

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

**RENGELKEL A MIKEL NGIRMERIL, by RODAS
NGIRENGKOI and FELIX FRANCISCO,**
Appellant,
v.
NGATPANG STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2020 Palau 31
Civil Appeal No. 20-001
Appeal from Case No. LC/L 18-00165

Decided: January 21, 2020

Counsel for Appellant Johnson Toribiong
Counsel for Appellee C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Acting Senior Judge,
presiding.

ORDER DENYING LEAVE TO FILE NOTICE OF APPEAL¹

PER CURIAM:

[¶ 1] Rengelkel a Mikel Ngirmeriil, by Rodas Ngirengkoi and Felix Francisco, appeals the Adjudication and Determination of the Land Court, which was entered on December 2, 2019. Presently before us is Appellant’s motion for leave to file a notice of appeal outside of the deadline provided by

¹ This Order has been reformatted for publication, and typographical errors not affecting the disposition have been corrected.

Rule 4 of the ROP Rules of Appellate Procedure, which is opposed by Appellee. For the reasons that follow, we **DENY** the motion.

[¶ 2] Appeals to this Court, including matters of timing, are governed by the Rules of Appellate Procedure, which provide in relevant part that a notice must be filed “within thirty (30) days after the . . . service of a judgment or order in a civil case.” ROP R. App. P. 4(a). Appellant’s counsel was served with the judgment on December 4, 2019. Consequently, the deadline for filing a notice of appeal in this matter was January 3, 2020. No such notice was filed by the deadline. Instead, on January 6, Appellant attempted to file a notice of appeal accompanied by a motion requesting that an extension of time be granted to deem the notice timely filed.²

[¶ 3] Appellant contends that its motion is governed by Rule 26(c), which provides that this Court may enlarge time to meet certain deadlines even after such deadlines have run “where the failure to act was the result of excusable neglect.” However, Rule 26(c) also provides that this court “may not extend the time for taking any action under Rule 4 . . . except to the extent and under the conditions stated therein.” Rule 4, in turn, authorizes the *trial court* (rather than this Court) to “extend the time for filing the notice of appeal by any party for a period not to exceed thirty (30) days.” ROP R. App. P. 4(c).

[¶ 4] To the extent we have not previously addressed the interaction of Rules 4(c) and 26(c),³ we conclude that the most logical reading of these rules is that the motion to extend time to file a notice of appeal must be presented to the trial court and not this Court. Furthermore, the trial court is often in the best position to determine, as a factual matter, whether an extension is warranted.⁴ The cases cited by Appellant are inapposite because they deal with

² Because January 4th was a Saturday and January 5th a Sunday, these days are excluded from the computation of time, *see* ROP R. App. P. 26(a), and therefore Appellant sought only a one-day extension.

³ In *Henry v. Shizushi*, we stated, “the time limits in which to file an appeal under the ROP Rules of Appellate Procedure are clear. Parties have 30 days, plus one 30 day extension, full stop.” 21 ROP 52, 56 (2014). However, in *Henry*, we did not have occasion to consider Rule 26(c), because the appellant had only sought an extension of time to file a notice of appeal in the trial court pursuant to Rule 4(c).

⁴ We have no occasion to consider and therefore express no view on the question of whether the trial court’s decision on such a motion is reviewable by this Court.

this Court’s ability under Rule 26(c) to enlarge deadlines for filing briefs—not the deadline for filing a notice of appeal. *See KSPLA v. Kebekol*, 22 ROP 122, 123 (2015) (considering whether the appellant’s failure to timely file an opening brief met Rule 26(c)’s “excusable neglect” standard); *Fritz v. Koror State Pub. Lands Auth.*, 17 ROP 294, 297 (2010) (same). Because Appellant failed to seek the trial court’s permission to file its notice of appeal out of time, we are powerless to grant the request.

[¶ 5] Finally, even if this Court could grant an enlargement of the time to file a notice of appeal pursuant to Rule 26(c), we would decline to do so in the present case. Appellant has not demonstrated that its failure to timely file was caused by “excusable neglect.” *See Fritz*, 17 ROP at 297 (“If a litigant makes a request *after* the expiration of the specified time period, the court may permit the filing only where the failure to file was the result of *excusable neglect*.” (citing ROP R. App. P. 26(c))). As we have previously explained:

For *excusable neglect* . . . counsel must establish something more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law. . . . The Court prefers to think along the lines of acts of God, like fires, floods, inexplicably inconsistent judgments, hospitalizations, and other such force majeure. It is not excusable neglect that an attorney fails to mind his or her own calendar. If that calendar is washed away in a hundred-year flood, then the Court may be convinced.

Id. at 299.

[¶ 6] The reasons for missing the deadline proffered by Appellant’s counsel—that his client did not decide to appeal until the day of the deadline, that the underlying judgment was served on his secretary when he was off-island—do not come close to meeting the stringent excusable neglect standard, especially considering that the notice of appeal is a simple (though crucial) document that is meant to merely identify “the party or parties taking the appeal, . . . the judgment, order or part thereof appealed from, and . . . the party or parties against whom the appeal is filed.” ROP R. App. P. 3(c); *see Henry v. Shizushi*, 21 ROP 52, 56 (2014) (noting that filing the notice of appeal in compliance with the Rule 4-time limits “is not an onerous burden”).

[¶ 7] Because we do not have authority to entertain Appellant's motion, and because Appellant has not, in any event, provided an adequate reason for granting its request, we **DENY** Appellant's Motion and **DISMISS** the appeal.⁵

⁵ Because the present motion was filed pursuant to ROP R. App. P. 26(c), nothing in the present opinion should be construed as limiting the power and discretion of the trial courts to entertain timely motions under Rule 4.