

Ngerur v. Supreme Court of the Republic of Palau, 4 ROP Intrm. 145 (1994)
TOBIAS NGERUR, VICTOR SILMAI,
Petitioner,

v.

SUPREME COURT OF THE REPUBLIC OF PALAU, TRIAL DIVISION,
Respondent.

SPECIAL PROCEEDING NO. 1-94
Criminal Case No. 268-93

Supreme Court, Appellate Division
Republic of Palau

Order denying petitions for reconsideration and motions for recusal
Decided: February 21, 1994

Attorney for Petitioner Ngerur: Ed Irvin, Public Defender

Attorney for Petitioner Silmai: Gerald G. Marugg, III

Attorney for Respondent ROP: Nicolas Mansfield, Acting Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

PER CURIAM:

Petitioners Ngerur and Silmai have each moved this Court, pursuant to ROP App. Pro. 40, to reconsider its Order Denying Petition for Writ of Prohibition or Mandamus entered on February 2, 1994. At the same time they have moved to recuse two members of the panel that issued the Order. Both the petitions and the motions are hereby DENIED.

ROP App. Pro. 40(b) requires a petition for rehearing to state with particularity the points of law or fact which the court has overlooked or misapprehended. The instant petitions fail to meet **L146** this requirement. The first contention is that the petitions for writs of mandamus or prohibition should not have been denied without briefing or oral argument. As we pointed out in our previous Order, however, ROP App. Pro. 21(b) clearly authorizes this Court to deny such petitions without either briefing or oral arguments. The second contention is that our Order fails to address the prosecution's use of arrest warrants in this case. This contention has no merit. The issue was not addressed because it was not the subject of the petition for writ of mandamus or prohibition. The issue before the Court was a very limited one: whether a defendant who has been arrested pursuant to a warrant signed by a judge, after reviewing an information and an affidavit of probable cause, has a constitutional or statutory right to a preliminary examination. Having answered this question in the negative, we denied the requested relief. Nothing in the

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instant petition leads us to conclude that we have overlooked or misapprehended the law or facts of the case within the meaning of ROP App. Pro. 40(a). The contentions raised in this petition border on the frivolous.

Petitioners also move to recuse Chief Justice Ngiraklsong and Associate Justice Beattie from this panel. The first argument is that both justices have decided the same issue in other cases, in violation of Article X, Section 10 of the Palau Constitution (“No justice may hear or decide an appeal of a matter heard by him in the trial division.”), and 4 PNC § 301 (“No justice or judge shall hear or determine, or join in hearing and determining an appeal from the decision of any case or issue decided by him.”). These provisions, however, serve only to prohibit the same justice from sitting on the 1147 appeal of a case in which he has participated, see *Rexford v. Brunswick-Balke-Collender Co.*, 33 S.Ct. 515 (1913), not to appeals of cases decided by another judge but involving an identical issue.

The next argument is that the Chief Justice should be recused because he had signed the search warrant after finding probable cause. What this argument ignores, however, is that our Order in no way addressed the validity of his probable cause finding. Rather, our holding was that petitioners had no right to a second determination of probable cause.

The third argument is that Justice Miller’s Trial Division Decision and Order cites Justice Beattie’s written but unpublished Order in *ROP v. Ngiratechekii*, Crim. Case No. 294-93 (Nov. 22, 1993), and therefore demonstrates that an ex parte communication took place, in violation of Canon 3(B)(7) of the Code of Judicial Conduct of the American Bar Association. We need not linger over this contention, for subsection (c) of this portion of the Canon expressly authorizes a judge to consult with other judges.

For all of the foregoing reasons, the petitions for reconsideration and motions for recusal are hereby DENIED.