special Tribunal shall not be subject to review by the High Court.

DISCUSSION

Review and application of the above provisions requires me to conclude that the Nuclear Claims Tribunal (“NCT”), and not the High Court, has subject matter jurisdiction over plaintiff’s claims. Plaintiff argues that because the NCT is unfunded and therefore defunct, subject matter jurisdiction has, of necessity, been transferred to the High Court. Although I am sympathetic to plaintiff’s concern about the lack of a functioning dispute resolution forum, I am required to *apply* the law that is; not to *create* the law that plaintiff or I might prefer. Creation of the law is

the job of the Nitijela. And to date, the Nitijela has not transferred subject matter jurisdiction over claims like those raised by plaintiff from the NCT to the High Court. Notably, the Nitijela has, at least twice since the NCT ceased operations, amended the High Court's jurisdiction as it relates to *other* matters originally within the NCT's jurisdiction. See P.L. 2013-18 and P.L. 2015-41.

ORDER

1. Plaintiff's complaint is dismissed with prejudice for lack of subject matter jurisdiction.
2. Because the High Court lacks jurisdiction, I do not reach defendants' other claim (failure to state a claim upon which relief can be granted).
3. The parties shall bear their own costs and attorney's fees.

DATED this 12th day of June, 2017.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice