

**FILED**

JUL 07 2020

CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

GEORGESTON MOLIK and HEMMY  
HISIAH

Appellants,

vs.

AMON TIBON (for LESLIE TIBON) and  
ESKAIA DEBRUM (for CARMEN  
SAMSON),

Appellees.

Supreme Court Case No. 2020-00566 (sic)  
(High Court Case No. 2003-122)

**ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION**

CADRA, Chief Justice, acting as a single judge addressing procedural issue pursuant to Rule 27(c):

Appellants, Georgeston Molik and Hemmy Hisiah, filed a "Joint Notice of Appeal" on June 22, 2020. The caption of the "Joint Notice of Appeal" is addressed to the High Court. As discussed below, the High Court lacks jurisdiction to grant relief because a timely motion for an extension of the time within which to file a notice of appeal was not made to the High Court within the time allowed by Supreme Court Rules of Procedure, Rule 4(a)(5). This matter was referred to the Supreme Court by the Clerk on or about June 29, 2020.

Appellants acknowledge that they failed to file their Notice of Appeal within 30 days of entry of the High Court's Final Judgment on September 16, 2019. Appellants offer the "Affidavit of Hemmy Hisiah" in support of Appellants' request that the Court accept late filing of the appeal.

Having considered the available record and the filings of Appellant(s) the undersigned DENIES allowance of the late filing of "Notice of Appeal" and DISMISSES this appeal for the following reasons:

1. Supreme Court Rule 4(a)(1)(A) requires filing of the notice of appeal within 30 days after the date of entry of the judgment or order appealed from.

2. The Republic's Supreme Court Rules of Procedure are modeled after the United States Federal Rules of Appellate Procedure (FRAP). Cases construing the analogous FRAP, Rule 4 are, therefore, instructive.

3. Both the United States Supreme Court and the Ninth Circuit have held failure to timely file an appeal is a jurisdictional defect barring the appeal. *Bowles v. Russell*, 551 U.S. 205 (2007)(taking appeal within prescribed time is mandatory and jurisdictional); *Hohn v. United States*, 524 U.S. 236 (1998)(filing of timely notice of appeal is mandatory and jurisdictional); *Nguyen v. Southwest Leasing and Rental Inc.*, 282 F.3d 1061, 1064 (9<sup>th</sup> Cir. 2002)(failure to file timely notice of appeal deprives court of appeals of jurisdiction); *Tillman v. Association of Apartment Owners of Ewa Apartments*, 234 F.3d 1087, 1089 (9<sup>th</sup> Cir. 2000)(30-day time limit for filing notice of appeal is mandatory and jurisdictional, Ninth Circuit lacks jurisdiction to decide appeal if notice of appeal not timely filed); *Stephanie-Cardona LLC v. Smith's Food & Drug Centers, Inc.*, 476 F.3d 701, 703 (9<sup>th</sup> Cir. 2007)(timely notice of appeal is a non-waivable jurisdictional requirement.)

4. Rule 4(a)(5) allows the High Court to extend the 30 day filing requirement upon a showing of “excusable neglect or good cause” if a motion is “actually filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(4) of this Rule 4.”

5. Review of the record available to this Court reveals Appellants did not timely seek an extension of time to file a Notice of Appeal by motion brought before the High Court.

Therefore, the High Court lacks jurisdiction to entertain a motion brought under Rule 4(a)(5).

6. Appellants failed to file a timely Notice of Appeal with the Supreme Court. The Supreme Court, therefore, lacks jurisdiction to decide this appeal and the appeal must be dismissed. *See item 3 supra.*

7. Assuming *arguendo* that the Supreme Court can dispense with the filing requirements of Rule 4 or ignore the late filing of Appellant’s Notice of Appeal under Rule 2, the undersigned finds that Appellants have failed to demonstrate “good cause” for suspending or dispensing with the timely filing requirements of Rule 4.

Review of the record below and the Affidavit of Hemmy Hisiah reveals that Appellant was represented by counsel in the High Court proceedings which is the same counsel (Russell Kun) presently representing Appellant in this appeal. Appellant’s affidavit indicates that appeal of the TRC and High Court decisions was discussed after the High Court had “adopted the decision of the TRC.” Thus, Appellant was on notice that a final judgment would likely soon issue. The matter of representation on appeal could and should have been resolved at that time. If not resolved, Appellants trial counsel could have been instructed to file a Notice of Appeal to preserve Appellant’s rights and the issue of representation be resolved later by substitution or some other manner. <sup>1</sup> *See* Rule 3(a)(2).

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<sup>1</sup> The undersigned suggests that the filing of a so-called prophylactic Notice of Appeal may bind the attorney to representation throughout the appeal.

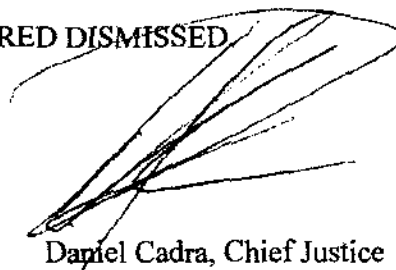
Appellant avers that she traveled to the United States and did not check with counsel (Kun) upon her return as to whether the final judgment had been issued. Rather, she learned from MLSC that the final judgment had issued. The role of MLSC in Appellant's representation is unclear but MLSC apparently took no steps to further Appellants' appeal. The Affidavit does not state the date Appellant became aware of the entry of final judgment or how long Appellant was absent from the Republic. It, therefore, is not possible to determine whether Appellant acted with reasonable diligence in securing counsel for filing a Notice of Appeal. It was not until June 12, 2020, (almost 9 months subsequent to the entry of final judgment) that Appellant met with present counsel (Kun) regarding pursuit of this appeal.

Because it is unclear as to the steps Appellant took to pursue this appeal after learning of the filing of the final judgment, the undersigned cannot find "good cause" for allowing a late filing of the Notice of Appeal. Additionally, there is no explanation offered for Appellant Molik's failure to take the steps necessary to timely perfect an appeal.

Finally, and more importantly as discussed above, timely filing of a Notice of Appeal is "mandatory and jurisdictional." Because there is no jurisdiction of the Supreme Court to hear the appeal it follows that the undersigned lacks jurisdiction to grant the requested relief (i.e. allowing the late filing of the Notice of Appeal).

For the above stated reasons, Appellants' request to allow late filing of their "Joint Notice of Appeal" is DENIED and this appeal is ORDERED DISMISSED

Dated July 6, 2020 (AST)



Daniel Cadra, Chief Justice

ENTERED AS SINGLE JUDGE PROCEDURAL ORDER – RULE 27 C

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

Molik & Hisiah )  
Appellant/Pltf. )  
vs )  
Tibon & Debrum )  
Appellee/Def. )

Appeal Case No. 2020-00566

**CERTIFICATE OF SERVICE**

I, Ingrid Kabua, Chief Clerk of the Courts, hereby certify that on 7/07/20

I served the Order Dismissing Appeal for Lack of Jurisdiction

filed 07/07/2020 in the above captioned matter on:

1. Russell Kun by  Email  Fax  Personal Hand Delivery
2. Divine Waiti by  Email  Fax  Personal Hand Delivery
3. Tiantaake Beero by  Email  Fax  Personal Hand Delivery
4. Ragonia Bennett by  Email  Fax  Personal Hand Delivery  
*on 7/20/20*

Attached is a copy of my  Sent Email /  Fax Confirmation.

Ingrid Kabua  
Chief Clerk of the Courts  
Marshall Islands Judiciary

FILED:

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JUL 07 2020

CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS



Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com>

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## Order

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Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com>

Tue, Jul 7, 2020 at 2:21 PM

To: Russell Kun <rkun2405@gmail.com>, Divine Waiti <marsollawyers@gmail.com>

Cc: Tiantaake Beero <angel.sunz67@gmail.com>

Iakwe Counsel,

Please find attached Order Dismissing Appeal for Lack of Jurisdiction in re: Molik & Hisiah vs. Tibon & Debrum.

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Republic of the Marshall Islands Judiciary

P.O. Box B


Majuro, MH 96960

Phone: (692) 625-3201/3297

Fax: (692) 625-3323

Website: rmicourts.org

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