

CHUUK STATE SUPREME COURT APPELLATE DIVISION

JOHANNES JACKSON,)	APPEAL CASE NO. 001-2011
)	
Petitioner-Appellant,)	
)	
vs.)	
)	
CHUUK STATE ELECTION COMMISSION,)	
)	
Appellee-Respondent,)	
)	
vs.)	
)	
SEASON JACKY,)	
)	
Real Party in Interest-Respondent.)	
_____)	

ORDER REVERSING AND REMANDING ELECTION COMMISSION DECISION

Hearing: April 18-19, 2011
Decided: April 19, 2011

BEFORE:

Hon. Keske S. Marar, Associate Justice, Presiding
Hon. Derensio S. Konman*
Hon. Nahoy G. Selifis**

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HEADNOTES

Elections – Revote

Under Chuuk State Law No. 3-95-26, no irregularity or improper conduct in the proceedings of any election board will void an election result, unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election, and an election will not be set aside on account of illegal votes unless it appears that such number of illegal votes has been given to the person whose right to the office is contested. Jackson v. Chuuk State Election Comm'n, 17 FSM Intrm. 492, 493-94 (Chk. S. Ct. App. 2011).

Elections – Revote

Since, in order for the Chuuk State Election Commission to have properly declared a revote, in addition to determining that illegal votes were cast, it was required to determine that the illegal votes resulted in the winning candidate being declared elected, a call for a revote was in error when there is nothing to indicate the likelihood that the 18 illegally cast votes would have resulted in a different candidate being declared elected, or a tie, or would have rendered a different outcome in the district 11 poll results. Jackson v. Chuuk State Election Comm'n, 17 FSM Intrm. 492, 494 (Chk. S. Ct. App. 2011).

Elections – Contests

In the case of a contested election of a member-elect of the Chuuk Senate or House of Representatives, the decision of the specific house concerned prevails. Jackson v. Chuuk State Election Comm'n, 17 FSM Intrm. 492, 494 (Chk. S. Ct. App. 2011).

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COURT'S OPINION

KESKE S. MARAR, Associate Justice:

This case comes before us on direct appeal, pursuant to Section 130, Chk. S.L. No. 3-95-26, as amended, from a decision of appellee/respondent, Chuuk State Election Commission, by petitioner/appellant, Johannes Jackson, a contestant in the March 8, 2011 General Election. Jackson and Season Jacky, real-party-in-interest, were two of three candidates vying for the District 11 legislative seat of the Chuuk State Legislature. On March 16, 2011 the results of the election were certified. Jackson received 363 votes, Jacky, 346, and Constantine Dangawin, 225. Jacky filed a complaint alleging irregularities in the conduct of the election at Nomwin, Murilo, Ruo and Fananu polling precincts on March 14, 2011. Election Commission conducted an administrative hearing on the matter on March 25, 2011.

Election Commission found that 18 votes were illegally cast between Ruo and Fananu precincts, and unanimously decided to call for a revote in the two precincts. We review that decision. Although Jackson makes a number of allegations in his complaint, the Court limits itself to a review of Election Commission's findings and Order of March 30, 2011. Since all parties stipulate that 18 votes were illegally cast in the precincts mentioned above on the day of the election, the Court is left to determine a single issue: Did the Election Commission's finding that 18 illegal votes were cast provide sufficient justification for Election Commission to call for a revote in the affected precincts? We find that it does not.

Sections 124 and 125 of Chuuk State Law No. 3-95-26 address irregularity or misconduct not affecting result and illegal votes not necessary to a majority, respectively. Section 124 provides, in

relevant part, that "[n]o irregularity or improper conduct in the proceedings of any election board shall void an election result, *unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election*" (emphasis added). Section 125 provides, in relevant part, that "[a]n election shall not be set aside on account of illegal votes, *unless it appears that such number of illegal votes has been given to the person whose right to the office is contested . . .*" (emphasis added). "The proper standard [for determining whether a revote should occur] is whether the result could have been different had the irregularities not occurred." Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 275, 277-78, (Chk. S. Ct. Tr. 1998).

The Aizawa court clarified this rule by citing 9 F.S.M.C. 906: "A petition made pursuant to this Section [irregularities not correctable by recount] shall not be granted unless the petitioner proves it is more likely than not that the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred," Aizawa, 8 FSM Intrm. at 278 (citing Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 82 (App. 1993)). It also made reference to 26 AM. JUR. 2D *Elections* § 438, at 233 (1996): "A petitioner basing a challenge on voting irregularities has the burden of proving the probability that the result of the election would be changed by a shift in, or invalidation of, questioned votes," Aizawa, 8 FSM Intrm. at 278.

We take this to mean that in order for Election Commission to have properly declared a revote in this matter, in addition to determining that illegal votes were cast, it was also required to determine that the illegal votes resulted in Jackson being declared elected. Upon review of Election Commission's Decision, the Court finds nothing to indicate the likelihood that the 18 illegally cast votes would have resulted in a different candidate being declared elected, or a tie. The most we can conclude from Election Commission's determination is that there is a possibility that the election results may have been different. At trial, neither Election Commission nor Jacky provided evidence indicating that the 18 illegally cast votes would have rendered a different outcome in the district 11 poll results. In other words, they were unable to show that the 18 illegally cast votes caused Jackson to be declared elected. That the votes could have made a difference does not meet the burden of proof enunciated by the Aizawa court.

We therefore find that Election Commission's call for a revote was in error and remand the matter back with instructions to vacate the Order of March 25, 2011 which calls for a revote. The Court also finds that nullification of the results from the precincts of Ruo and Fananu is unjustified under the circumstances and for the same reasons that a revote is improper. Section 131 of Chuuk State Law No. 3-95-26, provides, in relevant part, that "[i]n the case of a contested election of a member-elect of the Senate or House of Representatives, the decision of the specific House concerned shall prevail." Since this contest involves a member-elect of the Chuuk State Legislature, the Court refrains from declaring any person elected. That determination must be made by a co-ordinate branch of the Chuuk State Government.

IT IS SO ORDERED.

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