

**BIRASH JOASH and THE MUNICIPALITY OF DUD,
Plaintiffs-Appellants**

v.

**THE CABINET OF THE GOVERNMENT OF THE MARSHALL
ISLANDS, SHIRO RIKLON, CHIEF ELECTORAL OFFICER, and
WILFRED KENDALL, MINISTER OF INTERNAL AFFAIRS,
Defendants-Appellees**

Civil Appeal No. 411

Appellate Division of the High Court

Marshall Islands District

October 2, 1985

**Appeal from trial court determination that "Local Government Act 1980"
was constitutional and was to be complied with by local municipalities. The**

JOASH v. CABINET OF MARSHALL ISLANDS

Appellate Division of the High Court, Munson, Chief Justice, held that since Nitijela was constitutionally empowered to pass such legislation providing for the amalgamation of local governments, and since populated atoll or island had no constitutional right to more than one local government, the trial court's decision was affirmed.

1. Statutes—Construction—Strict Construction

The presumption of a statute's constitutionality is a strong one.

2. Statutes—Construction

For a statute to be judicially rendered unconstitutional, its invalidity must be proven unequivocally and by highly persuasive, clear and convincing evidence.

3. Constitutional Law—Interpretation

Words appearing in a constitution are presumed to have been used according to their ordinary, plain and natural meaning.

4. Legislature—Nitijela—Powers

Nitijela is empowered to enact legislation which is necessary and proper to carry out any powers vested to it by the Constitution.

5. Constitutional Law—Interpretation

Marshall Islands Constitution does not say that a populated atoll or island has a constitutional right to more than one local government.

6. Constitutional Law—Due Process

Local Government Act which provided for the amalgamation of local governments did not violate substantive due process, where act had a rational basis, since there was a legitimate purpose in seeking uniformity among the local communities on the islands and atolls.

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Before MUNSON, *Chief Justice*, HEFNER, *Associate Justice**, and LAURETA, *Associate Justice***

MUNSON, *Chief Justice*

* Chief Judge of the Commonwealth of the Northern Mariana Islands, designating

On February 18, 1981, the Marshall Islands Government enacted "Local Government Act 1980" (hereinafter referred to as "Act"). Part V, Section 21 of this Act provided for the amalgamation of local governments which, under the previous law and charter, were designated municipalities. Section 21, subsection 7 of the Act provided that:

Where there is more than one local government on an atoll or island, the Cabinet may by written order to each of them, require them to amalgamate, in accordance with this section, within a period, not being less than six months, fixed by the Cabinet or such longer period as the Minister allows.

On June 13, 1981, the Marshall Islands Cabinet, pursuant to said Section 21, ordered the amalgamation of the municipalities of Darrit, Uliga and Dalap (hereinafter referred to as DUD) and Majuro, the latter commonly known as Laura. This order was entitled Cabinet Order No. 1981-3(G). Both of the municipalities are located on Majuro Atoll, Republic of the Marshall Islands, and were chartered prior to the effective date of the Marshall Islands Constitution.

The two municipalities failed to amalgamate under the Cabinet's order, and on January 15, 1982, the appellants, Birash Joash and DUD, filed a complaint in the trial division of the Trust Territory High Court, seeking a declaration that the Act was unconstitutional and that the order of the Cabinet to amalgamate was void. On January 22, 1982, appellants sought, and were granted by the trial court, a preliminary injunction enjoining the appellees from taking any official action to amalgamate.

In deciding the action filed, the trial division held, on December 7, 1982, that "Cabinet Order No. 1981-3(G)

nated as Temporary Associate Justice by the United States Secretary of the Interior.

** United States District Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

must be complied with and that the amalgamation of Laura and DUD municipalities must be effected." The complaint was dismissed in its entirety. Appellants appealed, and moved for a stay of judgment, which was granted.

On January 18, 1984, the appellate division of the Trust Territory High Court addressed the issue of whether the delegation from the Nitijela to the Cabinet was a lawful delegation of authority. The appellate division found that it was, and ruled that "the delegation of authority to the Cabinet and the Minister on amalgamation provided for in this Act has met the test of delegable legislative authority." *Birash Joash v. Cabinet of Marshall Islands*, 8 T.T.R. 403, 406 (App. Div. 1984). The court also held that the Nitijela, which is vested with the legislative authority of the government, "is empowered to enact legislation which is 'necessary and proper' to carry out any power vested to it by the Constitution." *Id.* The appellate court, however, in a two-to-one decision, reversed and remanded the matter to the trial division of the High Court for consideration of several issues not discussed or covered in the trial court's judgment.

On December 7, 1984, the trial division, on remand, issued its declaratory judgment that:

Cabinet Order 1981-3(G), being a valid order under the Local Government Act 1980 and the Constitution, must be complied with by both the DUD and Laura municipalities on or before a date to be set by the Cabinet by an amendment of the said Cabinet Order, which would not be less than six months from the date of this judgment.

Birash Joash v. Cabinet of Marshall Islands (Trial Div. 1985). Appellants appealed to this court.

The issue presented in this case concerns whether the Local Government Act 1980, as enacted by the legislative body, the Nitijela, is consistent with the Marshall Islands Constitution. Article I, Section 2 of the Constitution provides in part that:

(1) Any existing law and any law made on or after the effective date of this Constitution, which is *inconsistent* with this Constitution, shall, to the extent of the inconsistency, be void. (Emphasis added.)

[1, 2] This court agrees with the trial division's finding that the Act was presumptively constitutional and that the Nitijela acted within the scope of its authority when it ordered amalgamation. Because the appellants have not overcome the burden of proving that the statute was not manifestly in contravention of the Constitution, the Act is therefore valid. The presumption of a statute's constitutionality is a strong one. *Monroe v. Carey*, 96 Misc. 2d 238, 412 N.Y.S.2d 939 (1977). For the statute to be judicially rendered unconstitutional, its validity must be proven unequivocally and by highly persuasive, clear and convincing evidence. *People v. L.*, 99 Misc. 2d 922, 417 N.Y.S.2d 655 (1979). Otherwise, the intent and purpose of the drafters of the constitution could be easily contravened by judicial interpretations. The Supreme Court of Hawaii has stated that

Our task as judges is not to rewrite the Constitution. Our system of government depends on each branch's recognition of the limitations to its power. The constitutional drafters wrote the Constitution which the people adopted. Our task is to apply the language in particular factual settings. When interpreting ambiguous provisions we attempt to determine the purposes which the provision was designed to achieve. We are always reluctant to decide that the constitutional draftsmen intended to accomplish what appears to be an absurd result. But when we conclude that the constitution's draftsmen intended to use [a phrase] in its ordinary meaning, the inquiry stops. We do not go on to decide whether or not the provision is sensible, and we do not, if we feel a provision is unwise, simply indulge in an exacerbated interpretation of a commonly used term.

Application of Pioneer Mill Co., 497 P.2d 549, 552 (Haw. 1972).

This court agrees with the trial division's finding that, based on the standards enumerated in U.S. cases, there was considerable authority that the Act is presumed to be constitutional. In *Bishop v. Mahiko*, 35 Haw. 608, 641 (1940), the Hawaii Supreme Court declared that:

In the absence of any constitutional restriction, the legislature has full power, in its discretion, to alter, extend or restrict the boundaries of municipalities, and, as the exigencies of the public may require, new municipalities may be created by the division or consolidation of existing ones, or territory may be detached from one municipality and annexed to another. Unless restrained by other provisions of the constitution, the time and mode of exercising this power are in the discretion of the legislature, and the consent of the inhabitants of the territory affected need not be obtained. (Emphasis added.)

Unless the court finds a constitutional restriction, the Niti-jela would therefore be empowered to order amalgamation.

The court next turns its attention to the principal constitutional provision involved. Article IX of the Marshall Islands Constitution states:

Section 1. Right to a System of Local Government.

(1) The people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law.

...

(3) The whole, of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government; and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.

Appellants argued that this court should interpret the language of subsection (1) to mean that the "people" of every populated atoll or autonomous island have "the right to band together in groups, to establish a system of local government." Appellants' Opening Brief at 12. Appellants contend that the "people" referred to in subsection (1) can

mean those inhabitants of certain villages or areas that are not part of the majority living on the populated atoll or island. Appellants reason that the Constitution does not dictate the boundaries of groupings of "people" within any one atoll or island. Therefore, only these "people" can decide if they want a system of local government, such as that that existed before the Constitution was ratified, or in another form such as an amalgamated one. This right, argues the appellants, belongs to the "people" and the Nitijela cannot initiate a change.

[3] This court disagrees with appellants' interpretation of what the constitutional drafters intended the term "people" to encompass. While certain phrases of the Constitution can appear to be ambiguous, it is a well settled rule of construction that words appearing in a constitution are presumed to have been used according to their ordinary, plain and natural meaning. *United States v. Sprague*, 282 U.S. 716, 731 (1931); *State ex rel. Anemiya v. Anderson*, 56 Haw. 566, 545 P.2d 1175, 1182 (1976). The term "people" in its ordinary and plain meaning appears to mean those inhabitants who, as a collective body, exist on the populated atoll or island, not various groupings or subgroups. If the framers of the Constitution intended for various groups of people on an atoll to have a constitutional right to their own system of local government, the Constitution would have stated so. It did not.

[4] Subsection (1) states clearly that the operation of local governments shall be "in accordance with any applicable law." Applying the natural, obvious and ordinary meaning of this phrase to the present case, the applicable law refers to those acts promulgated by the legislature. In the trial division, the judge stated that the legislative authority of the government was properly vested in the Nitijela. The Nitijela, therefore, is empowered to enact legisla-

tion which is necessary and proper to carry out any powers vested to it by the Constitution. The law on local government is one of them. This court finds that the intent was for there to be a right to a system of local government specifically made *subject* to legislation passed by the Nitijela. Thus, the Nitijela may legislate with broad discretion, provided that the right to *a system* of local government is not violated.

[5] Appellants have also advanced the argument that subsection (3) of Section 1 implicitly authorizes that the people have a right to their own local government which can co-exist with other local governments on the same atoll or island. This court disagrees. Applying a plain reading of that provision, it appears that what the Constitution recognized was that there may be a situation where more than one local government may co-exist. This may be because the Nitijela has not yet acted, or that the legislative body may decide that in the Marshall Islands' best interest, amalgamation is not yet proper. The Constitution does not say that a populated atoll or island has a constitutional right to more than one local government.

Appellants also raise the issue that the Act violates their right to substantive due process. Appellants argue that there exists no rational nexus between the end sought to implement the right to a system of local government which includes municipalities existing immediately before the effective date of the Constitution, and the means selected, a grant to the Cabinet of unfettered discretion to choose when amalgamation will or will not achieve this end. Appellants' Opening Brief at 11.

[6] Appellants' argument is easily disposed of. All that is needed for there to be a rational basis is a legitimate purpose. The court finds that such a legitimate purpose exists and agrees with the trial division's holding that

[t]he Local Government Act provides a fair and reasonable means by which local communities on islands and atolls may establish suitable local governments as a part of a system of local governments having some semblance of uniformity to each other, and having the mechanism to fulfill their responsibility.

Birash Joash v. Cabinet of Marshall Islands (Trial Div. 1984). Since there exists a legitimate purpose in seeking uniformity among the local communities on the islands and atolls, this court finds that the Act had a rational basis.

CONCLUSION

The appellants have failed to overcome the burden that a statute is presumed to be constitutional. Under a plain and ordinary construction of the Constitution, the Nitijela has the requisite constitutional authority to order amalgamation. Accordingly, the trial division's decision is affirmed.