

**IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION**

<p><b>FOYJUL AHAMED NAYEM,</b> <i>Petitioner,</i></p> <p><b>v.</b></p> <p><b>ALLISON SENGEBAU, CLERK OF COURTS TO THE REPUBLIC OF PALAU, THE REPUBLIC OF PALAU,</b> <i>Respondents.</i></p>
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Cite as: 2017 Palau 35  
Special Proceeding No. 17-005  
Criminal Case No. 17-129

Decided: November 28, 2017

Counsel for Petitioner.....DeJon Redd

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice  
JOHN K. RECHUCHER, Associate Justice  
R. BARRIE MICHELSEN, Associate Justice

**PER CURIAM:**

[¶ 1] Foyjul Ahamed Nayem has filed a petition for a writ of mandamus in this Court, listing as respondents the Clerk of Court and the Republic of Palau. The petition arises out of proceedings in Criminal Case 17-129. That case was dismissed without prejudice on the Republic’s motion.

[¶ 2] The Petitioner seeks an order from this Court, directing the Clerk to release bail and return his passport, notwithstanding the absence of a trial court order exonerating any bail obligors and releasing bail.

[¶ 3] For the reasons set forth below, the petition is dismissed for lack of jurisdiction.

**STANDARD ON APPEAL**

[¶ 4] The initial question presented is what decision of the trial division are we asked to review? The Appellate Jurisdiction Clause, ROP Const. Art.

X, Section 6 states: "The appellate division of the Supreme Court shall have jurisdiction to review all decisions of the trial division and all decisions of lower courts."

[¶ 5] "Every court, before ruling on a claim, motion, case, or other issue, must possess and be satisfied of its jurisdiction.... ". *Rengulbai v. Klai Clan*, 22 ROP 56, 60 (2015).

[¶ 6] "[T]his Court is duty-bound to pay heed – sua sponte as the case may be – to this issue: '[A] court has the power and duty to examine and determine whether it has jurisdiction of a matter presented to it.'" *Rechetuker v. Ministry of Justice*, 17 ROP 25, 27 (2009)(quoting *Roman Tmetuchel Family Trust v. Ordome Hamlet*, 11 ROP 158, 160 (2004)(quoting 20 Am. Jur. 2d Courts § 60 (1995)).

#### **FACTUAL BACKGROUND**

[¶ 7] For purposes of this review, we accept as true the factual statements as alleged in the Petition, and its accompanying exhibits.

[¶ 8] Petitioner was charged with a crime, and he was served with a penal summons. His initial appearance was held on September 14, 2017. The trial court "imposed cash bail in the sum of \$100 in accordance with the parties' recommendation" and Petitioner surrendered his passport.

[¶ 9] On October 16, 2017, the Court granted the Republic's motion to dismiss the case without prejudice.

[¶ 10] The Petitioner objects that the Clerk of Court will not release his cash bail, or his passport, absent a court order.<sup>1</sup> For that reason Petitioner seeks mandamus relief from this Court in the first instance, requesting an order directed to the Clerk to release his bail and passport without further court order.

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<sup>1</sup> See 18 PNC § 607 and ROP R. Crim. Pro. 46(g), which both provide in similar language for a court order to release bail and exonerate any obligors. Rule 46(g) provides in part: "[w]hen the condition of the bond has been satisfied..., the court shall exonerate the obligors and release any bail."

## ANALYSIS

[¶ 11] In *Rechetuker, supra*, the Petitioner sought a mandamus order directed to the Grievance Panel of the Ministry of Justice. The Court held that such requested relief should be filed in the Trial Division. Similarly, in an earlier case, *Koror State v. Western Caroline Trading Co.*, 2 ROP Intrm. 305 (1991), this Court declined, on jurisdictional grounds, to reach the merits of a mandamus petition directed at Western Caroline Trading Co., which asked for an order requiring access to company records. In both cases, the Court held that its role was limited to reviewing “decisions of the trial division and all decisions of lower courts” per the Appellate Jurisdiction Clause.

[¶ 12] Normally our review occurs as part of a final judgment. “[W]e have long adhered to the premise that the proper time to consider appeals is after final judgment.” *ROP v. Black Micro. Corp.*, 7 ROP Intrm. 46, 47 (1998)(citations and footnote omitted). “Piecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts. It is far better to consolidate all alleged trial court errors in one appeal.” *Id.*

[¶ 13] One exception to the final judgment rule utilizes the equitable power of an appellate court. Such equity power includes the issuance of a writ – to use the traditional phrasing – “to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 63 S. Ct. 938, 941, (1943); accord, *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661, 98 S. Ct. 2552, 2556 (1978).

[¶ 14] ROP R. App. Pro. 21 provides the appellate procedure when a petition for such a writ is “directed to a court.” Rule 21 is not meant to be expanded to include petitions for writs directed to private persons, corporations, or government officials. Such claims for relief are properly brought in the Trial Division.

[¶ 15] Here, the Petitioner seeks review of a decision by the Clerk of Court. Such a request ought to be brought in the Trial Division, where evidence may be taken and a record made.

[¶ 16] The petition is DISMISSED for lack of jurisdiction.

**SO ORDERED**, this 28<sup>th</sup> day of November, 2017.