

Rurcherudel v. Uchel, 2 ROP Intrm. 244 (1991)
IYECHAD RURCHERUDEL,
Appellant,

v.

NGIRUCHELBAD UCHEL,
Appellee.

CIVIL APPEAL NO. 5-90
Civil Action No. 359-89

Supreme Court, Appellate Division
Republic of Palau

Appellate decision and order
Decided: May 2, 1991

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Mariano W. Carlos

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
ARTHUR NGIRAKLSONG, Associate Justice.

NGIRAKLSONG, Associate Justice.

BACKGROUND

Counsel for Appellant, the late Mr. Jonas W. Olkeriil, filed Appellant's Notice of Appeal from the judgment of the Trial Court on January 18, 1990, and the designation of record on the same date. On February 5, 1990, Mr. Olkeriil paid \$190.00 for the preparation of the transcript to begin.

1245 On June 30, 1990, Mr. Olkeriil passed away. On July 6, 1990, the Clerk of Court issued the notice of certification of record. The certification was served on the Appellee himself, although there is no proof of return of service on file. ROP R. App. Pro. 31(b) requires that Appellant's brief shall be filed within forty five (45) days from the date a certification of record is issued. The forty five (45) days from July 6, 1990 fell on August 20, 1990. No Appellant's brief was filed within this period.

The file shows that on September 5, 1990, the Chief Justice issued a notice calling for a Status Conference on October 4, 1990. On October 3, 1990, Appellee filed his motion to dismiss the appeal based on ROP R. App. Pro. 31(b) and (c). There is no record of what transpired at the Status Conference, if it was held at all, on October 4, 1990.

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On October 5, 1990, Mr. Johnson Toribiong filed a notice of appearance as the new counsel for Appellant and a “motion for leave to review the file and to file such pleadings as may be required to perfect his appeal including the preparation and filing of any briefs as may be required.” In support of his motion, Mr. Toribiong cited the Appellant’s ripe old age (77) and his total reliance on his counsel, Mr. Olkeriil, who passed away on June 30, 1990.

Appellee filed his objection to the Appellant's motion to dismiss. Appellee stated that “Appellant’s unfamiliarity with the Court process should have propelled him to the front door of an attorney to find out what he should do next with his appeal **¶246** because his counsel had died.” (Appellee’s Objection, at 2).

On October 16, 1990, the Chief Justice granted Appellant’s motion to review the file and to have until November 30, 1990, to file his brief. Appellee did not challenge the authority of a single justice ruling on a motion to dismiss the appeal pursuant to ROP R. App. Pro. 31(b) and (c).

On November 29, 1990, a stipulation signed by Mr. Toribiong and Mr. Carlos was filed and the Chief Justice approved it on December 4, 1990. The stipulation moved the time for Appellant to file his brief from November 30, 1990 to February 1, 1991. Simultaneously, Appellant requested an additional extension of time to file his brief. In a separate motion, Appellant requested that Appellant’s brief be filed within forty five (45) days from the date the transcript of the proceedings before the Land Claims Hearing Office and the Trial Court became available. The Chief Justice also granted this motion on December 4, 1990.

In a letter, dated January 31, 1991, Mr. Toribiong inquired of the status of Appellant’s request for verbatim transcripts of the Land Claim Hearing Office and Trial Court proceedings from the Clerk of Court. On the same date, Appellant filed a “MOTION TO DECLARE THE DEADLINE OF FEBRUARY 1, 1991, MOOT RE: FILING OF APPELLANT’S BRIEF” because the transcript had not become available. No decision has been issued on this motion. The motion, however, is a repeat of the motion made by Appellant to file his brief within forty five (45) days after the certification of transcript, which motion was granted by the Chief Justice on December 4, 1990.

¶247 The transcript of the proceedings requested has not become available and there may be a problem of what proceedings of the Land Claims Hearing Office are relevant. (Clerk’s letter of February 4, 1991).

DISCUSSION

This matter came before the full panel on February 26, 1991, for oral argument on Appellee’s motion to dismiss the appeal pursuant to ROP R. App. Pro. 31(b) and (c).

In his brief, Appellee cited cases where this Court has dismissed appeals pursuant to ROP R. App. Pro. 31(b) and (c). In each of these cases, however, there was a hearing and a full appellate panel decided the issues. Furthermore, the word “Court” in our Rules of Appellate

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Procedure contemplates a full panel unless otherwise specified. Examples of instances where a single justice may act are Rule 8(a), Rule 9(a) and Rule 43 of the Rules of Appellate Procedure. ROP R. App. Pro. 31(b) and (c) does not permit a single justice to rule on Appellee's motion to dismiss the appeal.

A motion that is unopposed, or which seeks relief in the form of "procedural orders" that do not ". . . substantially affect the rights of the parties or the ultimate disposition of the appeal . . ." may be ruled upon by a single judge, ". . . subject to the right of any party who is adversely affected by the action to seek reconsideration." 9 J. Moore, et al. Moore's Federal Practice, Sec. 227.01 (2d ed. 1983). A motion to dismiss an **L248** appeal is one of "substance" and therefore must be considered and decided by the full appellate panel. *Id.*

Appellee did not challenge the propriety of the Chief Justice's October 6, 1990 order, granting Appellant's motion to extend time to file his brief. He did not complain of any error. He did not object or continue to stand on his objection to the single justice's order. Under these circumstances, Appellee effectively waived his right to his motion to dismiss the appeal. 5 Am. Jur. 2d, Waiver or Estoppel; Stipulation, Sections 709 and 710; *Bass v. Bass*, 437 P.2d 324, 329 (1908); 35 A.L.R. 2d. 612.

Not only did Appellee waive his motion to dismiss the appeal, he specifically consented by Stipulation to Appellant's filing his brief on November 30, 1990, or for a further extension of time from the date the transcript of the appropriate proceedings became available. 5 Am. Jur. 2d, *supra*, at Section 711. As stated earlier, the Chief Justice granted Appellant's motion to file Appellant's brief forty five (45) days after transcripts were made available.

CONCLUSION

Accordingly, Appellee's motion to dismiss the appeal is hereby dismissed for reasons of waiver and stipulation. Appellant shall file his brief within forty five (45) days after the notice of the certification of record is issued.