

Sebaklim v. Uehara, 1 ROP Intrm. 649 (1989)
INAO SEBAKLIM,
Appellee,

v.

SISANG UEHARA, TAKAWO OBEKETANG,
Appellants.

CIVIL APPAL NO. 2-86
Civil Action No. 108-82

Supreme Court, Appellate Division
Republic of Palau

Decision re motion to dismiss appeal
Decided: August 17, 1989

Counsel for Uehara: Johnson Toribiong

Counsel for Obeketang: Kaleb Udui

Counsel for Sebaklim: John K. Rechucher

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Designated Associate Justice and Presiding Judge of National Court.

PER CURIAM:

1650 Judgment was rendered in this matter on November 8, 1985. The Parties were served on the same date.

On December 9, 1985, Appellant Uehara moved for an extension of time to file his notice of appeal until January 10, 1986, pleading simply that he needed more preparation time. This Motion was granted ex parte with no comment by the trial judge on December 9, 1985. On January 13, 1986, Appellant Uehara again moved for an extension of time from January 10, 1986 to January 15, 1986. This motion was also granted on January 14, 1986.

Appellant Obeketang filed his Motion to Extend Time for Filing Notice of Appeal on December 9, 1985, requesting extension to January 15, [1986 sic]. This motion was granted ex parte and without comment by the trial Judge on December 9, 1985.

Notice of Appeal was filed by Appellant Uehara on January 15, 1986, and by Appellant Obeketang on January 14, 1986.

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On January 21, 1986, Appellee Sebaklim, filed a Motion to Reconsider the trial court's ruling granting extension of time to January 15, 1986, for Appellant Uehara, and a Motion to Dismiss Appellant Obeketang's Appeal.

The Trial Court held a hearing on Appellee Sebaklim's motions on March 27, 1986, and decided, by Order entered March 28, 1989, in pertinent part, that the Trial Division lacked jurisdiction to entertain the motions.

The Motion to Dismiss Appeal was then filed by Appellee Sebaklim in the Appellate Division on April 6, 1989.

Hearing was held and oral argument heard on July 27, 1989.

Essentially, Sebaklim argues that ROP R. App. Pro. 4(a) and (b), **L651** require that notice of appeal be filed within thirty (30) days of service of Judgment and that an extension of that time (1) may not exceed an additional thirty days and (2) must be based on a showing of excusable neglect.

Uehara and Obeketang argue that the time period required by Rule 4(a) and (b) is not "fixed and rigid", since Rule 4(a) allows for a longer period where the filing of (1) a motion to alter or amend the judgment, (2) a motion for new trial, or, (3) a motion in arrest of judgment in a criminal case, tolls the filing time for notice of appeal. Thus, they contend, there is flexibility built into the rule which would allow this Court to expand the required period and take jurisdiction even where no such motions were filed in the trial court.

Further, Uehara and Obeketang argue, citing 32 Am. Jur. 2d Federal Practice and Procedure, sec. 1073, that an appellant may be entitled to an extension even if a trial court has erroneously granted it if the appellant has relied upon such ruling.

We disagree with Appellants that Rules 4(a) and 4(b) may be flexed beyond their clear language. In the instant matter no motions to alter or amend the judgment or for a new trial were filed in the trial court and, in the absence of these specific events which toll the time for filing an appeal we find that such time runs.

We find that 32 Am. Jur. 2d, Federal Practice and Procedure, Section 1073, is inapplicable to the time for filing a notice of appeal on the facts here because it relates to a situation where one of the a post-trial motions designated in Rule 4(a) is filed **L652** in the trial court and the filing of such a motion tolls the running of the time for filing a notice of appeal. This did not occur in the instant case.

Finally, we hold that the language of Rule 4(b) requires a showing of excusable neglect and that the bare conclusionary statement that Counsel needs more time to research or prepare is insufficient to satisfy the rule.

Time for filing notice of appeal herein expired on December 8, 1985. December 8, 1985,

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was a Sunday and the last day then for filing the notice extends, pursuant to ROP R. App. Pro. 26(a), to Monday, December 9, 1985. Appellant Uehara filed his first Motion to Extend on December 9, 1985, as did Appellant Obeketang.

Each Motion was granted ex parte by the Trial Judge, such Order being entered on December 9, 1985. Thirty (30) days from December 9, 1985, was the maximum time allowed by Rule 4(b) for extension (i.e. January 8, 1986). The Trial Judge was therefore not empowered to grant an extension past January 8, 1986.

Likewise, the Appellate Division is without jurisdiction to entertain an appeal where the notice of appeal is untimely filed. *Babul, et al. v. Singeo*, 1 ROP Intrm. 123 (App. Div. May 1984).

Since the notices of appeal were filed herein 6 and 7 days after January 8, 1989, they were untimely filed.

We comment, to dispel any confusion which may exist as to the required process for application for extension of time to file notice of appeal made prior to the running of the initial thirty (30) days, that such application must show excusable neglect and may be made ex parte unless the Court otherwise **L653** requires.

Contrarywise, the rule is clear that such application made after the expiration of the initial thirty (30) days period for filing notice of appeal must be by way of formal Motion with such notice as the Court deems appropriate.

The Motions to Dismiss Appeal, more properly Motions to Strike, and they are deemed so to be, are granted and each Notice of Appeal as well as all other documents filed at the trial and appellate levels in furtherance of these are stricken.