

KSPLA v. Diberdii Lineage, 3 ROP Intrm. 77 (1992)
**IN THE MATTER OF THE APPEALS FROM THE
DECISION OF THE LAND CLAIMS HEARING OFFICE (LCHO)**

**KOROR STATE PUBLIC LANDS AUTHORITY (KSPLA)
and OBODEI S. IYAR,
Appellants,**

v.

**DIBERDII LINEAGE,
Appellee.**

**NONA LUII, ESEBEI ARBEDUL, KSPLA and IDID CLAN,
Appellants,**

v.

**MERIANG CLAN,
Appellee.**

**REPUBLIC OF PALAU, COLLEGE OF MICRONESIA,
SUGIYAMA FAMILY IBAI LINEAGE, Appellants,**

v.

**JONATHAN KOSHIBA, et al.,
Appellees.**

CIVIL APPEAL NO. 9-91
(Civil Action Nos. 654-89, 656-89)
(Consolidated Civil Action Nos. 210-90, 227-90, 242-90, & 275-90) (Civil Action No. 453-90)

Supreme Court, Appellate Division
Republic of Palau

Order denying opposition to extension and motion to strike responsive brief
Decided: February 20, 1992

178

Counsel for Appellants Koshiba and LHCO: John Rechucher

Counsel for Appellee KSPLA: Mark Doran

BEFORE: LOREN A. SUTTON, Associate Justice; ROBERT A. HEFNER, Associate Justice;
ALEX R. MUNSON, Associate Justice

PER CURIAM:

BACKGROUND

On September 6, 1991, appellee Koror State Public Lands Authority (KSPLA) filed an ex parte motion to extend the time for the filing of its responsive brief. The motion stated that KSPLA had moved for an extension of time on May 30, 1991, prior to the filing of the opening briefs in this matter, but no decision either granting or denying the motion was ever issued despite KSPLA's attempts to bring the matter to the Court's attention. KSPLA also alleged that the extension was necessary because of counsel's heavy caseload.

Finding good cause for the motion, Chief Justice Mamoru Nakamura granted it on September 6, 1991 and gave KSPLA until September 16 to file its responsive brief.

On September 11, 1991 appellants Koshiba and the Land Claims Hearing Office (LCHO) filed an "Opposition To Motion For Extension Of Time To File Response Brief And To Prohibit KSPLA From Presenting Oral Argument." The grounds alleged are that: 1) KSPLA failed to file its responsive brief before expiration of the time to file as provided in ROP Appellate Pro Rule 31(b); 2) KSPLA's May 30, 1991 Motion To Extend did not toll the running of the filing time; 3) the May 30 Motion To Extend "appeared to have been ¶179 mooted" by KSPLA's Motion to Dismiss; and 4) counsel's busy caseload is not good cause for failing to timely file an appellate brief.

KSPLA filed its responsive brief on September 16, and on September 24 appellants Koshiba and the LCHO filed a "Motion To Strike Out Appellee's Response Brief Filed Herein On September 16, 1991." This motion incorporated by reference the arguments set forth in Koshiba and the LCHO's September 11 motion.

ANALYSIS

Appellants' opposition and motion raise issues that are strikingly similar to issues addressed by this Court in its July 25 Order regarding KSPLA's Motion to Dismiss Appeals. The facts pertinent to that motion are as follows. Appellants Iyar, Arbedul and Ibais separately filed ex parte motions for extensions of time to file their opening briefs. Each party's counsel asserted that the extensions were necessary because of their busy caseloads and each motion was granted by a single justice. The motions of Iyar and Arbedul were filed and granted on or before the time expired for them to file their briefs, and they subsequently filed their briefs before the time as extended expired.

Ibais's motion was filed over a month after the brief initially came due, but an extension was granted until May 30 to file. On May 30 Ibais was granted a further extension until June 7. The grounds for these extensions were that due to a busy caseload, ¶180 Ibais' counsel needed more time to prepare the brief.

On May 20 KSPLA moved to dismiss on the grounds that none of the appellants' opening

briefs were timely filed.

This panel denied KSPLA's motion on the grounds that the ROP Appellate Rules permit a single Justice to rule on procedural orders such as time extensions and that a motion to dismiss was not the proper mechanism for challenging a procedural order issued by a single justice: ROP Appellate Pro Rule 27(b) requires that the aggrieved party file a motion to vacate, modify or reconsider. The panel also found that KSPLA's counsel failed to research the appellate rules, cited a case for the opposite proposition, and consequently filed and pursued a frivolous motion. Accordingly, he was sanctioned \$500.00. Against this backdrop Koshiba and the LCHO pursue their Opposition to the Extension of Time and Motion to Strike.

Appellants' Motions are no less frivolous than KSPLA's Motion to Dismiss. This panel's July order makes it clear that the ROP Appellate Rules permit a single Justice to grant a procedural order such as an extension of time even after the time to file the brief has expired. This reasoning is grounded in ROP Appellate Pro Rule 3 which provides that only the failure to timely file a notice of appeal is dispositive of an appeal.

The mechanism for challenging such a procedural order is set forth in ROP Appellate Pro Rule 27. Appellants made no such motion, filing only a post-order opposition and a motion to strike. Moreover, each argument in support of these pleadings is without **181** merit.

First, KSPLA had timely moved this Court for an extension of time, but the motion remained pending as it was neither granted nor denied. Pursuant to the practice of this Court, as all counsel must be aware, a motion to extend time to file an appellate brief tolls the time for filing until the motion is disposed of. Appellants' need only look at the practice followed in this matter in regards to Ibais' extensions for confirmation of this practice. Secondly, there is no support offered for the argument that KSPLA's Motion to Dismiss "mooted" its Motion for an Extension. It is true that had KSPLA prevailed there would have been no need to file a responsive brief. However, it is equally true that denial of the motion would not moot the need to file a responsive brief. Thirdly, each extension granted in this matter was granted on the grounds of counsel's caseload. The cases cited by Appellants for the proposition that a busy caseload is not good cause are distinguishable from the facts at bar: none of those cases involved a situation where the party who had not filed had a motion to extend pending before the court.

Appellants' counsel did not need to look beyond the file in this matter, which he should be intimately familiar with, to see that the opposition and motion to strike were not only procedurally improper but made on the same grounds which this court has made clear are without merit.

Appellants' counsel admitted at oral argument that he was unaware of the fact that on September 6 the Chief Justice had **182** granted appellee an extension of time until September 16 to file the responsive brief. He had received a copy of the motion requesting the extension but never bothered to check the court file to determine whether the extension had been granted: he simply filed his opposition and motion to strike. Counsel conceded that had he been aware of the September 6 extension he would not have filed his opposition and motion to strike.

KSPLA v. Diberdii Lineage, 3 ROP Intrm. 77 (1992)

Appellants' opposition and motion to strike are frivolous and are DENIED. The failure of Appellants' counsel to conduct basic legal research and to be certain of underlying facts that were essential to the issues at hand warrant sanctions against appellants' counsel personally in the amount of \$500.00. The sanctions are to be paid to counsel for KSPLA, Mark Doran, by 4:30 p.m. on February 28, 1992.