

Ngiratreked v. Joseph, 3 ROP Intrm. 266 (1993)
**IN THE MATTER OF THE APPEAL FROM THE
DECISION OF THE LAND CLAIMS HEARING OFFICE**

**BRENGIEI NGIRATREKED,
Appellant,**

v.

**VICTOR JOSEPH,
Appellee.**

CIVIL APPEAL NO. 3-92

Supreme Court, Appellate Division
Republic of Palau

Order denying motion to dismiss
Decided: June 30, 1993

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

PER CURIAM:

Appellee brought his Motion to Dismiss this appeal on December 29, 1992, on the grounds that Appellant failed to file her brief within the time prescribed by Rule 31(b).

Appellant filed her Notice of Appeal on January 9, 1992 and pursuant thereto the Clerk of Courts issued its certification of the record on January 30, 1992. Through extensions, Appellant had until May 13, 1992 to file her brief. A large part of Appellant's delay may be attributable to the pendency of a previous motion by Appellee to strike the appeal, which was denied by the Court on November 11, 1992. However, as of the time of Appellee's Motion to Dismiss on December 29, 1992--forty-eight days later--Appellant still had not filed her brief. She did file it a day after Appellee's Motion to Dismiss, on December 30, 1992.

1267 ROP App. Pro. Rule 31 gives this Court discretion to dismiss an appeal for failure to timely file an opening brief. *A.J.J. Enterprises v. Uchel*, Civil Appeal No. 29-91, Order of February 20, 1992, at 2. In the past, we have chosen to exercise that discretion by denying motions to dismiss where the appellee has not shown that he has been prejudiced by the delay, the required prejudice being more than just monetary. *Kedung Clan v. Kerradel*, Civil Appeal No. 16-91, Order of July 24, 1991, at 3; *Katsutoshi Becheserrak v. Koror State, et al.*, 2 ROP

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Intrm. 327, 332 (1991). In this case, although the filing of Appellant's brief was late by any measure, the Appellee has failed to show that Appellant's delay has worked a prejudice to Appellee. Accordingly, we deny Appellee's motion while preserving our authority to insist on strict compliance in future cases.

While denying the motion to dismiss, the Court acknowledges that Appellee has suffered monetary prejudice for its costs in preparing the Motion to Dismiss and prodding Appellant to finally file her brief, and thereby awards Appellee attorneys' fees of \$200. Such sanction is imposed against Appellant's counsel personally, not against Appellant, and shall be paid within seven days of the date of this order. *Kedung Clan, supra; ROP v. Singeo*, 1 ROP Intrm. 528A (1987).

1268 Appellee shall have 30 days from the date of this order to file his responsive brief.