

Alik v. Amalei, 1 ROP Intrm. 513A (1988)
Appeal from the land Commission Determination Nos. 145, 1746, and 1747, dated June 19, 1986, by

**TEBENGEL ALIK,
Appellant,**

v.

**ULECHONG AMALEI,
Appellee.**

CIVIL APPEAL NO. 25-87
Civil Action No. 207-86

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: March 30, 1988

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Kaleb Udui

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

This is an appeal from a ruling of the Trial Court which held that Appellant was barred from appealing three Determinations of Ownership issued by the Palau Land Commission because he did not file his appeal within 120 days of the date of the determinations, as required by 35 PNC § 933(a)¹:

1513B A determination of ownership by the Commission shall be subject to appeal by any party aggrieved thereby to the Trial Division of the Supreme Court at any time within 120 days from the date of said determination.

The facts of the dispute are uncontested, and may be summarized as follows:
June 19, 1986: Date of Determinations.

August 18, 1986: Date of service on Appellant.

¹ RPPL 2-24, effective 12-4-87, repealed Chapter 9 of Title 35 and replaced it with Chapter 11 of Title 35. Section 1113 of Title 35 now provides that appeals are to be filed within 45 days of the date of determination.

Alik v. Amalei, 1 ROP Intrm. 513A (1988)
[Elapsed Time: 60 days]

October 17, 1986:	Filing Deadline [Elapsed Time: 60 days from service, 120 days from Determination]
November 15, 1986:	Appellant's filing of his appeal. [Elapsed Time: 29 days from Deadline, 89 days from Service, 149 days from Determination.]

Appellee argues that the statute is unambiguous and requires that an appeal be filed within 120 days of the date of Determination, regardless of when service of the Determination was affected. Appellant argues that the date which controls should be the date of service, otherwise, the Land Commission could effectively bar any appeal from its Determinations by delaying service until the 120 days had run.

At first blush, it would appear that Appellee's argument is the correct one, since the plain language of 35 PNC 933(a) permits no other conclusion but that the legislative intent was to cut off any appeal filed more than 120 days after the date of **1513C** the determination. But when one looks at 35 PNC § 932, and sees therein that "Notice of all determinations of ownership by the Commission shall be given promptly..." it becomes clear that the legislature did not intend to permit the Commission to deprive parties of their ability to appeal by withholding notice from them.

Reason and common sense tell us that there must be a remedy where, as here, a party's right to appeal has been abridged. If there is no remedy, it is likely that the statute runs afoul of the Equal Protection guarantee of the Constitution (Article IV, Section 5). It would certainly not make every person "equal under the law" and give every person the "equal protection" of the law if we condoned a situation where some parties were given a full 120 days to appeal while others received less or none. Since the Commission failed to give Appellant notice of its determination promptly (i.e. 60 days late) it is only simple fairness to restore those 60 days to him. This can be done only by computing the filing deadline as of the date when notice was actually given.

Appellee has argued that for the Court to grant Appellant the relief he seeks would amount to a usurpation of the legislative function, since the Court would be, in effect, re-writing the statute to say that the time for appeal runs from the date notice is given rather than the date of deter-**1513D**-mination. But this overlooks the Court's long-settled responsibility to construe statutes in such a manner as to uphold their constitutionality. As the U.S. Supreme Court said in *United States v. Moy*, 241 U.S. 394, 36 S.Ct. 658 (1916):

A statute must be construed if fairly possible so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score. *Id.* at 241 U.S. 401, 41 S.Ct. at 659.

Alik v. Amalei, 1 ROP Intrm. 513A (1988)

Accordingly, we hold that the 120-days limit imposed by 35 PNC § 933(a) must be construed together with the prompt notice requirement of 35 PNC § 932, so that, in effect, the 120-day period begins to run from the date upon which notice of the Determination is given.

Reversed and remanded.