

Remeliik v. Luii, 1 ROP Intrm. 592 (1989)
**NOBOR REMELIIK and MAR
NGELEKEL A EDANGEL REMELIIK,
Appellants,**

v.

**ITELBANG LUII, TELBONG, and
BANK OF HAWAII, KOROR BRANCH
Appellees**

CIVIL APPEAL NO. 2-82
Civil Action No. 173-82

Supreme Court, Appellate Division
Republic of Palau

Appellate decision and order
Decided: April 12, 1989

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Carlos H. Salii

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice and EDWARD C. KING, Associate Justice.

PER CURIAM:

Judgment was entered for the defendants on June 10, 1983, and the Plaintiff filed a notice of appeal. This case has lingered for almost six years, shuttling back and forth between this Court's trial and appellate divisions.

1593 The case is now before us on the defendant's motion to dismiss the appeal for lack of prosecution. As we review the file we note that the appellants have made numerous efforts over the years to move the litigation along, principally through motions for a new trial.

The primary problem has been the inability of the clerk's office to produce a full transcript of the trial proceedings. This in turn is due to the loss of the tape recording of the testimony of one witness, Kebekol Ngirakelebid, who is now deceased.

Plainly, it would not be appropriate to punish the appellants for these administrative problems, nor does it seem desirable to convene a new trial again now, since we are told that other witnesses in addition to Kebekol Ngirakelebid have died since the 1983 trial. The following instructions are provided in an effort to permit the record to be completed so that the case may be readied for an appellate decision.

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Counsel for both parties expressed willingness to attempt to agree upon a summary of the testimony of Kebekol Ngirakelebid. If they can agree, they shall file with this Court within 15 days an agreement pursuant to Rule 10(e) of our Rules of Appellate Procedure. Otherwise the appellants, the party seeking to supplement the record, shall within 21 days of the date of this order, request the Chief Justice of this Court to designate a trial judge to hold the hearing provided for by Rule 10(e).

When the record has become fixed through this 1594 procedure, the Clerk of Courts for the Appellate Division shall so certify and briefs shall be filed within the terms prescribed in ROP R. App. Pro. 31(b).