

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

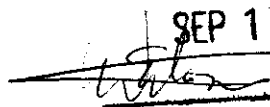
In the Matter of the Vacancy of the)
 Mayoral Seat, Majuro Atoll Local)
 Government,)
)
 By:)
)
 Titus W. Langrine, in his capacity as)
 Acting Mayor of Majuro Atoll Local)
 Government.)

Supreme Court Civil Appeal No. 2008-008
 High Court Civil Action No. 2008-127

OPINION

FILED

SEP 17 2009



 CLERK OF COURTS
 REPUBLIC OF MARSHALL ISLANDS

BEFORE: Cadra, C.J.; Kurren, A.J.;¹ Wallace, A.J.²

OPINION: Cadra, C.J.

This case involves the manner in which a vacancy in the Majuro Atoll Local Government Mayor due to the death of the incumbent is to be filled. Appellant, Office of the Attorney General, contends a special election must be held. Appellee, Titus W. Langrine, in his capacity as Acting Mayor, contends the Majuro Atoll Local Government Executive Committee may appoint one of its members to perform the functions of Mayor for the remainder of the deceased Mayor's term. A Complaint for Declaratory Relief was filed with the High Court. The High Court held that a special election to fill the vacancy was not required by the Majuro Atoll Local Government Constitution. This appeal followed. Oral argument was waived and the parties requested decision on the written submissions. We affirm.

I. FACTS AND PROCEEDINGS BELOW

¹ Hon. Barry Kurren, United States District Magistrate Judge, District of Hawaii, sitting by designation of the Cabinet.

² Hon. J. Clifford Wallace, Senior Judge, United States Court of Appeals, 9th Circuit, sitting by designation of the Cabinet.

The facts are not in dispute. Riley Alberttar was duly elected Mayor of Majuro Atoll Local Government in November 2007. On May 4, 2008, Mayor Alberttar died. On May 28, 2008, appellee Titus W. Langrine, a member of the Majuro Atoll Local Government Executive Committee, was appointed by his fellow Executive Committee members as Mayor to serve out the remainder of deceased Mayor Alberttar's term.

On May 29, 2008, Majuro Atoll Local Government legal counsel requested an opinion from the Attorney General as to whether a special election was required to fill the seat of the deceased Mayor. The Attorney General issued an opinion on May 28, 2008, stating that the Local Government Constitution requires a special election.

On June 24, 2008, appellee Titus W. Langrine filed a Complaint for Declaratory Relief asking the High Court to decide whether the Local Government Constitution requires a special election to fill the vacancy caused by the death of Mayor Alberttar. Motions for summary judgment were filed by both parties.

On August 20, 2008, the High Court issued an order granting summary judgment for declaratory relief in favor of appellee. The High Court held that a special election was not required to fill a vacancy in the office of the Mayor caused by the death of the incumbent and, further, that such vacancy is to be filled pursuant to the provisions of Section 19(1) of the Majuro Atoll Local Government Constitution. This appeal followed.

II. THE ISSUE

The issue which divides the parties is solely one of law: Does the Majuro Atoll Local Government Constitution require a special election to fill a vacancy of the Mayor's Office caused by the death of the incumbent mayor or does the Constitution permit the Executive

Committee to appoint one of its members to perform the duties of Mayor for the remainder of the incumbent's term?

III. STANDARD OF REVIEW

Appellant contends the High Court erred as a matter of law in reaching its conclusions. We review the matter *de novo*. *Lobo v. Jejo*, 1 MILR 172, 173 (1991). Appeals from summary judgment are reviewed *de novo*. *Ammu v. Ladrik*, 2 MILR 20, 22 (1994).

IV. DISCUSSION

A. The Majuro Atoll Constitution Does Not Require a Special Election to Fill a Vacancy in the Office of Mayor Occasioned by the Death of the Incumbent.

The Majuro Atoll Constitution, Section 17(1) generally provides that the Mayor shall be elected by the registered voters of Majuro Atoll.³ The term of the Mayor's office is 4 years pursuant to Section 8. If the Office of Mayor becomes vacant during the 4 year term, the Majuro Atoll Constitution provides a mechanism for filling that vacancy.

Section 24(4) provides that "[i]f the Office of the Mayor becomes vacant otherwise than by his dismissal under Section 18(2), the Executive Members shall continue to perform their functions (including the function of appointing under Section 19, a member of the Executive Committee to perform the functions of Mayor)."

Section 18(1)(c) provides that the Office of Mayor becomes vacant if, among other things, "[h]e dies."

In examining constitutional provisions, the Supreme Court's task is to give effect to the clear, explicit, unambiguous, and ordinary meaning of language; if the language of the provision

³ Section 17(1) provides, "the Mayor shall be elected by the registered voters of Majuro Atoll."

is unambiguous, it must be given its literal meaning and there is neither the opportunity nor the responsibility to engage in creative construction. *Rice v. Connolly*, 488 N.W.2d 241, 247 (Minn. 1992). There is no ambiguity in the procedure contemplated by Sections 18 and 24. When the Office of Mayor becomes vacant due to death of the incumbent, the Executive Committee is to appoint one of its members to perform the functions of Mayor under Section 19.⁴

The issue then becomes whether the appointment by the Executive Committee is temporary pending a special election.

Appellant argues that “Section 19 of the Constitution of Majuro Atoll discusses temporary appointment, i.e. an appointment in cases where the duly elected Mayor is ‘temporarily’ absent or incapacitated and not where the office is vacant.”⁵ Appellant therefore reasons that any appointment under that Section is temporary pending the election of a new Mayor by the registered voters of Majuro Atoll.⁶

If we were to construe Section 19(1) in isolation, without reference to other provisions of the Majuro Atoll Constitution, we might agree that Section 19(1) applies only to temporary appointments during the absence or incapacity of the Mayor and does not apply to vacancies in

⁴ Section 19, “Acting Head of the Local Government” provides:

(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 is authorized to perform, by virtue of Subsection (1), the member shall be deemed to be the Mayor, and any reference in any law or in the Rules of Procedures of the Council to the Mayor shall be read as including a reference to that member, accordingly.

⁵ Appellant’s Opening Brief, p. 10.

⁶ *Id.*

that office.⁷ We must, however, read all provisions of the constitution together and harmonize apparently conflicting or ambiguous provisions so that no provision is rendered meaningless.⁸ Section 24(4) expressly provides that Section 19(1) shall apply if the office of the Mayor becomes vacant other than by reason of his dismissal under Section 18(2). Giving effect and meaning to both Sections requires the conclusion that such vacancies are to be filled pursuant to Section 19(1). As discussed above, death of the incumbent Mayor creates a vacancy that is to be filled by appointment of the Executive Committee pursuant to Section 19(1).

We, like the High Court, conclude it significant that the Majuro Atoll Constitution implicitly recognizes that the Office of Mayor can be filled by appointment. Section 18(1)(b) provides that the Mayoral Office becomes vacant if the Mayor “ceases to possess the qualifications for election that he was required under Section 16 to have at the time of his election *or appointment.*” In construing a constitution, we must lean in favor of a construction that will render every word operative, rather than one which will make some words idle or nugatory. *Havens v. Board of County Comm’rs*, 924 P.2d 517, 523 (Co. 1966) (“We have been guided by a long standing rule of constitutional construction that provisions contained in this state’s constitution are to be interpreted as a whole with effect given to every term contained therein.”)

⁷ “In legal terminology a dead person is not spoken of as merely absent (or incapacitated). Only figuratively are the dead spoken of as absent. Absence connotes that a person is in being but not present in some particular place, and not that he has departed this life.” *See, e.g., Nolan v. Representative Council of City of Newport*, 57 A.2d 730, 731 (R.I. 1948) (addressing issue of whether a city charter imposed a duty to call a special election to fill a vacancy in the office of mayor or whether the council was vested with discretion to do so).

⁸ It is the court’s duty to make every effort to give effect to every word of a constitution, to resolve ambiguities, and to reconcile inconsistencies. *Oneida Indian Nation v. New York*, 691 F.2d 1070, 1085 (2nd Cir. 1982) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803)).

(internal quotation marks omitted). The parties have referred us to no language in the Majuro Atoll Constitution addressing an appointment of the Mayor other than the appointment for a vacancy in that office outlined by Sections 19(1) and 24(4). Giving meaning to each word and provision of the Constitution, we are of the opinion that the intent of the framers is that the Office of Mayor can be filled by appointment and that appointment can be made by the Executive Committee of one its members to perform the functions of Mayor for the remainder of the deceased Mayor's term.

There is no provision in the Majuro Atoll Constitution requiring a special election to fill a vacancy in the Office of Mayor under the circumstances presented by this case. The only reference in the Constitution to a special election is found in Section 10(1).⁹ That section refers to the need for a special election to fill the seat of a Council member that becomes vacant other than by termination of his office in accordance with Section 8. We, like the High Court, think it significant that the Constitution explicitly requires the use of a special election to fill a vacancy in

⁹ Section 10, Causal Vacancies, provides:

(1) If the seat of a member of Council referred to in Section 6(1)(a) becomes vacant otherwise than by termination of his term of office in accordance with Section 8, the vacancy shall be filled as soon as practicable by a special election in the ward that he represented.

Section 6, Membership and Elections, provides:

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

- (a) the 13 members elected by the wards, as specified in Section 4; and
- (b) 2 voting Iroij members; and
- (c) 1 mayor.

(2) The members referred to in Subsection (1)(a) shall be elected by ballot by the eligible voters of the ward from which each member is standing for election as provided for by Section 13 and 23 of the Local Government Act 1980.

a Council member's seat, but fails to do so in the case of a vacancy of the Mayor's Office. The drafters could have explicitly manifested the need for a special election to fill a vacancy of the Mayor's office occasioned by the incumbent's death but failed to do so. The duty and function of a court is to construe, not to rewrite a constitution. *State ex rel Randolph County v. Walton*, 206 S.W.2d 979, 982 (Mo. 1947). We will therefore not write into the Majuro Atoll Constitution a requirement for a special election absent evidence that this is what the drafters intended. We have not been provided such evidence.

Sections 24(4) and 19(1) do not limit the duration of the appointment of an Executive Committee member to perform the functions of Mayor. In the absence of any explicit requirement that a special election be held in the event of a vacancy occasioned by the death of the incumbent, and in the absence of any express time limit on how long the appointed Executive Committee member may serve as a replacement Mayor, we conclude that the Constitution permits the appointed Executive Committee member to perform the functions of Mayor for the remainder of the deceased Mayor's term.

Accordingly, we hold the Majuro Atoll Constitution does not require a special election to fill the vacancy of the deceased incumbent under the circumstances presented by this case.

B. We Do Not Reach Appellant's "Equal Protection" Argument Because It Was Not Raised Below.

Appellant argues the High Court abused its discretion by denying the registered voters of Majuro Atoll equal protection of the laws under Article II, Section 12(1) and Section 12(2) of the Constitution of the Republic of the Marshall Islands.¹⁰ Inasmuch as this Constitutional challenge

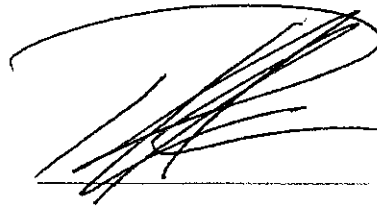
¹⁰ Appellant's Opening Brief, pp. 12-13.

on equal protection grounds was not raised below, we deem the issue waived.

V. CONCLUSION

For the reasons set forth above, we hold that a special election is not mandated by the Majuro Atoll Local Government Constitution under the circumstances presented by this case. We hold that the Executive Committee may appoint one of its members to perform the functions of Mayor until the next general election. We, therefore, AFFIRM the judgment of the High Court.

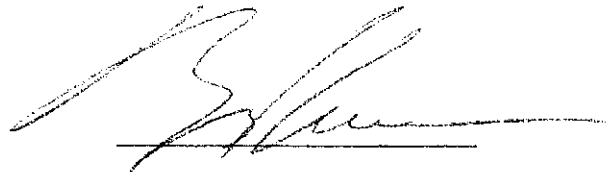
Dated: 9/19/09



Daniel Cadra, Chief Justice

Dated:

September 14, 2009



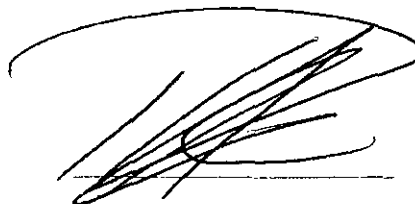
Barry Kurren, Associate Justice

Dated:

J. Clifford Wallace

For the reasons set forth above, we hold that a special election is not mandated by the Majuro Atoll Local Government Constitution under the circumstances presented by this case. We hold that the Executive Committee may appoint one of its members to perform the functions of Mayor until the next general election. We, therefore, AFFIRM the judgment of the High Court.

Dated: 9/14/09

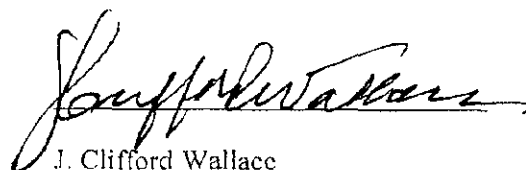


Daniel Cudra, Chief Justice

Dated:

Barry Kurren, Associate Justice

Dated: September 11, 2009



J. Clifford Wallace