

Oiph v. Remengesau, 3 ROP Intrm. 87 (1992)
**IN THE MATTER OF THE APPEAL FROM
THE LAND CLAIMS HEARING OFFICE,**

**TEOPH OIPH,
Appellant/Appellee,**

v.

**PAULINA REMENGESAU,
Appellee/Appellant.**

CIVIL APPEAL NO. 19-91
Civil Action No. 377-90

Supreme Court, Appellate Division
Republic of Palau

Ruling and order
Decided: February 20, 1992

Counsel for Appellant/Appellee: Kevin N. Kirk

Counsel for Appellee/Appellant: *Pro se*

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; and ROBERT HEFNER, Associate Justice

PER CURIAM:

On July 24, 1991, Appellee Oiph filed a motion to dismiss Appellant's appeal, charging that Appellant had failed to file her appellate brief within 45 days of May 23, 1991, the date notice of appeal was filed.

Appellant designated the "entire record" as being necessary for her appeal. Because the parties waived oral argument in the Trial Court, the record did not include a transcript. This Court has specifically held that "transcript," as used in Rule 10(b) and (c) of the ROP Rules of Appellate Procedure, is limited to testimony and evidence. *Becheserrak, et al. v. Koror State, et al.*, 2 ROP Intrm. 327 (App. Div. May 1991).

In the present case, there was no trial court hearing at which testimony and evidence were presented. As a result, the transcript could not have been "designated," within the meaning of Rule 31(b) of the ROP Rules of Appellate Procedure, and Appellant's opening brief should have been filed within 45 days from the date notice of appeal was filed.

Appellant has not filed a response to Appellee's motion to dismiss. On August 29, 1991,

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she filed a motion for an extension of time to file her brief, which was granted that day by the Chief Justice nunc pro tunc. The motion for an extension indicates that Appellant computed the time for filing her brief from the date the record was certified rather than the date notice of appeal was filed.

Appellee filed a motion for reconsideration, vacation or modification of the Order granting Appellant an extension of time to file her brief on the grounds that Appellee's motion to dismiss the appeal should have been ruled on first. On October 29, 1991, the Chief Justice granted the motion for modification, and ordered appellee's motion to dismiss to be heard at the next Appellate Session.

This is not a new issue in the courts of Palau. Several cases have been decided which clarify Rule 31(b) filing deadlines. In *Kebekol, et al. v. Palau Election Commission*, 1 ROP Intrm. 654 App. Div. Sept. 1989), the Court reconsidered an order denying a motion to dismiss for failure to comply with Rule 31(b). Because 189 appellants in *Kebekol* had not designated a transcript, the court ruled that the opening brief was due 45 days from the date notice of appeal was filed, not from the date the record was certified or transcript costs were paid. On reconsideration, the court granted the motion to dismiss in order to bring the case into conformance with the decision in *Silmai v. Pension Fund*, 1 ROP Intrm. 631 (App. Div. May, 1989).

Silmai, supra, involved facts similar to this case. A notice of appeal was filed, and the transcript was waived. Appellant's opening brief was not filed within 45 days of the notice of appeal. A motion to dismiss was filed. Appellant did not file a response to the motion to dismiss, but instead filed a motion for an extension of time. The court granted the motion to dismiss for failure to timely file the opening brief and denied the motion for an extension of time, stating that "[n]o good cause has been shown for us to depart from following the rules of procedure." *Id.*

. . . this Court [has] adopted the standard that good cause must be shown for the Court to depart from the rules of procedure and that good cause 'shall not be deemed to exist unless the movant avers something more than the normal (or even the reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law'. *Id.*

As in *Silmai, supra*, Appellant has not filed a response to Appellee's motion to dismiss explaining why the Court should depart from the requirements of Rule 31(b). No good cause has been shown, therefore Appellee's motion to dismiss this appeal is hereby GRANTED. The August 29, 1991 Order granting Appellant's motion for an extension of time is hereby VACATED.