

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

CECILIE KABUA,

Plaintiff/Appellant,

vs.

MWEJEN MALOLO,

Defendant/Appellee.

Supreme Court Case No. 2018-08
(High Court Case No. 2012-190)

**ORDER GRANTING "REQUEST FOR ENLARGEMENT OF TIME TO FILE
OPENING BRIEF."**

CADRA, Chief Justice:

On March 5, 2020, Appellant filed a "Request for Enlargement of Time to File Opening Brief" pursuant to Supreme Court Rules of Procedure, Rule 26(b). Appellant's counsel cites extensive briefing and hearing on unrelated case(s), as well as travel between Honolulu and Majuro, as justifying the missed deadline for filing an opening brief and the requested enlargement of time.

Appellee has filed no objection or response.

Rule 26(b) allows granting the requested enlargement of time for "good cause" shown.

"Good cause" is not defined by Rule.

"Excusable neglect" would constitute "good cause."

Counsel's press of business or busy schedule does not constitute "excusable neglect." See, e.g., *Hawks v. J.P. Morgan Chase Bank*, 591 F.3d 1043, 1048 (2010)(two trials and Social Security hearing does not constitute excusable neglect); *McLaughlin v. City of LaGrange*, 662 F.2d 1385, 1387 (11th Cir. 1981) cert. denied 456 U.S. 979 (solo practitioner engaged in the preparation of other cases does not establish excusable neglect.)

The Court turns to balancing the four factors announced by the United States Supreme Court in *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395 (1993) in determining whether "excusable neglect" and therefore "good cause" exists for granting the requested enlargement of time.

1. Danger of Prejudice to Non-moving Party.

Appellee has filed no opposition to the requested extension of time and no prejudice has been demonstrated should the request be granted.

This factor weighs in favor of granting the request.

2. The Length of Delay and Impact on the Proceedings.

Appellant's counsel states the opening brief was due on March 2, 2020. The instant request was, according to the Court's file stamp, promptly filed within approximately 3 days on March 5, 2020. There has not been a long delay in seeking relief.

Granting the request has no discernable impact on the proceedings because there is no hearing/oral argument date set at present and this appeal is in its early stages.

This factor weighs in favor of granting the request.

3. The Reason for the Delay Including Whether it was in the Reasonable Control of the Moving Party.

As above noted, the press of business is not excusable neglect in missing a deadline. Managing one's calendar to comply with deadlines set by Rule or Court Order is within the control of counsel.

This factor weighs against granting the request.

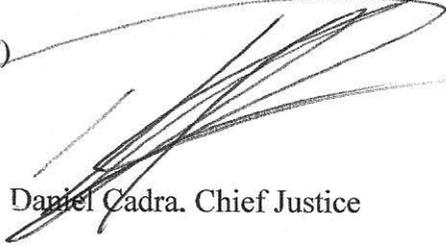
4. Whether the Movant Acted in Good Faith.

There is no reason to believe that Appellant's counsel has not acted in good faith in seeking an extension/enlargement of time. The undersigned cannot conceive of any tactical advantage to be gained by failure to timely file an opening brief and then seeking an enlargement of time to file.

This factor weighs in favor of granting the request.

There is a general policy that cases be decided on their merits rather than upon technicalities. This policy is equally applicable to appeals to the Supreme Court. In recognition of this policy and having weighed the above enumerated factors, the Court FINDS "good cause" exists for granting the request and therefore GRANTS the requested enlargement of time and ORDERS that Appellant file its opening brief on or before April 6, 2020.

Dated this 15th day of March 15, 2020 (AST)



Daniel Cadra, Chief Justice

ENTERED AS A SINGLE JUDGE PROCEDURAL ORDER-RULE 27(C)