

FILED

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

APR 17 2009
[Signature]
CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

IN THE MATTER OF THE 30TH NITIJELA)
CONSTITUTIONAL REGULAR)
SESSION, INTERPRETATION OF)
CONSTITUTION)
)
by TION NABAU in his capacity as)
ATTORNEY-GENERAL,)
)
petitioner)
)
v.)
)
JURELANG ZEDKAIA in his capacity as)
SPEAKER OF THE NITIJELA)
)
respondent.)
_____)

CIVIL ACTION NO. 2009-088

JUDGMENT

TO: Acting Attorney-General Tion Nabau
Legislative Counsel Divine Waiti, counsel for Speaker Jurelang Zedkaia

At 4:35 p.m. on April 17, 2009, this matter came before the Court on the Attorney-General's April 17, 2009 Complaint for Declaratory Relief and the Attorney-General's April 17, 2009 Motion to Expedite Hearing. Upon stipulation by the Attorney-General and counsel for Speaker Zedkaia (the Legislative Counsel) the Court scheduled argument on the Complaint for 4:30 p.m. on April 17, 2009, at the Majuro Courthouse. The Court granted counsel for the Speaker leave to file and serve a written answer or opposition prior to argument, but due to time constraints, the Court did not require a written opposition. Both counsel agreed to proceed on the Attorney-General's Complaint and without a written answer or opposition by the Speaker. Further pleading is not required and the case is at issue.

The Court agreed to expedite the complaint because it involves a matter of great concern

and urgency for the Government and the people of the Marshall Islands — a vote of no confidence.¹

Factual Background

The following facts were stipulated to by the parties or are undisputed:

1. On April 8, 2009, at a meeting of the Nitijela, Senator Kaibuke Kabua for himself and six other Senators gave notice of their motion of no confidence in the Cabinet pursuant to Article V, Section 7(1), of the Constitution.²
2. After Senator Kabua's introduction of the motion, the Speaker recessed the Nitijela.
3. On April 15, 2009, the Speaker announced that the Nitijela would reconvene at 10:00 a.m. on April 22, 2009, to vote on the motion of no confidence.

Issue

The Attorney-General argues as follows:

1. under Article V, Section 7(2), of the Constitution, the Nitijela must vote on the motion of no confidence not earlier than five days and not later than ten days after notice of the

¹ “The crucial importance of a no confidence motion has been recognized by other countries which utilize a parliamentary type system. ‘Perhaps the most crucial motions considered by the House of Representatives are those which express a want of confidence in, or censure of, a Government as it is an essential tenet of the Westminster system that the Government must possess the confidence of the lower (representative) House. . . The importance of such motions or amendments is recognized by the rule that any motion of which notice has been given or amendment which expresses a censure of, or want of confidence in, the Government . . . takes precedence of all other business until disposed of.’” In the Matter of the 19th Nitijela Constitutional Regular Session, High Court CA Nos. 1998-214 and 1998-215 (consolidated) (1998), Opn. 3, citing Commonwealth of Australia, House of Representatives Practice, pg. 417, 1980 Ed.

²Senator Kabua pre-filed the motion on March 27, 2009.

motion was given on April 8, 2009;

2. under Article XIV, Section 4(1), of the Constitution, the period within which the vote must be had began on Monday, April 13, 2009, and ends on Saturday, April 18, 2009; and

3. failing to vote on the motion between April 13 and 18, 2009, is a violation of the Constitution and any resulting vote may be null and void.

The Attorney-General seeks a declaratory judgment to this effect.

Counsel for the Speaker argues as follows:

1. true, under Article V, Section 7(2) of the Constitution, the Nitijela must vote on the motion of no confidence not earlier than five days and not later than ten days after notice of the motion was given on April 8, 2009;

2. however, pursuant to Section 18 of the Rules of Procedure of the Nitijela, Saturdays, Sundays, and legal holidays should not be included in calculating the days within which the Nitijela must vote – that is, the tenth day after notice of the motion of no confidence is April 23, 2009;

3. the April 22, 2009 date set by the Speaker for the vote of no confidence is within the five to ten-day period required by Article V, Section 7(2); and

4. to require that Nitijela to vote on the motion of no confidence on April 18, 2009, i.e., tomorrow, would cause them great inconvenience as they have made other plans based upon the April 22, 2009 date the Speaker announced on April 15, 2009.

The Applicable Law

Article V, Section 7, of the Constitution reads as follows:

Vote of No Confidence in the Cabinet.

(1) At any meeting of the Nitijela, any 4 or more members

of the Nitijela who are not members of the Cabinet may give notice of their intention to make a motion of no confidence in the Cabinet.

(2) Any such motion shall be voted on at a meeting of the Nitijela held not earlier than 5 days nor later than 10 days after the date of the giving of the notice.

(3) If the motion of no confidence is carried by a majority of the total membership of the Nitijela, the President shall be deemed to have tendered his resignation from office.

(4) If the Nitijela has not elected a President at the expiration of 14 days after the date on which the President is so deemed to have tendered his resignation from office, the vote of no confidence and the tender of the President's resignation shall lapse.

(5) In any case where a vote of no confidence has lapsed, notice of intention to make a motion of no confidence in the Cabinet may not again be given until the expiration of 90 days after the date on which that vote of no confidence lapsed, unless there has sooner been an appointment of the members of the Cabinet, following the election of a President.

Article XIV, Section 4, of the Constitution reads as follows:

Dates, Days and Periods of Time.

(1) In any case where this Constitution prescribes a date, or a means of fixing a day, or a period of time, for the performance of any duty or for the happening of any event or for any other purpose:

(a) that day, or the last day of that period shall be calculated by excluding the day from which any period of time begins to run;

(b) if that date or day or the last day of that period falls on a Sunday or a public holiday it shall be deemed to fall on the next day that is not a Sunday or a public holiday.

(2) In any case where the date or day prescribed by or pursuant to this Constitution for any election or for the meeting of any session of the Nitijela has passed, and no valid election has been held or no session of the Nitijela has met, that election shall be held or that session of the Nitijela shall meet as soon thereafter as practicable; and if no other means is provided by or pursuant to this Constitution for fixing a new date or day for that election or the meeting of that session of the Nitijela, a new date or day may be fixed by the High Court.

Section 18 of the Rules of Procedure of the Nitijela read as follows:

Place and time of meeting.

(1) The Nitijela shall meet in the Nitijela chamber or in such other place as the Nitijela determines.

(2) The Nitijela shall meet at 10 a.m. on each day other than a Saturday, Sunday or legal holiday during a session, or on such other days or at such other times as the Speaker, subject to Article IV, Sections 10 and 11 of the Constitution and to appeal to the Nitijela, determines.

(3) After the Speaker opens a sitting in accordance with Section 8(2)(a) of these Rules, the Clerk shall call the roll.

Discussion

In considering the issues presented in this case, the Court benefits from an earlier Marshall Islands case: In the Matter of the 19th Nitijela Constitutional Regular Session, High Court CA Nos. 1998-214 and 1998-215 (consolidated) and In the Matter of the 19th Nitijela Constitutional Regular Session, 2 MILR 134 (RMI S.Ct. 1999). In September 1998, members of the Government party boycotted the Nitijela for more than ten days after notice of a motion of no confidence was given so that there were no quorum and no meeting. They then argued that because the five to ten-day period had ~~past~~^{PASSED}, the motion of no confidence had lapsed. In considering the “plain and obvious meaning” of the Constitution, the High Court found that the Government’s argument was unsupported because it “appears well settled that a failure to comply with a time limit does not relieve the duty to act and/or render subsequent action void where the statute or rule does not provide for consequences upon failure to comply.” Opn. p. 5. In affirming the High Court’s rejection of the Government’s argument, the Supreme Court, in relevant part, held that the motion for the no confidence vote did not lapse, that the Constitution’s language requiring a vote within the limited time frame was mandatory, that the Nitijela session does not terminate until the vote is had, and that the senators who obstructed the

vote were behaving unlawfully.

Considering the “plain and obvious meaning” of Article V, Section 7(2) and Article XIV, Section 4(1), this Court finds that given (as stipulated by the parties) a notice for motion of no confidence was given on April 8, 2009, the days within which the Nitijela must vote on the matter started five calendar days after April 8 and will end ten calendar days after April 8, inclusive of intervening Saturdays, Sundays, and holidays — i.e., from April 13 to April 18, 2009. If April the 18th were a Sunday or a holiday, then according to Article XIV, Section 4(1), the last day would be the next day that is not a Sunday or a holiday. Article XIV, Section 4(1), however, does not exclude intervening Saturdays, Sundays, and holidays in determining the five to ten-day period under Article V, Section 7(2), and Article XIV, Section 4(1) does not exclude Saturdays from the days of the week upon which a vote can be had. Article XIV, Section 4(1) is so detailed that if the Framers of the Constitution intended to exclude intervening Saturdays, Sundays, and holidays and ending Saturdays in the computation of prescribed dates and days, they should have done so. But to do so would not have made sense in the context of the rest of the Constitution. If one does a computer search in the Constitution for the word “day,” one will see references to “sitting days” which would be counted even if they were held on Saturdays.³ Also, one will find reference to “30 days,” “60 days,” and “120 days,” which would be rendered confusing if one were to imply the exclusion of intervening Saturdays, Sundays, and holidays.⁴

Counsel for the Speaker argues Section 18 of the Rules of Procedure of the Nitijela is controlling and excludes Saturdays, Sundays, and holidays from “sitting days.” However,

³See Article IV, Section 10, of the Constitution.

⁴Id.

Article V, Section 7(2) of the Constitution does not use the term “sitting days” in prescribing the days in which the Nitijela must hold a vote on a motion of no confidence, and when in the Constitution, the Framers intended to use the term “sitting days,” they did so expressly.⁵ As interpreted by counsel for the Speaker, Section 18 of the Rules of Procedure of the Nitijela is not consistent with Article V, Section 7(2) and Article XIV, Section 4(1), of the Constitution. To the extent that the Rules of Procedure of the Nitijela conflict with the “plain and obvious meaning” of the Constitution, they are void. Const. Art. I, Section 2(2).

Counsel for the Speaker also argues that Nitijela members would be greatly inconvenienced by having to vote on April 18, 2009, as they have made other plans assuming the vote would be on April 22, 2009. The Court understands the inconvenience its ruling may cause, ^{But} ~~be~~ the Constitution is the supreme law of the land and a vote of no confidence is of extreme importance.

Conclusion

For the above reasons, the Court holds as follows:

1. The provisions of Article V, Section 7(2), and Article XIV, Section 4(1), of the Constitution are mandatory.
2. Pursuant to Article V, Section 7(2), and Article XIV, Section 4(1), of the Constitution, the prescribed period for the Nitijela to vote on the motion of no confidence noticed on April 8, 2009, is April 13 to April 18, 2009, five to ten days after April 8, 2009, inclusive of intervening Saturdays, Sundays, and holidays and including a Saturday on the last day.

⁵Id.

3. The failure to vote on the motion of no confidence within this time period is contrary to the Constitution; however, it does not cause the motion of no confidence to lapse or render a resulting vote null and void.

4. If the Nitijela fails to vote on the motion of no confidence on April 18, 2009, either party may file an action in the Court to fix a date for the vote pursuant to Article XIV, Section 4(2) of the Constitution.

Dated: April 17, 2009.

A handwritten signature in black ink, appearing to read 'C. Ingram', is written over a horizontal line.

Carl B. Ingram
Chief Justice