

THE SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA  
Cite as *Kony v. Mori*, 6 FSM Intrm. 28 (Chuuk 1993)

[6 FSM Intrm. 28]

**MISKE KONY et al.,  
Plaintiffs,**

**vs.**

**BOB MORI et al.,  
Defendants.**

**KALISTO REFALOPEI et al.,  
Plaintiffs,**

**vs.**

**BOB MORI, as NATIONAL ELECTION COMMISSIONER;  
STATE ELECTION COMMISSIONER;  
FEDERATED STATES OF MICRONESIA; and  
CHUUK STATE  
Defendants.**

**CIVIL ACTION NO.1993-1002**

**OPINION**

Richard H. Benson  
Associate Justice

Decided: March 1, 1993

**APPEARANCES:**

For the Plaintiffs: Mr. Johnny Meippen  
P.O. Box 705  
Weno, Chuuk FM 96942

Mr. Midasy Aisek  
P.O. Box 185  
Weno, Chuuk FM 96942

For the Defendants: Mr. Douglas J. Juergens, Esq.  
Chief of Litigation  
Office of the FSM Attorney General  
P.O. Box PS-105  
Palikir, Pohnpei FM 96941

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**[6 FSM Intrm. 29]**

**HEADNOTES**

**Civil Procedure – Injunctions**

To obtain a temporary restraining order there must be a clear showing that immediate and irreparable injury or loss or damage would occur otherwise. An injury is not irreparable if there is an adequate alternative remedy. Kony v. Mori, 6 FSM Intrm. 28, 29 (Chk. 1993).

**Elections; Administrative Law – Judicial Review**

Generally Speaking the conduct of elections is left to the political branches of government, unless the court has powers given to it specifically by Congress contrary to that general rule. Kony v. Mori, 6 FSM Intrm. 28, 29 (Chk. 1993).

**Elections; Administrative Law – Judicial Review**

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM Intrm. 28, 30 (Chk. 1993).

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**COURT'S OPINION**

**RICHARD H. BENSON**, Associate Justice:

The plaintiffs seek a temporary restraining order to delay the national and state elections in Chuuk State because they have been unable to inspect the general register of voters. The election is scheduled for tomorrow. I decline to exercise pendent jurisdiction over the state election matters and will consider only the national election issues.

In this proceeding before me, there has been filed a complaint supported by an affidavit. The facts in essence are that the National Election Commissioner has failed to comply with section 303 of Title 9 of the FSM Code. That section requires the general election register to be available no later than 60 days before the election. I will say that I can understand the anxiety and the pressure that candidates would feel under those circumstances. The proceeding this afternoon by the plaintiffs is really an oral motion for a Temporary Restraining Order. We proceeded without objection under that motion.

The essential thing that must be shown here, is that there is a clear showing that immediate and irreparable injury or loss or damage would occur if the Temporary Restraining Order is not granted. Ponape Transfer & Storage v. Pohnpei State Pub. Lands Auth., 2 FSM Intrm. 272, 276 (Pon. 1986). Now, irreparable injury has a meaning in this way. It means, it is irreparable because there is no adequate alternative remedy. Id.

Generally speaking, the conduct of elections is left to the political branches. 26 Am. Jur. 2d Elections § 326, at 148 ("courts have no jurisdiction of an election contest until the election is completed"). The power to regulate elections resides in the two political branches of government, in case of the National Government, Congress and the Executive, unless the court has powers given to it specifically by Congress contrary to that general rule.

The National Election Law in the case of election irregularities, permits any person at the

**[6 FSM Intrm. 30]**

- polling place to petition for a correction of an irregularity. The law requires that the decision be made on that complaint before the polling place closes. 9 F.S.M.C. 807. If the person making the complaint does not prevail or win with the board member at the polling place, he appeals at once to the National Election Commissioner. The National Election Commissioner is required to arrive a decision if at all possible before the polls close. Id.

After the conclusion of the balloting any candidate may, on the grounds of irregularities, petition the National Election Commissioner for a recount or for the election to be set aside and a new one ordered. 9 F.S.M.C. 901, 902, 906.

Only after the National Election Commissioner has made his ruling and if it is adverse to the person who has made the complaint, then the person making the complaint has the right under sections 903 and 906 of title 9 to appeal to the FSM Supreme Court.

So an act of Congress – the code sections cited, gives the court power at that point. Section 903 states that the court can require a recount. If a recount is not adequate, it can set aside the election. Pub. L. No. 5-70, § 20 (5th Cong., 3rd Spec. Sess. 1988) (to be codified at 9 F.S.M.C. 906).

Now from the affidavit itself, it is clear the disadvantage the plaintiffs find themselves. However, I must follow the law that is given to me. Elections, particularly, are in the hands of the political branches. Where, as I outline, there is an alternative method of making complaint very specifically set out in the code, and when the code is very specific as far as the point at which the court can rule on the matter and even states the breadth of the ruling that can be reached at that point, I have to find that the damage today is not irreparable. There are alternate and adequate remedies.

So taking the statute as I find it, I must deny the motion for a Temporary Restraining Order.

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