

In re Estate of Kaleb Udui, 3 ROP Intrm. 130 (1992)
In the Matter of: KALEB UDUI,
Decedent.

CIVIL APPEAL NO. 2-91
Civil Action No. 580-90

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: February 21, 1992

Counsel for Appellant John Rechucher: Martin Wolff
Counsel for Appellant Anne Higgins: *Pro se*
Counsel for Appellee Geggie Udui: David Shadel

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; and ROBERT A. HEFNER, Associate Justice.

PER CURIAM:

On January 22, 1991, Appellant/Intervenor Rechucher filed a notice appealing two rulings of the Trial Court: an August 6, 1990 ruling which denied Appellant/Intervenor's motion to dismiss and held that a valid will takes precedence over an eldecheduch, and a December 17, 1990 ruling which admitted a copy of decedent's handwritten will to probate and appointed Appellee as permanent executrix of decedent's estate.

A notice appealing the August 6, 1990 ruling on virtually the same grounds had previously been filed by Appellant Rechucher on August 16, 1990 (Civil Appeal No. 13-90). That appeal is still on record.

On January 22, 1991, Appellant/Intervenor Higgins filed a notice appealing the December 27, 1990 ruling for the same reasons stated in Appellant Rechucher's notice of appeal. Appellant Higgins' appeal is designated Civil Appeal No. 3-91.

¶131 On September 11, 1991, Appellant Rechucher filed a motion, pursuant to Rule 27(a) of the ROP Rules of Civil Procedure, to stay all further Trial Court proceedings while his appeal of the two rulings was pending, and to strike all documents and orders filed in the Trial Court since the notice of appeal was filed. The motion argues that the Trial Court should not probate the will by resolving claims against the estate and acting on discovery motions after the appeal was filed because its jurisdiction is limited to motions relating to the judgment only.

In her response, filed September 17, 1991, Appellee Udui argues that Appellant's motion to stay and strike should fail because the Trial Court rulings are not final judgments subject to appeal. Appellee adds that there is no statutory or other basis for the stay requested, and that even

In re Estate of Kaleb Udui, 3 ROP Intrm. 130 (1992)

if there were, there are no pending proceedings to stay.

Appellee also filed a motion to dismiss the appeals on the grounds that the August and December, 1990 rulings are not final judgments and are therefore not appealable.

To determine whether the rulings were interlocutory or final orders, the Court must consider whether further action by the Trial Court is essential to a final determination of the rights of the parties. *Nakatani v. Nishizono*, 1 ROP Intrm 289, 290 (Tr. Div. Dec. 1985). An order which does not finally settle the issues on trial generally is not appealable, although it is open to review in connection with an appeal of the final judgment. *Nakatani v. Shigemitsu, et al.*, 1 ROP Intrm. 663A (Supp.) (App. Div. Sept. 1132 1988); *EQPB v. Ngatpang State*, 1 ROP Intrm. 647 (App. Div. Aug. 1989); *Fritz v. Salii*, 1 ROP Intrm 521, 546 (App. Div. Aug. 1988); *Olikong v. Salii*, 1 ROP Intrm 406 (App. Div. June, 1987); Rule 10 ROP Rules of Appellate Procedure.

In this case, neither the Trial Court Order of August, 1990 nor the Order of December, 1990 finally determined the dispute between the parties. That will not occur until the Trial Court issues a determination as to the distribution of the estate's assets. "So long as the matter remains open, unfinished or inconclusive, there may be no intrusions by appeal." *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 1225 (1949).

Appellant retains the option to raise the August ruling, the December ruling, and any other alleged Trial Court errors, on appellate review of the final judgment in the case. *See, Pulliam v. Pulliam*, 183 P.2d 220, 163 Kan. 497, 1 ALR 418, 420 (1947). Reviewing all stages of a proceeding in one appeal avoids piecemeal appellate review of trial court decisions. *Osterneck v. Ernst & Whinny*, 109 S.Ct. 987, 991 (1987); *Parr v. U.S.*, 351 U.S. 453, 76 S.Ct. 912 (1956).

The appeals filed by Appellants are improper because they attempt to appeal interlocutory orders. *Nakatani v. Shigemitsu, et al., supra*; *EQPB v. Ngatpang State, supra*. Appellant has failed to cite any authority to support a right of appeal under these circumstances, where such a right has not been created by statute or rule of court.

1133 Pursuant to Rule 3(b) of the ROP Rules of Appellate Procedure, the Court hereby ORDERS Civil Appeal No. 13-90 and Civil Appeal No. 3-91 consolidated with Civil Appeal No. 2-91.

Appellee's motion to dismiss Appellant's appeals of the August 6 and December 27, 1990 rulings and orders is hereby GRANTED. Consequently, there is no basis for Appellants' motion to stay all proceedings and to strike documents and orders filed in the Trial Court since the date the interlocutory appeal was filed. Appellants' motion to stay and strike is hereby DENIED.