

Temol v. Tellei, 15 ROP 156 (Tr. Div. 2007)

**KALISTA TEMOL,
Appellant,**

v.

**JOSEPH TELLEI, FRANCISCA RINGANG, PHILIP BISMARCK, EYANGEL RINGANG,
UBAL TELLEI, and MIRAIR POLLOI,
Appellees.**

CIVIL ACTION NO. 11-85

Supreme Court, Trial Division
Republic of Palau

Decided: December 4, 2007

LOURDES F. MATERNE, Associate Justice:

Before the Court is Appellant Kalista Temol's Motion for Relief from this Court's Order of October 9, 2007 dismissing Temol's appeal as untimely. The Motion urges the Court to relieve Appellant of the Order of Dismissal and allow the appeal to proceed. For the reasons that follow, the Court will deny the motion. This matter concerns an appeal that has been pending in the Trial Division for over twenty years. On September 11, 2007, Appellant filed a motion to remove this matter to the Appellate Division and proceed with her appeal. No response was filed to the motion, and by order dated October 9, 2007, the Court denied the motion and dismissed the appeal as untimely. On October 10, 2007, Appellant filed a motion for relief under Rule 60(b)(6). The Court then ordered any Appellees, heirs, assigns, or others in possession of or holding title to the land in question to file a response to Appellant's motion. On November 12, 2007, heirs Patrick Tellei and Henaro Polloi filed their response in opposition of the motion. Appellant did not file a reply. The response raises several arguments in opposition **¶157** of Temol's Motion for Relief. However, the Court need not even reach the issues raised by the respondents, as the question of the timeliness of Temol's appeal remains and pervades.

At the time this appeal was filed, the statute creating appellate jurisdiction in the Trial Division from the Land Commission also set the time for filing the Notice of Appeal as 120 days from the date of the determination. 67 TTC § 115, *repealed by* Palau National Land Commission Act of 1985, RPPL No. 2-18. In this case the determination of ownership was issued on July 26, 1984, making the deadline for filing a Notice of Appeal November 23, 1984. However, Appellant did not file her Notice of Appeal until January 24, 1985. Appellant states that she received a copy of the determination on November 5, 1984. Based on the above, the Court dismissed this appeal as untimely filed.

Appellant's motion for relief from this order argues that the appeal *was* timely filed because the 120 day filing period should not have begun until she received notice of the determination (Nov. 5, 1984). Under this logic, then, her Notice of Appeal, filed on January 24, 1985 (181 days after the determination issued, 79 days after notice of the determination) would be well within the 120 day period.

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Appellant bases this argument on *Alik v. Amalei*, 1 ROP Intrm. 513A (1988). *Alik* held that the notice of appeal statute must be read in conjunction with the “reasonable notice” statute, and therefore the 120 days must run from the date of service rather than from the date of the determination as in the text of the statute.¹ What Appellant’s argument ignores, however, is the question of whether *Alik* should apply to the case at bar at all. In other words, while the holding of *Alik* is clear, whether it should apply retroactively is not so clear. The Notice of Appeal in the instant matter was filed in 1985. *Alik* wasn’t decided until 1988.

While Palauan case law has not had an occasion to speak on this issue, the Court can look to cases from the U.S. for guidance. In the U.S., it has been held that the U.S. Constitution neither requires nor prohibits retroactive or prospective application of a new decision. *American Trucking Assn. Inc. v. Smith*, 496 U.S. 167, 110 S.Ct. 2323 (1990). Generally speaking, whether anew decision should apply prospectively or retroactively is a matter of judicial discretion applied on a case by case basis. See, e.g., *Metcalf v. Felec Servs.*, 784 P.2d 1386 (Alaska 1990).

The United States federal courts start with a presumption of retroactivity and then apply a three factor test derived from *Chevron Oil Co. Inc. v. Huson*, 404 U.S. 103, 92 S.Ct. 349 (1971). First, the decision must establish a new principle of law either by overruling past precedent or by deciding an issue of first impression whose resolution is not clearly foreshadowed. Second, the court must weigh the merits and demerits of each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective application will further or retard its operation. Finally, the court must weigh the inequity imposed **¶158** by retroactive application, for “where a decision . . . could produce substantial inequitable results if applied retroactively, there is ample basis . . . for avoiding the injustice or hardship by a holding of nonretroactivity.” *Id.*

In this case, the question answered by *Alik* was a matter first impression. The plain language of the statute governing time for appeals was no doubt relied upon in this case by the parties and the clerks in the years proceeding the *Alik* decision. Moreover, in the more than twenty years since the filing of the Notice of Appeal, the appellees and their heirs have relied to their detriment upon the finality of the Land Court’s determination. Without a doubt, applying the rule retroactively at this stage would produce great injustice to those heirs. The Court therefore finds that the *Alik* decision should have purely prospective application. Temol’s appeal is therefore untimely, and the Court will deny the motion for relief.

Accordingly, it is hereby ordered that the Motion for Relief from the Court’s October 9, 2007 Order is denied.

¹ *Alik* construed the statute that replaced 67 TTC 115. The two statutes are virtually identical.