

*Bausoch v. Tmeleu Clan*, 4 ROP Intrm. 60 (1993)  
**IN THE MATTER OF THE APPEAL FROM THE DECISION OF  
THE LAND CLAIMS HEARING OFFICE,**

**ILILAU BAUSOCH, et al.,  
Appellants,**

v.

**TMELEU CLAN and NGIRAUNGIANG TEBEI,  
Appellees.**

CIVIL APPEAL NO. 44-91  
Civil Action No. 397-90

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: December 9, 1993

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

The appeal in this matter was filed on December 20, 1991. Appellants' counsel simultaneously filed in the Appellate Division a Motion for Leave to Proceed on Appeal In Forma Pauperis, on the purported ground that "[t]he appeal cannot proceed without payment for transcripts of the Trial Court that is yet to be calculated." On September 29, 1992, appellants' counsel was informed that such motion was not properly made in the Appellate Division absent an initial request to the Trial Division for such relief. On April 15, 1993, appellants' counsel requested that the Clerk of Courts amend the caption of the previously-filed motion to refer to the Trial Division. Upon further review of the file in this matter, we deny appellants' motion, sanction appellants' counsel in the amount of \$200 and direct that appellants' brief be filed within 30 days.

**¶61** This case came to the Trial Division on appeals from a determination by the Land Claims Hearing Office. Following the preparation of transcripts of the LCHO proceedings, briefs were filed by the various parties. The Trial Division issued the decision from which appellants appeal after oral argument but without a trial de novo or the taking of any additional testimony or evidence. In light of that fact, there is no transcript to be prepared for this appeal, *Becheserrak v. Koror State*, 2 ROP Intrm. 327, 329-30 (1991), and appellants' request that the Court allow it to proceed with this appeal without "prepayment of transcripts" was both pointless and frivolous. We therefore deny appellants' motion and sanction their counsel for having made it in the amount of \$200 to be paid to the Clerk of Courts within 30 days.

Pursuant to ROP App. Pro. 31(b), "if a transcript is not designated or is waived", then an

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appellant's brief is due "within forty-five (45) days after the filing of the notice of appeal". Obviously, an appellant cannot extend his or her time for filing a brief by designating a transcript where none is called for. This appeal is therefore plainly subject to dismissal. We decline to take this step for the sole reason that in a previous decision we held that even where there is no transcript to be prepared, an appellant's time to file a brief does not run until the Clerk of Courts had certified the record, which did not take place here. *Estate of Olkeriil v. Ulechong*, Civil Appeal No. 25-91 (Feb. 20, 1992), at 3-4.

We now overrule that aspect of *Olkeriil* and caution all 162 counsel that we will henceforth adhere to the clear dictates of ROP App. Pro. 31(b). In appeals where there is no transcript to be prepared, the appellant's brief shall be due within 45 days of the filing of the notice of appeal irrespective of the certification of record and without the need for any other action by the Clerk of Courts. It is the sole responsibility of appellants and their counsel to determine whether there is any transcript to be prepared and to act accordingly.

For the reasons stated above, appellants' motion to proceed in forma pauperis is denied, appellants' counsel is sanctioned in the amount of \$200, and appellants' brief is ordered filed within the next 30 days or this appeal will be dismissed.