

Tellei v. Ngirasechedui, 5 ROP Intrm. 148 (1995)

**UBAL TELLEI,
Appellant,**

v.

**LOMISANG NGIRASECHEDUI,
Appellee.**

CIVIL APPEAL NO. 30-95
Civil Action Nos. 564-93, 504-93 & 503-93

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: November 17, 1995

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Raynold Oilouch

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

PER CURIAM:

Before the Court is Appellee's motion to dismiss this appeal. Appellant filed his notice of appeal with this Court 47 days after service of the Trial Division judgment. The Rules of Appellate Procedure provide that a notice of appeal must be filed within 30 days of service of the judgment. Rule 4(a).

The late filing of a notice of appeal is a fatal jurisdictional defect. *ROP v. Chisato*, 2 ROP Intrm. 227, 228 (1991). An untimely appeal must therefore be dismissed.

Although that would normally end our inquiry, appellant's attorney opposes dismissal on the grounds that the lateness for filing the appeal was attributable to the error of an assistant. The Court will treat the proffered excuse in this case as a motion to extend the time for filing the notice of appeal pursuant to Rule 4(c).¹

Counsel explains that he first learned of the August 24 decision when he contacted the

¹ Motions to extend the time for filing the notice of appeal pursuant to ROP App. Pro. 4(c) must be made in the Trial Division. *Babul v. Singeo*, 1 ROP Intrm. 123 (1984); *accord*, *Sebaklim v. Uehara*, 1 ROP Intrm. 649 (1989). Because appellant's excuse is asserted as an opposition to a motion to dismiss, however, we will consider it notwithstanding the failure to file a motion in the Trial Division.

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secretary of the trial court judge in "mid to late" September, 1995. However, as is the usual practice, counsel for both sides were provided with copies of the decision the same day that the judge filed it with the Clerk of Courts. Appellant's counsel explains that his "helper" retrieved the written decision and put it in the file without bringing it to counsel's attention. Counsel further avers that "[b]ut for the fact that I did not become aware of the court's decision until mid or late September, the appeal would have been timely filed."

As a matter of law, the reason appellant's attorney advances for his failure to file the notice of appeal in a timely manner does not constitute excusable neglect or good cause. Attorneys are **¶150** personally responsible for the occupational actions and omissions of the personnel they employ. *ROP v. Singeo*, 1 ROP Intrm. 428A, 428C (1987).

In this case, counsel relied on an assistant who was helping counsel within the scope of his or her employment. The negligence counsel attributes to his helper is also attributable to counsel. In order to constitute good cause or excusable neglect, counsel must establish something "more than the normal (or even reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law." *Id.* at 428D; *Silmai v. Pension Fund*, 1 ROP Intrm. 631, 633 (1989).

Appellee's motion to dismiss is hereby GRANTED and this appeal is DISMISSED.²

² The Clerk of Courts is directed to refund the transcription fee previously paid by appellant to appellant's counsel.