

*Republic of Palau v. Kuchad*, 1 ROP Intrm. 440A (1988)  
**IN THE MATTER OF ROBIN KUCHAD,  
AN ALLEGED DELINQUENT CHILD,**

**REPUBLIC OF PALAU,  
Plaintiff/Appellant,**

**v.**

**ROBIN KUCHAD,  
Defendant/Appellee**

JUVENILE APPEAL NO. 14-85  
Juvenile Case Nos. 15-85, 5-85, and  
Criminal Case No. 291-85

Supreme Court, Appellate Division  
Republic of Palau

Decision and order

Decided: February 18, 1988

Counsel for Appellee: Philip Isaac, Acting Attorney General

Counsel for Appellant: Kevin N. Kirk

BEFORE: ARTHUR NGIRAKLSONG, Associate Justice; FREDRICK J. O'BRIEN,<sup>1</sup> Associate Justice PRO TEM; and EDWARD C. KING,<sup>2</sup> Associate Justice PRO TEM.

**1440B** NGIRAKLSONG, Justice:

Appellee Robin Kuchad has moved to dismiss this appeal pursuant to ROP R. App. Pro. 31(c), on the grounds that appellant, the Republic of Palau national government, had failed to file its brief within 45 days, as required by ROP R. App. Pro. 31(b), and had not filed a timely motion for an extension. Appellee Kuchad also opposes the government's motion to extend time filed after the 45 days time limit.

An information of juvenile delinquency was filed on June 5, 1985, against Robin Kuchad, among others, charging him with burglary and grand larceny. Kuchad represented his birthdate to be November 8, 1968, making him a minor. The juvenile court, with Chief Justice Nakamura presiding, discovered that Kuchad's authenticated birthdate is July 17, 1967. With this discovery, the court on August 13, 1985, dismissed the information of juvenile delinquency on the grounds that Kuchad had reached the age of eighteen (18) on July 17, 1985, and the court had

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<sup>1</sup> The Honorable Fredrick J. O'Brien is the Presiding Judge of the Palau National Court.

<sup>2</sup> The Honorable Edward C. King is the Chief Justice of the Federated States of Micronesia.

*Republic of Palau v. Kuchad*, 1 ROP Intrm. 440A (1988)

therefore lost its jurisdiction over the juvenile.

On August 20, 1985, the government filed a notice of appeal from this decision in Juvenile Case Nos. 14-85 and 15-85. Ten days later, the government filed Criminal Case No. 291-85 against Kuchad as an adult on identical charges made in the juvenile petition against him.

**¶440C** The Trial Court with Associate Justice Sutton presiding in Criminal Case No. 291-85 granted defendant's motion to dismiss the case. The court's reason for dismissal is that the court "is without jurisdiction to proceed absent certification from the juvenile court on a finding that the juvenile's physical and mental maturity justifies the handling of the juvenile as an adult." This ruling was issued on November 21, 1985, and the government filed a notice of appeal on November 22, 1985.

On December 9, 1985, the government filed a motion to consolidate these two appeals. The court has failed to rule on this motion which has not been opposed by Kuchad. It appears clear that the interests of expedient justice would be served by consolidation. Accordingly, we grant the government's motion to consolidate these two appeals.

The Clerk of Court certified the record in Juvenile Case Nos. 14-85 and 15-85 on February 18, 1986. The Clerk certified the record for Criminal Case No. 291-85 and 5-85 on April 24, 1986. ROP R. App. Pro. Rule 31(b) requires that an appellant shall file his brief within 45 days after notice of certification of record has been served on him.

For Juvenile Case No. 14-85 and 15-85, the 45 days time limit for the government to file its brief fell on April 5, 1986. In the companion case, the time limit fell on June 9, 1986. On April 21, 1986, 16 days from the expiration of 45 days time limit in Juvenile Case Nos. 14-85 and 15-85 and still within the time limit for Criminal Case No. 291-85 and 5-85, **¶440D** the government filed a motion to extend time. On April 30, 1986, the government filed its brief. The government complied with the time requirement in one case and failed in another. The court has also failed to rule on the government's motion to extend time for now a year and 7 months.

The language of ROP R. App. Pro. 31(c) makes it clear that the consequences for a failure to file timely are discretionary. This court has recently served notice to the Bar that nothing but good cause shown will be sufficient grounds for any departure from the Rule's time requirements. *ROP v. Singeo*, CR. App. No. 2-87.

The government's reasons for its dereliction with respect to Juvenile Case Nos. 14-85 and 15-85 were: (1) the pressure of the President's assassination case and the Ipseco lawsuit, (2) oversight in filing a motion to extend time within the 45 days time limit with respect to the juvenile case and (3) the failure of the Court to rule on the government's motion to consolidate.

We find that there is simply no good reason shown to excuse the government from filing a timely motion to extend time. Such a motion takes, but only the smallest of efforts.

However, the government's brief was filed in timely fashion for one of the appeals which

*Republic of Palau v. Kuchad*, 1 ROP Intrm. 440A (1988)

we recognize should be consolidated here. We believe that to do justice in these appeals, and avoid confusion, all the issues should be dealt with together.

¶440E Moreover, the failure of the court to rule on the government's motion to consolidate and motion to extend time may have influenced the government's failure to comply with the time requirements in ROP R. App. Pro. Rule 31(b).

For these reasons and in exercising our discretion under ROP R. App. Pro. 31(c), we grant the government's motion to consolidate these two appeals and to extend time for filing of appellant's brief. We deny Kuchad's motion to dismiss.

IT IS THEREFORE ORDERED that the government's motions to consolidate these two appeals and extend time to file appellant's brief are hereby granted and Kuchad's motion to dismiss is denied.

IT IS FURTHER ORDERED that the government shall file and serve its brief 20 days from the date of service of this decision and order. Kuchad shall file and serve his brief 30 days after the filing and service of the government's brief. The government may file its reply brief 15 days after the filing and service of Kuchad's brief.

SO ORDERED.