

Tehekii Clan v. Paulus, 1 ROP 514 (1988)
**TECHEKII CLAN, REP. BECHES
RENGIIL, and KYOTA DENGOKL,
Plaintiffs/Appellants,**

v.

**NGIRATKAKL PAULUS,
Defendant/Appellee.**

**TECHEKII GLORIA G. SALII and
RECHUCHER RA TECHEKII
CHARLIE GIBBONS,
Intervenors/Appellants.**

CIVIL APPEAL NO. 9-87
Civil Action No. 69/70-81

Supreme Court, Appellate Division
Republic of Palau

Ruling on appellee's motion to dismiss
Decided: August 8, 1988

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Mariano W. Carlos

Counsel for Intervenors: Carlos H. Salii

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
ARTHUR NGIRAKLSONG, Associate Justice.

PER CURIAM:

Appellee moves to dismiss the appeal herein, pursuant to ROP R. App. Pro. 3(a) and 31(c), on the grounds that Appellants have taken no further action on this appeal since **1515** the filing of their notice of appeal.

Intervenors/Appellants filed their Notice of Appeal on April 30, 1987 and Plaintiffs/Appellants filed their Notice of Appeal on May 4, 1987. On May 4, 1987, Intervenor/Appellant's counsel was sent a memorandum from Clerk of Courts, Lucio Ngiraiwet, advising that the estimated cost to prepare the Transcript of Evidence in Civil Case No. 69/70-80 is \$3,300.00. On May 26, 1987, Plaintiffs/Appellants' counsel was sent a letter by Assistant Clerk of Courts Grace Y. Sam, giving notice that the estimated cost to prepare the Transcript of Evidence in this case would be \$3,300.00 and that this cost should be shared by both Appellants.

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Both notices informed the Appellants that actual work on the Transcript of Evidence would only be commenced after payment for the transcript was made.

Since the time of the notices to Appellants from the Office of the Clerk of Court, there has been no further action by them on this appeal.

ROP R. App. Pro. 31 addresses the filing and service of briefs. Rule 31(b) specifically addresses the time of filing. That section of the rule states, in pertinent part, that:

(b) Time of Filing. Appellant's brief shall be filed within forty-five (45) days after the notification (service) of certification of the record by the clerk of the trial court or after entry of the trial court order setting the transcript, whichever shall occur last; or if a transcript is not designated or is waived, then forty-five (45) days after the filing of the notice of appeal. . . . (emphasis added).

1516 Rule 31(c) goes on to address the consequences of failure to file briefs. That section of the rule states, in pertinent part, that:

(c) Consequences of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. . . . (emphasis added).

The language of ROP R. App. Pro. 31(c) makes it clear that dismissal of the appeal as a consequence for failing to file briefs is discretionary. The Court is always concerned about the consequences with which Appellant is faced and whether dismissing his appeal would best serve the ends of justice.

In the case of *In the Matter of the Estate of Obak Kloulubak*, Civil Appeal No. 8-84, the Court was faced with a motion to extend time for the filing of Appellant's opening brief that was filed one day after the due date for the brief. The Appellant pleaded excusable neglect, in that oversight resulted in the omission of the due date for his brief from his calendar.

The Court in that case granted the Appellant's motion to extend time and sanctioned Appellant's attorney to pay \$250.00 to Appellee as reimbursement for time and costs in bringing the motion to dismiss.

In the recent case of *Republic of Palau v. Leeman Singeo*, Criminal Appeal No. 2-87, the Court was faced with a case where Appellant filed a motion for an extension to file **1517** his opening brief two days after Appellee filed a motion to dismiss. This was forty-five days after his opening brief was due to be filed. Appellant in this case ultimately did file an opening brief sixty-five days late.

Under the circumstances in that case, the Court granted Appellant's motion for extension and sanctioned Appellant's attorney \$500.00 under the Court's inherent power to discipline attorneys pursuant to ROP Const., Article X, sections 5 and 14, and 4 PNC § 101.

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The Court stated:

. . . It seems to the Court that justice can best be served by allowing Appellant to pursue his appeal, by sanctioning Appellant's counsel, and by servicing notice upon the Bar that henceforth naught but good cause shown will be sufficient grounds for any departure from the rules. . . *Id.* at 3. (emphasis added).

The Court in *Leeman* elaborated on what constitutes "good cause". The Court cited the case of *United States v. Raimondi*, 760 F.2d 460, 462 (CA 1985), and stated that good cause shall not be deemed to exist unless the movant avers something more than the normal (or even the reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law. *Id.* at 4.

In the case before us, no motion for extension of time to file briefs has even been filed by Appellants, the attorneys for appellants have extensive experience in the practice of law in this jurisdiction, an unconscionable amount of time has been allowed to pass since Appellants were notified of the estimated costs of the transcript, Appellee has asserted that they have L518 been put through hardship and disadvantage due to the delay in completing this appeal, and good cause for the inaction has not been shown.

Appellants contend that this Court lacks jurisdiction over the subject matter and therefore this motion should be dismissed. They argue that Appellee should have filed this motion in the Trial Division of this Court. In support of this position, Appellants cite *Skebong v. Election Commissioner*, (App. Div., Nov. 1985) as controlling authority.

We have reviewed *Skebong* and conclude that the facts and circumstances of that case are distinguishable from this case. *Skebong* dealt with the application of ROP R. App. Pro. 10(b), and not ROP R. App. Pro. 31(c), as the case in this case.

In light of the circumstances of this case and the warning given to the Bar in the *Leeman* case, the Court has no recourse but to grant Appellee's Motion to Dismiss.

Appellee's Motion to Dismiss is hereby GRANTED.