

CHUUK STATE SUPREME COURT TRIAL DIVISION

HENRY NEDELEC,	)	CSSC-CIVIL ACTION NO. 116-2020
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GRADFIN AISEK, Mayor of Tonoas, and TONOAS	)	
MUNICIPAL GOVERNMENT,	)	
	)	
Defendants.	)	
_____	)	

ORDER REGARDING SUBJECT MATTER JURISDICTION, ORDER DENYING MOTION FOR RECONSIDERATION, AND ORDER DENYING RULE 12(b) MOTION OF DISMISSAL

Kerio D. Walliby  
Associate Justice

Hearing: February 3, 2021  
Decided: May 4, 2021

APPEARANCES:

For the Plaintiff: Roy T. Chikamoto, Esq.  
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Honolulu, Hawaii 96828-1199

For the Defendants: Charleston Bravo  
Legal Consultant  
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HEADNOTES

Civil Procedure – Motions – For Reconsideration

When an order is not the final judgment in the case, a motion for reconsideration is reviewed under Rule 54(b). Nedelec v. Aisek, 23 FSM R. 277, 280 (Chk. S. Ct. Tr. 2021).

Civil Procedure – Motions – For Reconsideration

When a motion for reconsideration presents no new facts or legal arguments which the court had not duly considered before it issued its order and its order was consistent with the court's past opinions, the motion will be denied. Nedelec v. Aisek, 23 FSM R. 277, 280 (Chk. S. Ct. Tr. 2021).

Courts; Jurisdiction

The Chuuk Constitution vests the Chuuk State Supreme Court trial division with exclusive jurisdiction over questions arising under the Constitution and concurrent original jurisdiction to try all civil cases, cases

involving state laws, and cases in which the state government is a party; except for those matters which fall under the FSM Supreme Court's exclusive jurisdiction. Nedelec v. Aisek, 23 FSM R. 277, 281 (Chk. S. Ct. Tr. 2021).

#### Courts; Jurisdiction

Chuuk municipal courts have jurisdiction over cases when the cause of action arose in the municipality, or when the defendant resided in the municipality, or in any case where the parties voluntarily appear, but when there are over \$1,000 in damages, it is outside the municipal courts' jurisdiction and is a matter which is within the Chuuk State Supreme Court's exclusive scope of jurisdiction. Nedelec v. Aisek, 23 FSM R. 277, 281 (Chk. S. Ct. Tr. 2021).

#### Elections – Court Jurisdiction

Since elections belong to the political branch of the government, the court can exercise authority over election disputes only to the extent that there is a constitutional or statutory provision expressly or impliedly giving it that authority. Nedelec v. Aisek, 23 FSM R. 277, 282 (Chk. S. Ct. Tr. 2021).

#### Constitutional Law – Chuuk – Case or Dispute – Political Question

Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Nedelec v. Aisek, 23 FSM R. 277, 282 (Chk. S. Ct. Tr. 2021).

#### Custom and Tradition – Chuuk

While the Tonoas Constitution may have placed the Soupun as the head of Tonoas' government, the traditional title of Soupun, and the responsibilities associated with it, is not merely a role which stems from an election under the democratic processes or one which is delegated to the legislative or executive branch, but exists, first and foremostly, under the customs and traditions of the people of Tonoas and Chuuk. Nedelec v. Aisek, 23 FSM R. 277, 282 (Chk. S. Ct. Tr. 2021).

#### Constitutional Law – Chuuk – Case or Dispute – Political Question; Custom and Tradition – Chuuk

The traditional position of Soupun is not a position that is created in accordance with a general election, but is a position to which an individual accedes in accordance with the tradition of the respective island's people and is not curtailed by acts of the legislature or the executive branch, and therefore may not be categorized as a political question. It is a right that is protected under the Chuuk Constitution. Nedelec v. Aisek, 23 FSM R. 277, 282 (Chk. S. Ct. Tr. 2021).

#### Constitutional Law – Chuuk; Constitutional Law – Chuuk – Case or Dispute – Political Question; Custom and Tradition – Chuuk

While the Constitution vests the legislature with the power to protect traditional rights, it more importantly provides a protection of existing Chuukese custom and tradition from acts of usurpation. This ensures that a challenge raised by a traditional leader against an interference of such right by a municipality, regardless of whether that traditional leader's role is also one which is part of a municipal government, is a right that is apart from "political questions." It is a right that arises under Article IV the Chuuk Constitution. Nedelec v. Aisek, 23 FSM R. 277, 282 (Chk. S. Ct. Tr. 2021).

#### Constitutional Law – Chuuk – Case or Dispute – Standing

When a plaintiff lacks standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case must be dismissed. The Chuuk Constitution implicitly requires plaintiffs to have standing so as to implement the constitutional requirement that a "case" or "dispute" exist. Nedelec v. Aisek, 23 FSM R. 277, 283 (Chk. S. Ct. Tr. 2021).

Constitutional Law – Chuuk – Case or Dispute – Standing

Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. To have standing, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question. Nedelec v. Aisek, 23 FSM R. 277, 283 (Chk. S. Ct. Tr. 2021).

Constitutional Law – Chuuk – Case or Dispute

For a "case" to exist, the matter must be appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Nedelec v. Aisek, 23 FSM R. 277, 283 (Chk. S. Ct. Tr. 2021).

Civil Procedure – Dismissal – For Lack of Jurisdiction

The court will not dismiss a matter under 12(b)(1), when the possibility of reputational harm may still be demonstrated if the court considers the complaint's contents in the most favorable light as it concerns the plaintiff, but the plaintiff will still need to demonstrate actual harm with specificity in order to prevail. Nedelec v. Aisek, 23 FSM R. 277, 283 (Chk. S. Ct. Tr. 2021).

Civil Procedure – Dismissal – For Lack of Jurisdiction

Where jurisdictional issues are inextricably intertwined with the merits of a case and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction is best denied, but any such denial will not preclude the subject matter jurisdiction issue from being raised at a later stage of the proceeding – once such issues of fact have been clarified. Nedelec v. Aisek, 23 FSM R. 277, 283 (Chk. S. Ct. Tr. 2021).

Constitutional Law – Chuuk – Case or Dispute – Political Question; Custom and Tradition – Chuuk

A municipality's decision to hold an election to replace a traditional chief and swear in a new traditional chief, in lieu of the traditional process surrounding the selection of a traditional chief, does not transform the position of "traditional chief" into a "political question" and thus such matter is not outside of the court's subject matter jurisdiction. Nedelec v. Aisek, 23 FSM R. 277, 284 (Chk. S. Ct. Tr. 2021).

Constitutional Law – Chuuk – Case or Dispute – Standing; Custom and Tradition – Chuuk

A "violation of traditional rights" and "reputational harm" constitutes a sufficient injury in fact for a "deposed" traditional chief to have standing so as to file an action before the Chuuk State Supreme Court. Nedelec v. Aisek, 23 FSM R. 277, 284 (Chk. S. Ct. Tr. 2021).

Constitutional Law – Chuuk – Case or Dispute – Standing; Custom and Tradition – Chuuk

A "deposed" traditional chief may have standing to file a complaint when allegations outside of the complaint allege that the "deposed" traditional chief wrote a letter of resignation and where a genuine question exists under custom and tradition as to the effectiveness of such resignation. Nedelec v. Aisek, 23 FSM R. 277, 284 (Chk. S. Ct. Tr. 2021).

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COURT'S OPINION

KERIO D. WALLIBY, Associate Justice:

I. INTRODUCTION

When Nedelec's counsel filed this action, the filed Complaint failed to meet the standard set by this Court under its rules and the Constitution. This Court then gave Nedelec an opportunity to amend the

Complaint, which Nedelec readily amended on December 10, 2020. Aisek filed his answer on December 23, 2020, where Aisek essentially argued that this Court has no subject matter jurisdiction to hear this matter and that no relief can be granted under the facts alleged within the Complaint. Aisek's 12(b) defenses argue that 1.) this matter is a political and 2.) that Nedelec lacks standing since he allegedly resigned from his position. Stated differently, both of Aisek filed two 12(b)(1) defenses which raise the issue of whether this Court has subject matter jurisdiction over this matter.

This Court held a hearing on February 3, 2021 on whether it has subject matter jurisdiction to hear this case. The Court then allowed the parties to file briefs to further discuss the points raised during that hearing. The parties responded.

The Court finds that Nedelec has standing to bring forth this claim and the Court has subject matter jurisdiction to hear this matter. This opinion follows.

## II. PRELIMINARY MATTERS

On February 3, 2021, Nedelec's counsel raised a motion to disqualify Aisek's counsel and later filed a motion to strike Aisek's brief and disqualify Aisek's counsel. On March 8, 2021, this Court issued an opinion and denied that motion. On March 16, 2021, Nedelec filed a motion to reconsider its opinion to strike Aisek's brief and disqualify his counsel - citing Rules 7, 59, and 60 of the Chuuk State Rules of Civil Procedure. As the March 8, 2021 order was not a final judgment in this case, our jurisprudence has generally recognized that motions for reconsideration are reviewed under Rule 54(b) and the applicable provisions of Rule 60(b).

Rule 54(b) of the Chuuk State Rules of Civil Procedure provides that "any order . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Rule 60(b) specifically provides that motions alleging mistake, newly discovered evidence, or fraud/misconduct by the adverse party may be filed for the Court to reconsider its previous order.

Nedelec's motion for reconsideration presented no new facts or legal arguments which the Court had not duly considered before it issued its March 8, 2021 order. Further, the Court's March 8, 2021 Order, as it concerns attorney-client privilege, and its refusal to improperly infringe upon the attorney-client privilege as insisted upon by Nedelec's counsel, is consistent with past opinions rendered by this Court, including "Order Denying Reconsideration" in Baltazar Bossy v. Berea Evangelical Church, CA 122-2012 (Nov. 2020), "Order Denying Disqualification of Counsel's Motions" in Baltazar Bossy v. Berea Evangelical Church, CA 122-2012 (Nov. 2020), and "Order Concerning Disqualification of Counsel Motion, Section V.(A)" in Ezekiel Peter v. Victor Gouland, CA 007-2019, (Mar. 2019). Perhaps Nedelec's counsel forgets that the final determination of law in Chuuk State rests with the judiciary branch; and not with the attorney general's office, other state courts, or private individuals. Likewise, Mr. Bravo's representation of Aisek will by no means serve to absolve Aisek and the Tonoas Municipal government of any obligations they may incur as to opposing parties before the Court as a result of Mr. Bravo's representation. That begs the question as to which purpose this motion, filed by Nedelec's counsel, furthers any matter within this case; aside from the counsel incurring additional hours of legal work for which Nedelec may have to pay for. Naturally, that is a matter between Nedelec and his counsel into which this Court will not probe into either. Nedelec's motion for reconsideration is denied.

Likewise, Nedelec made a motion for this Court to hold an additional hearing on the subject matter jurisdiction issue. Since this Court is satisfied that it has subject matter jurisdiction at this stage, that motion is moot, and thus denied also.

### III. BACKGROUND ON THIS CASE

Aisek alleged, and Nedelec's counsel appeared not to dispute at the February hearing, the fact that Henry Nedelec - who at that time held the traditional position of the Soupun of Tonoas - submitted a resignation letter to his clan on June 24, 2012. In that letter Nedelec allegedly abdicated his traditional position as the Soupun, or paramount chief, of Tonoas.

Aisek alleges that Nedelec stopped undertaking his traditional duties before his people as well as within the Tonoas government after that time. The Constitution of Tonoas places the Soupun as the head of Tonoas' municipal government. In November 2020, Gradvin Aisek, the Mayor of Tonoas, allegedly held the installment ceremony for the "new" Soupun of Tonoas. The "new" Soupun was not the same individual as Nedelec. Nedelec is still alive and has filed this case, at this Court, seeking declaratory relief and enjoinder against Aisek and the Tonoas municipality from recognizing an individual other than Nedelec as Soupun, while Nedelec remains alive.

### IV. ISSUES

1. Whether a municipality's decision to hold an election to replace a traditional chief and swear in a new traditional chief in lieu of the traditional process surrounding the selection of a traditional chief transforms the position of "traditional chief" into a "political question" outside the subject matter jurisdiction of this court.
2. Whether "violation of traditional rights" and "reputational harm" constitutes a sufficient injury in fact for a "deposed" traditional chief to have standing so as to file an action before the Chuuk State Supreme Court.
3. Whether a "deposed" traditional chief may have standing to file Complaint within this Court, where allegations outside of the Complaint allege that the "deposed" traditional chief wrote a letter of resignation and where a genuine question exist under custom and tradition as to the effectiveness of such resignation.

### V. LAW AND ANALYSIS

#### *a. Chuuk State Supreme Court's Subject Matter Jurisdiction over alleged violations of Plaintiff's Constitutional Rights*

Article VII, Section 3(a) of the Chuuk State Constitution vests the Chuuk State Supreme Court trial division with exclusive jurisdiction over questions arising under the Constitution. Section 3(c) of Article VII provides the trial division of the State Supreme Court with concurrent original jurisdiction to try all civil cases, cases involving state laws, and cases in which the State Government is a party; except for those matters which fall under the exclusive jurisdiction of the Supreme Court of the Federated States of Micronesia. The appropriate court for handling certain disputes may be assigned by statute.

Chuuk State Law No. 190-08, § 34 provides municipal courts with jurisdiction over cases when the cause of action arose in the municipality, or when the defendant resided in the municipality, or in any case where the parties voluntarily appear – all instances which pertain to the parties.

However, in the Civil Action filed within this matter, Nedelec alleges over \$1,000 in damages against Mayor Aisek and the Tonoas Municipality – which is outside the jurisdiction of municipal courts. Nedelec also alleges a violation of his Constitutional rights under the State Constitution – a matter which is within the exclusive scope of jurisdiction of this Court.

b. *Political Questions v. Traditional Rights*

The Tonoas Constitution establishes the Soupun as the head of the Tonoas Municipal Government. Aisek argues that the installment ceremony and any disputes concerning the position of a Soupun must thus be a political question which is outside the jurisdiction of this court. This Court disagrees.

As a Court, we have consistently held that the Constitution does not vest the Chuuk State Supreme Court with jurisdiction over election disputes – unless specifically authorized by statute. Since elections belong to the political branch of the government, the court can exercise authority over election disputes only to the extent that there is a constitutional or statutory provision expressly or impliedly giving it that authority. Kinemary v. Siver, 16 FSM Intrm. 201, 205 (Chk. S. Ct. App. 2008); David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998); Phillip v. Phillip, 9 FSM Intrm. 226, 228 (Chk. S. Ct. Tr. 1999); Mathew v. Silander, 8 FSM Intrm. 560, 562 (Chk. S. Ct. Tr. 1998). Under the political question doctrine, when there is in the Constitution a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by a court because of the separation of governmental powers provided for by the Constitution. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

The title of Soupun, however, is not merely a role which stems from an election under the democratic processes or one which is delegated to the legislative or executive branch. While the Tonoas Constitution may have placed the Soupun as the head of Tonoas' government; this title and the responsibilities associated with it, is one that first and foremost, exists under the customs and traditions of the people of Tonoas and Chuuk. This traditional title, and the responsibilities associated with it, dates back centuries - well before the contact period with non-Micronesians, well before the first common law Constitution came into existence in the English-speaking world, and well before democracy reached the shores of Chuuk. Nothing within Tonoas' Constitution stripped away the traditional rights of a Soupun when it also made the Soupun the head of its government. The traditional position of Soupun is not a position that is created in accordance with a general election. Instead, it is a position to which an individual accedes in accordance with the tradition of the respective island's people. It is thus not a right which is curtailed by acts of the legislature or the executive branch to incorporate it into modern government – and therefore may not be categorized as a political question. Instead, it is a right that is protected under the Chuuk State Constitution.

Section 2 of Article IV of the Chuuk State Constitution provides that "nothing in this Constitution takes away the role or function of a traditional leader as recognized by Chuukese custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles in government." Section 1 of the same article mandates that "existing Chuukese custom and tradition shall be respected." While the Constitution vests the legislature with the power to protect traditional rights, it more importantly provides a protection of existing Chuukese custom and tradition from acts of usurpation.

This provision ensures that a challenge raised by a traditional leader against an interference of such right by a municipality, regardless of whether that traditional leader's role is also one which is part of a municipal government, is a right that is apart from "political questions." It is a right that arises under Article IV the Chuuk State Constitution. Thus, this Court has subject matter jurisdiction to hear an action where a Soupun claims that he has been deposed by a municipality in violation of custom and tradition.

c. *Specificity as it concerns Reputational Harm*

Both the original and amendment Complaint fell short of explaining precisely how an installment ceremony that allegedly occurs in violation of custom and tradition will necessarily impact Nedelec. After all, an installment ceremony that allegedly flatly violates custom and tradition in a community will not likely gain recognition or acquiesce by the members of such community. Meanwhile, custom and tradition generally arises out of the customary practices of the community at the applicable moment in time. It is thus

not obvious that an act allegedly so out of conformance with such customary practice will result in Nedelec's loss of recognition within the community. This necessitates this court is raise the issue of standing.

Standing is a threshold issue concerning a court's subject matter jurisdiction. This Court previously articulated that when a plaintiff lacks standing to pursue an action, the court lacks subject matter jurisdiction over the action and the case must be dismissed. Chuuk State Bd. of Educ. v. Sony, 16 FSM Intrm. 213, 219 (Chk. S. Ct. Tr. 2008). Sony explained that the Chuuk State Constitution implicitly requires plaintiffs to have standing so as to implement the constitutional requirement that a "case" or "dispute" exist. *Id.* (citing Chk. Const. art. VII, §§ 3 and 4; further referencing In re Sproat, 2 FSM Intrm. 1, 4 (Pon. 1985) and Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM Intrm. 389, 401 (Pon. 1984) as to their interpretation of the equivalently worded jurisdiction clause in FSM Const. art. XI, §§ 6(a), 6(b)).

Black's Law Dictionary defines standing as "a party's right to make a legal claim or seek judicial enforcement of a duty or right. To have standing . . . a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee in question." BLACK'S LAW DICTIONARY 1536 (9th ed. 2009).

For a "case" to exist, the matter must be "appropriate for judicial determination," that is, a "justiciable controversy," as distinguished from a "difference or dispute of a hypothetical or abstract character," or one that is "academic or moot." Sony, 16 FSM Intrm. 213; see also In re Sproat, 2 FSM Intrm. 1; Ponape Chamber of Commerce, 1 FSM Intrm. 389. The controversy must be "definite and concrete, touching the legal relations of parties having adverse legal interests." Sony, 16 FSM Intrm. 213.

Since this matter is still in its earliest phase, this Court will not dismiss this matter under 12(b)(1), since the possibility of reputational harm may still be demonstrated if the Court considers the contents of the Complaint in the most favorable light as it concerns Nedelec. However, Nedelec will need to demonstrate actual harm with specificity in order to prevail under this claim.

d. *Standing despite resignation letter with intent to abdicate?*

In Aisek's answer, Aisek included a resignation letter dated June 24, 2012, from Henry Nedelec as an exhibit. Allegedly, Nedelec wrote the letter and intended to abdicate this position. Aisek's counsel argued that Nedelec has no standing and thus the matter needs to be dismissed.

This Court has previously held that it is within the court's discretion to allow or disallow affidavits and other matters outside the pleadings to be brought in when considering a motion to dismiss challenging the court's subject matter jurisdiction. Chuuk State Bd. of Educ. v. Sony, 16 FSM Intrm. 213 (Chk. S. Ct. Tr. 2008). Further, this Court has recognized that in cases where jurisdictional issues are inextricably intertwined with the merits of a case and issues of fact remain, a motion to dismiss for lack of subject matter jurisdiction is best denied. *Id.* However, any such denial shall not preclude the issue of subject matter jurisdiction from being raised at a later stage of the preceding – once such issues of fact have been clarified.

As this case is in its earliest stages, this Court will not consider matters outside the pleadings. Instead, for the purpose of ruling upon this motion at this time, this Court will act under the 12(b)(6) standard and presume that all allegations of the Complaint are true. Here, the Complaint had not alleged the Nedelec attempted to resign or that he sent a resignation letter.

Since this matter may be subject to a similar motion before trial, that too will necessitate a hearing with testimony - so it may best be a matter left to trial. First, the letter's authenticity needs to be proved or stipulated to. Second, if its authenticity is proved, a genuine question of law under custom and tradition

exists as to whether Nedelec's act of writing and sending such letter is an effective act of abdication of his role as Soupun. Custom and tradition may prevent Soupuns in Tonoas from resigning from their title for any reason aside from death - but that too will require the introduction of competent evidence within an evidentiary hearing. And although Aisek rightfully noted in his oral argument that Section 9 of Article III of the Chuuk State Constitution prohibits slavery and involuntary servitude (and a law preventing someone from resigning a role and the role's associated duties may arise to constitute "slavery"), Section 1 of Article V appears to supersede it. Article V does note that "if challenged as violative of Article III, protection of Chuukese custom and tradition shall be considered a compelling social purpose warranting such governmental action." Likewise, an equivalent series of provisions exist within the FSM Constitution.

With these matters noted, the Court will schedule a trial on the merits of this case once the FSM's borders reopen to allow for off-island parties and counsels to appear before the Court in accordance with established law.

#### VI. CONCLUSION

This Court makes the following findings:

1. A municipality's decision to hold an election to replace a traditional chief and swear in a new traditional chief in lieu of the traditional process surrounding the selection of a traditional chief does not transform the position of "traditional chief" into a "political question" and thus such matter is not outside the subject matter jurisdiction of this Court.
2. A "violation of traditional rights" and "reputational harm" constitutes a sufficient injury in fact for a "deposed" traditional chief to have standing so as to file an action before the Chuuk State Supreme Court.
3. A "deposed" traditional chief may have standing to file Complaint within this Court, where allegations outside of the Complaint allege that the "deposed" traditional chief wrote a letter of resignation and where a genuine question exist under custom and tradition as to the effectiveness of such resignation.

Therefore, in summary:

1. This Court has subject matter jurisdiction to hear this case.
2. Nedelec's Motion for Reconsideration on the May 8, 2021 Order is Denied.
3. Nedelec's Motion to hold another hearing on Subject Matter Jurisdiction is Denied.
4. Aisek's Motion to Dismiss this matter under 12(b) is Denied.

The parties shall exchange their discovery requests within 30 days of this order and answers to the discovery requests shall be provided within 45 days of service of such discovery requests. The Court shall schedule a trial on the merits once the FSM's borders reopen.