

**ABEL SUZUKY,  
Appellant,**

**v.**

**MARIO GULIBERT,  
Appellee.**

CIVIL APPEAL NO. 12-033  
Civil Action No. 11-266

Supreme Court, Appellate Division  
Republic of Palau

Decided: November 26, 2012

[1] **Appeal and Error:** Procedure

Republic of Palau Rule of Appellate Procedure 28 governs the form of appellate briefs filed in this Court. Specifically, Rule 28(a) requires, among other things, that a brief must be typed and double-spaced, must include a properly formatted Table of Contents and Table of Authorities, must list clearly and concisely each question presented on appeal, and must be accompanied by a copy of the judgment or orders appealed from.

[2] **Appeal and Error:** Procedure

As a general matter, the burden of demonstrating error on the part of a lower court is on the appellant.

[3] **Appeal and Error:** Procedure

Failure to adhere to the Rules of Appellate Procedure with respect to citation to the factual record is fatal to a party's factual allegations.

[4] **Appeal and Error: Burden of Proof**

With respect to specifications of legal error, the burden is on the party asserting error to cite relevant legal authority in support of his or her argument.

[5] **Appeal and Error: Pro Se Litigants**

Pro se litigants have a duty to inform themselves of the requirements for proceeding with an appeal.

Counsel for Appellant: Pro Se  
Counsel for Appellee: Rachel A. Dimitruk

BEFORE: KATHLEEN M. SALII, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem; and HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

This case concerns a long-running dispute between members of the Orakiblai Clan—Appellant Abel Suzuky and Appellee Mario Gulibert—which resulted in a Trial Division Decision and Judgment in favor of Appellee on his claims of defamation against Appellant. For the following reasons, the Court **DISMISSES** this appeal for Appellant’s failure to comply with the Republic of Palau Rules of Appellate Procedure and for inadequate briefing.

**BACKGROUND**

Despite Appellant’s reference to numerous facts that are beyond the scope of his appeal, the factual background relevant to this appeal is limited and largely undisputed.

The subject of this dispute is a trust fund known as the Angaur Municipal Fund, which was established with approximately \$10,000,<sup>1</sup> for which Appellee and Andres Uherbelau served as trustees since November 15, 1999.

On September 23, 2011, Appellant delivered a letter he wrote to Ms. Lbong Walter at Pacific Savings Bank, which he copied to Obak Andres Uherbelau, Appellee Mario Gulibert, and Angaur Rubak. In the letter Appellant asserted, among other things, that Andres Uherbelau and Appellee improperly took control of and misused a trust fund managed by “the Board” by dissolving the Board and changing their titles to “Trustees” without a meeting of the “Angaur Rubak.”

Appellee issued a letter to Appellant on October 6, 2011, demanding that Appellant retract his false statements and cease and desist from further accusations. On December 15, 2011, Appellee filed a lawsuit for defamation in the Trial Division of the Supreme Court.

Protracted litigation between the parties resulted in Appellant being sanctioned for his failure to follow the

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<sup>1</sup> The Court notes that Appellant appears to make reference to multiple trust funds and to numerous sources of the money in those trusts in his Opening Brief, but he neither clearly establishes to which trusts he refers nor addresses the Trial Division’s factual findings with respect to the corpus and control of the trust fund at issue.

Court's orders and rules, partial summary judgment in favor of Appellee, and a temporary restraining order against Appellant prohibiting continued dissemination of defamatory statements. After a trial on the remaining issues of fact, on August 22, 2012, the Trial Division issued its Decision and Judgment in favor of Appellee and awarded Appellee \$9,115.00 in punitive damages for Appellant's malicious defamation. Appellant filed his timely appeal on August 27, 2012.

### ANALYSIS

On appeal, Appellant appears to assert a number of factual and legal challenges to the Trial Division's rulings without citation to the record or to any legal authority.

#### I. Appellant's Challenges on Appeal

Appellant's Opening Brief is three pages. Two of Appellant's pages assert a number of factual matters that are either beyond the scope of the underlying proceeding or are entirely new at this stage.<sup>2</sup> In addition, Appellant asserts facts contrary to those the Trial Division found conclusively proven as a sanction for Appellant's disregard of court orders and procedure, such as Appellant's continued assertion that Appellee misused funds in the disputed trust. In any event, Appellant does

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<sup>2</sup> For example, Appellant asserts Appellee was able to "make a loan of \$900,000" based "on this Rubak's money" and that Masao Gulibert improperly transferred Orakiblai Clan shares in Western Caroline Trading Company to Appellee. Neither "fact" appears properly to be a part of the trial court record, nor does it appear the Trial Division made any express related findings.

not make a single citation to the record to support his numerous assertions of fact.

Appellant's argument on appeal is limited to one page that only purports to set out two issues. The first issue appears to assert that the Trial Division improperly defined, and ostensibly confused, the terms "trustee" and "depositor" in reaching its conclusion that Appellant's statements about Appellee's mismanagement of the trust were false. This argument also seems to imply that Appellee and Andres Uherbelau received but failed to deposit into the trust an additional sum of money to which the Angaur Rubak is entitled.

The second issue appears to present a general challenge to the Trial Division's conclusion that Appellant's letter of September 23, 2011, was unlawful and an implicit challenge to the Trial Division's grant of a temporary restraining order preventing Appellant's dissemination of materials related to his accusations of wrongdoing against Appellee in this matter.

Neither of Appellant's issues refer to specific rulings by the trial court, cite to any portion of the record, nor provide any legal citations in support of his argument.

#### II. Standards for Adequate Appeals

The Republic of Palau Rules of Appellate Procedure and the Court's case law impose both formal and substantive requirements for adequate appellate briefing.

##### A. Formal requirements

[1] Republic of Palau Rule of Appellate Procedure 28 governs the form of appellate briefs filed in this Court. Specifically, Rule

28(a) requires, among other things, that a brief must be typed and double-spaced, must include a properly formatted Table of Contents and Table of Authorities, must list clearly and concisely each question presented on appeal, and must be accompanied by a copy of the judgment or orders appealed from.

In addition, Rule 28(a)(7) provides in relevant part:

In the body of all briefs shall be the Statement of the Case. This shall set forth, in clear and concise terms and in substantially the following order, the following: the nature of the action, suit, or proceeding, [and] the relief sought . . . ; the nature of the judgment, decree, or other order to be reviewed; a concise but complete statement of all facts material to the determination of the question(s) presented for appellate decision, such statement to be presented in narrative form, with reference to the portion of the record or recording of the hearing where such facts appear; and any other matters necessary to inform the Appellate Division concerning the questions and contentions raised in the appeal.

Rule 28(e) further provides with respect to citation to the record:

References to evidence must be followed by a pinpoint citation to the page, transcript line, or recording time in the record. Only clear abbreviations may be used. Any pinpoint citation to an audio recording must include the day,

hour, minute, and second the testimony was offered. Factual arguments or references to the record not supported by such an adequately precise pinpoint citation may not be considered by the Appellate Division. A party referring to evidence whose admissibility is in controversy must specifically identify the point at which the evidence was identified, offered, and received or rejected.

### **B. Substantive requirements**

[2] As a general matter, the burden of demonstrating error on the part of a lower court is on the appellant. *Ngetchab v. Lineage v. Klewei*, 16 ROP 219, 221 (2009) (“[I]t is the job of Appellant, not the Court, to search the record for errors.”). Lacking clarity and precision in the appellant’s argument, this Court will not “trawl the entire record for unspecified error.” *Id.* See also *Idid Clan v. Demei*, 17 ROP 221, 229 n.3 (2010) (“It is not the Court’s duty to interpret . . . broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply.”). This general burden applies both to an appellant’s specifications of factual and legal error, each of which requires clarity and proper citation.

[3] With respect to assertions of factual error, the Court’s prior enforcement of Rule 28 makes clear that a failure to adhere to the Rules of Appellate Procedure with respect to citation to the factual record is fatal to a party’s factual allegations:

With a single exception (see Appellant’s Br. at 10), Beches failed to include a pinpoint citation to the

record in support of any of his asserted facts. He occasionally refers to documentary evidence, but the lack of citation to the witnesses' testimony—especially where there is no transcript of the proceedings—is inappropriate and contrary to Palau's Rules of Appellate Procedure.

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[Rule 28] is clear and unambiguous, and it permits this Court to disregard Beches's unsupported factual arguments—which is nearly all [of] them. The Court finds this recourse appropriate in light of the violation of Rule 28(e), and it will not consider Beches's specific factual arguments.

*Beches v. Sumor*, 17 ROP 266, 272 (2010). See also *Ngetchab Lineage*, 16 ROP at 221 (“[A]n appellant must ‘point out specifically where the findings are clearly erroneous.’”) (quoting *Pachmayr Gun Works, Inc. v. Olin Mathieson Chem. Corp.*, 502 F.2d 802, 807 (9th Cir. 1974)).

[4] With respect to specifications of legal error, the burden is on the party asserting error to cite relevant legal authority in support of his or her argument. *Aimeliik State Pub. Lands. Auth. v. Rengchol*, 17 ROP 276, 282 (2010) (“Litigants may not, without proper support, recite a laundry list of alleged defects in a lower court’s opinion and leave it to this Court to undertake the research.”). Unsupported legal arguments need not be considered by the Court on appeal. See *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 164 (2006). See

also *Idid Clan*, 17 ROP at 229 n.3 (“[A]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing.”). Issues raised but not addressed in the argument section in accordance with Rule 28(a)(8) are also deemed waived by the appellant. *Dalton v. Borja*, 12 ROP 65, 75 (2005) (“identifying an issue in the ‘issues raised’ section of a brief but omitting any discussion of that issue in the ‘argument’ section renders that issue waived”).

## DISCUSSION

Appellant’s brief is rife with formal and substantive shortfalls. In violation of Rule 28(a), Appellant’s brief is not double-spaced, lacks a table of contents and a table of authorities, lacks a clear specification of the factual and legal errors asserted, and does not include a copy of the decisions or orders from which Appellant appeals. In addition, Appellant did not cite to the record in support of the facts set out in his statement of facts in violation of Rule 28(a)(7) and 28(e).

With respect to Appellant’s assertions of factual and legal error, as noted, his Opening Brief lacks citations to the record, to the rulings by the Trial Division, or to any legal authority. Additionally, Appellant’s arguments are so poorly developed that it is within the Court’s discretion to ignore them entirely.

[5] We acknowledge Appellant has appeared pro se and that the Court should permit parties to represent themselves to ensure adequate access to this tribunal for all citizens of Palau. Nevertheless, pro se litigants “have a duty to inform themselves

of the requirements for proceeding with an appeal.” *Estate of Masang v. Marsil*, 13 ROP 1, 1-2 n.1 (2005) (recognizing it as a “harsh remedy” but dismissing a pro se appeal for failure to comply with the ROP Rules of Appellate Procedure). Appellant’s status as a pro se party does not relieve him of the burden to provide clear and concise bases for appeal, and it does not impose on the Court a duty to act as Appellant’s counsel or to sweep the record for potential errors of law and fact that are not clearly developed.

Based on the foregoing grounds, the Court concludes that Appellant’s Opening Brief is so inadequate and poorly developed that it fails to set out any issues on appeal that the Court must resolve. In light of the numerous formal and substantive shortfalls of Appellant’s brief, the Court dismisses this appeal in its entirety.

### **CONCLUSION**

The Court **DISMISSES** this appeal for Appellant’s failure to comply with the Republic of Palau Rules of Appellate Procedure and for wholly inadequate briefing.