Echerang Lineage v, Tkel, 1 ROP Intrm. 547V (1988)

ECHERANG LINEAGE, REPRESENTED BYIBEDUL YUTAKA GIBBONS, AS TRUSTEE,
Appellant/Appellee,

vs.

KESOUAOL TKEL, AND THE HEIRS OF TATSUO ADACHI, REPRESENTED BY JOSEPH ADACHI,
Appellees/Appellants.

CIVIL APPEAL NO. 22-84
Civil Action No. 77-81

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: October 21, 1988

Counsel for Appellant: Carlos H. Salii

Counsel for Appellees: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; and FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

Appellees moved to dismiss this appeal on the grounds that Appellant had abandoned it. Appellees pointed out that the Notice of Appeal was filed on December 14, 1984, and that Appellant paid the estimated cost of the transcript on February 4, 1985. Thereafter, ⊥547W on August 14, 1986 (18 months later), the Clerk of Courts notified the Chief Justice and counsel that the transcript could not be completed because the tape-recorded testimony of two witnesses was indiscernible. Appellant did nothing thereafter for nineteen months, at which time Appellees moved for dismissal. No written opposition to this motion was ever filed.

Appellant concedes that he received the August 14, 1986, letter. He explains his inaction as being due to his failure to understand the problem. Appellees counter that if Appellant had been diligent, he would have followed the guidelines given in ROP App. Pro. 10, and the problem would have been resolved prior to the resignation and departure from the Republic of the trial judge (Judge Gibson) and, perhaps, prior to the death of one of the witnesses whose testimony was indiscernible (Rubasch Fritz) on November 10, 1986.

Over a hundred years ago, the U.S. Supreme Court decided that it is the duty of the party seeking appeal to see that the record is properly presented to the appellate tribunal. *Union*

Pacific Railroad Company v. Stewart , 95 U.S. 279, 24 L.Ed. 431 (1877). Twelve years later, in *Redfield v. Parks* , 130 U.S. 623, 32 L.Ed. 1053, 9 S.Ct. 642 (1889), the Court reaffirmed that decision and expanded upon its prior holding to add that it is also the ⊥547X duty of the appealing party to insure that the record is sufficient to show all the errors alleged. Thus, no lawyer can claim lack of knowledge that imperfect appeals are subject to dismissal.

In more recent times, the decisions of the High Court of the Trust Territory have favored dismissals for defects in the appellate process: *Aguon v. Rogoman* , 2 TTR 258 (Tr. Div. 1961) [failure to file timely notice of appeal]; *Fenef v. Pinengin* , 7 TTR 218 (App. Div. 1974) [failure to pay cost of transcript]; *Lanzanas v. Trust Territory*, 7 TTR 221 (App. Div. 1974) [failure to pay balance due ($18.75) on transcript]; *Trust Territory v. Bermudes* , 7 TTR 230 (App. Div. 1975) [failure to file brief]; and *Western Carolines Trading Company v. Ikeda* , 7 TTR (App. Div. 1975) [failure to file brief or to argue case]. It should be noted, however, that an exception is made for cases in which the delay is attributable to a default by court personnel. *Aguon, supra*, at 261.

Considering the foregoing authorities, we find that the initial eighteen-month hiatus was attributable to court personnel and, therefore, not chargeable to Appellant. As to the succeeding nineteen-month delay, however, viewing it against the background of the earlier lengthy delay, and considering Appellant's lack of a ⊥547Y response to Appellees' motion to dismiss, we conclude that Appellant failed to prosecute the appeal.

Accordingly, Appellees' motion to dismiss must be, and the same hereby is GRANTED.

The appeal is hereby DISMISSED.