

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

Supreme Court Case No. 2026- 00002
[High Court Case No. 2026-012]

Susanne Kayser,
Appellant/Plaintiff,
v.
Bernard Aldiniwin in his capacity as Attorney
general & Mercyba Balos, Director of
Immigration,
Appellee/Defendant.

**ORDER DIRECTING CLERK TO
FILE NOTICE OF APPEAL**

CADRA, C.J., SINGLE JUDGE PROCEDURAL ORDER:

I. BACKGROUND

Plaintiff/Appellant Susanne Kayser, *pro se*, has filed an “Emergency Motion for an Order Directing the Clerk to Docket Notice of Appeal, or in the Alternative, Petition for Writ of Mandamus” with the Supreme Court file stamped September 23, 2026. This is the second motion or application for a writ of mandate allowing the filing of a Notice of Appeal from a High Court order dismissing petitioner’s complaint with prejudice and vexatious litigant prefiling order.

Petitioner’s first “Application for Leave to File a Notice of Appeal” (of an August 5, 2026, order of dismissal) was denied on August 25, 2026, without prejudice to the filing of an appeal directly with this Court upon issuance of a final judgment by the High Court disposing of all issues including any award of attorney fees and costs. The stated reasoning being that the order of dismissal was “interlocutory” and that piecemeal litigation (e.g. an appeal of the order of

dismissal and a potential second subsequent appeal of an attorney's fees/costs award) is disfavored because such a practice is wasteful of both time and judicial resources.¹

On September 17, 2026, the High Court issued an "Amended and Reissued Order Granting Defendant's Motion to Dismiss and Dismissing Complaint with Prejudice; Order Declaring Plaintiff a Vexatious Litigant and Imposing a Prefiling Order; Order Denying Rule 60 Motion."

After issuance of the September 17, 2026, "Amended and Reissued Order" Petitioner sought to file a Notice of Appeal with the clerk. The clerk refused the filing of the Notice of Appeal given (1) the prior Supreme Court August 25, 2026, order allowing a direct filing upon entry of a final judgment including an award of fees and costs and (2) the High Court's vexatious litigant prefiling order prohibiting the filing of any "new litigation" without first obtaining "leave of the presiding judge of the court where the litigation is proposed to be filed."²

Plaintiff's proposed Notice of Appeal seeks appellate review of the High Court's September 17, 2026, order dismissing plaintiff's complaint with prejudice as well as the High Court's vexatious litigant prefiling order.

As discussed below, the High Court's order of dismissal of plaintiff's complaint with prejudice is immediately appealable as a final judgment even though attorney fees and costs are yet to be determined. Because there is a final judgment on the merits of plaintiff's claims, the vexatious litigant order is not interlocutory but also final and appealable. Although the undersigned is of the opinion that the High Court should be interpreting its own prefiling orders permitting or denying a vexatious litigant the right to file further actions, including an appeal, the

¹ Courts split on whether an order determining costs and fees is necessary for a judgment to be final. As discussed herein the rule in the RMI and federal courts is that undecided fees and costs do not affect the finality of a judgment.

² See e-mail exchanges attached as an Exhibit to plaintiff's motion/petition.

undersigned finds it has the authority to alter procedural rules under SCROP, Rule 2, and that it has the inherent authority to control litigation sought to be brought within its constitutional jurisdiction to hear appeals from final judgments. Although the High Court has the authority to control filings made or attempted to be made in the High Court, the prefiling order does not offer a reason why its final judgment in this case should not be reviewable by the Supreme Court. For consistency in procedural rulings and the Supreme Court's inherent authority to control litigation sought to be brought before it, the undersigned finds that compliance with the vexatious litigant prefiling order is not necessary and, therefore, the Clerk is ordered to accept plaintiff's Notice of Appeal.

II. DISCUSSION

A. The Supreme Court has authority to allow the filing of plaintiff's Notice of Appeal even though plaintiff has not obtained an order allowing appeal from the High Court.

A threshold issue exists as to whether this Court has the authority to allow the commencement of appellate proceedings without plaintiff first obtaining permission from the High Court to do so. While there is a definite split of authority amongst the U.S. federal and state courts whether a trial court can limit access to the appellate courts by a prefiling order,³ and while the "better" procedure might have been for the High Court to consider the motion for leave to file notice of appeal, the undersigned holds that the RMI Supreme Court has the inherent authority to control litigation sought to be brought before it and may allow the filing of the Notice of Appeal without plaintiff first obtaining permission to do so from the High Court in this particular case.

³ There is case law indicating that an appellate court generally cannot accept or process a new appeal filed by a pro se litigant who is subject to an active prefiling injunction unless the litigant complies with the order and obtains permission to appeal.

The Ninth Circuit in *DeLong v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990) recognized appellate jurisdiction over an appeal from a plaintiff subject to a prefiling order without requiring plaintiff to first obtain district court permission to appeal. The appellate court considered both plaintiff's challenge to the district court's prefiling order as well as his appeal of the underlying habeas corpus claim (which is a civil matter). The appellate court noted, *inter alia*, that the prefiling order was overbroad and that such broad injunctions "may block free access to the courts." *Id.* at 1148.

In the case at bar, there is no apparent reason why the High Court's prefiling order should be construed so broadly as to block appellate review of its decisions in this particular case without its permission. To do so would infringe, without explanation or apparent reason, into the Supreme Court's Constitutional jurisdiction to hear appeals of final judgments from the High Court.

Appellate courts have reviewed prefiling orders and refused to enforce those which it finds overbroad by limiting access to the appellate courts without explanation or reason. The appellate court in *Sieverding v. Colorado Bar Ass'n*, 469 F.3d 1340 (10th Cir. 2006) found a district court's vexatious litigant prefiling review order over broad in that it attempted to limit access to the court of appeals. The court stated:

Finally, we note that the district court's broad order, unlike the order at issue in *Martin-Trigona*, fails to include an exception for filings in the federal appellate courts. This was error. It is unreasonable for the District of Colorado to attempt to limit access to this court or any other court of appeal. We are capable of deciding if filing restrictions are appropriate in this court. *Id.* at 1344. (emphasis added).

The Fifth Circuit in *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, at 191-92 (5th Cir. 2008), followed *Sieverding's* rationale that a district court's prefiling injunction may not extend to filings in the appellate courts stating:

Recently, the tenth circuit held that (1) a district court's pre-filing injunction may extend to filings in lower courts within the circuit that the issuing court is located, (2) a district court's pre-filing injunction may not extend to filings in any federal appellate court, and (3) a district court's pre-filing injunction may not extend to filings in any state court. (emphasis added).

The RMI Constitution, Article II, Section 14 (1) guarantees access to the courts and Article IV, Section 2(a) provides that an appeal shall lie as of right from a final judgment of the High Court. The High Court's pre-filing order recites the language of MIRCP Rule 11.1 but does not limit its scope. While the High Court's pre-filing order may be appropriate to control litigation before it, there is no apparent reason for blocking access to the Supreme Court from its decisions in this particular case. In that sense, the order is overbroad. Under these circumstances and limited to this case, the undersigned finds compliance with the pre-filing order is not necessary to allow the filing of plaintiff's Notice of Appeal.

The next issue is whether the undersigned's August 25, 2026, order requiring that the High Court determine attorney fees and costs as a condition prior to appeal was appropriate. Upon reconsideration, the undersigned it was not. As discussed below, both the order dismissing plaintiff's complaint and the vexatious litigant pre-filing order are ripe for appeal even though attorney fees and costs remain undecided.

B. The High Court's 9/17/26 order dismissing appellant's/plaintiff's complaint with prejudice is a final appealable order even though attorney fees and costs have not been determined.

Generally, only final judgments are appealable to the Supreme Court. *See* Constitution, Article VI, Section 2(2).⁴

⁴ Art. VI, Sec.2(2) states: "An appeal shall lie to the Supreme Court (a) as of right from any final decision of the High Court in the exercise of its original jurisdiction."

The High Court's order of dismissal of plaintiff's complaint is an appealable "final judgment" because it is "with prejudice." A dismissal of a complaint with prejudice is generally recognized as a final appealable order because it terminates the litigation on its merits and leaves nothing further for the court to decide. *See, e.g., Moya v. Schollenbarger*, 465 F.3d 444 (10th Cir. 2006).⁵

The Ninth Circuit has consistently held that an order dismissing a complaint with prejudice constitutes a final judgment subject to appeal under 28 U.S.C. 1291 (the federal statute authorizing appeals from the district/trial courts)⁶. *See, e.g., Flood v. Harrington*, 523 F.2d 1248, 1250 (9th Cir. 1976) ("Since the district court dismissed Flood's complaint and action with prejudice, its order is final and appealable under 28 USC 1291."); *Corey v. Westinghouse Elec. Corp.*, 623 F.2d 117, 119 (9th Cir. 1980) ("A dismissal with prejudice constitutes a final appealable judgment and confers jurisdiction upon this court under 28 U.S.C. 1291."); *Begay v. Kerr-McGee Corp.*, 682 F.2d 1311 (9th Cir. 1982) (The court emphasizing that adding the phrase "with prejudice" to the dismissal order evidently meant no additional amendments would be allowed, thus, making the order final for purposes of appeal conferring jurisdiction to the appellate court. "... [T]he district court's order (dismissal with prejudice) 'precluded any

⁵ The 10th Circuit drew a distinction between the "dismissal of a complaint with prejudice" and the "dismissal of the action with prejudice." A dismissal of a complaint with prejudice may or may not be final but the court applied a practical approach in determining finality for purposes of appeal. "Despite our use of this complaint/action terminology, we have long recognized that the requirement of finality imposed by section 1291 is to be given a 'practical rather than a technical construction' *citations omitted*. In evaluating finality, therefore, we look to the substance and objective intent of the district court's order, not just its terminology ... Thus, an order is not necessarily devoid of finality simply because it speaks in terms of dismissal of a complaint. Rather, we 'endeavor to scrutinize [complaint dismissals] closely in order to pinpoint those situations wherein, in a practical sense, the district court by its order has dismissed a plaintiff's action as well. *Citing Petty v. Manpower, Inc.*, 591 F.2d 615, 617 (10th Cir. 1979)." In the case at bar, it is apparent that the High Court's order went to the merits of plaintiff/appellant's complaint itself and not to some procedural problem to which amendment to the complaint might be rectified. As a practical matter, that order disposed of plaintiff's entire action and is therefore a final judgment subject to immediate appeal.

⁶ 28 U.S.C. 1291 authorizes appeals from the district courts to the appellate courts and is analogous to the RMI Constitution, Art. VI, Sec. 2(2).

possible salvaging of the action by further amendments to the complaint. *Citation omitted.*

Adding ‘with prejudice’ evidently meant no further amendments would be allowed. We therefore have jurisdiction to entertain this appeal pursuant to section 1291.”)

A final judgment in the RMI is immediately appealable even though an award of sanctions, attorney’s fees or costs may remain pending before the trial court. MIRCP, Rule 58 states:

Subject to the provisions of Rule 54(b), upon a decision by the court granting or denying relief, the court shall promptly file the judgment (be it labeled a judgment, decree, order, or otherwise). The filing of the judgment constitutes entry of judgment. The judgment is effective upon filing. Filing shall not be delayed for the taxing of costs

The RMI Supreme Court has previously held that a judgment is final notwithstanding that fees and costs have not been settled. *RMI v. Balos, et al*, 1 MILR(Rev.) 120, 121 (1988)(“A suggestion that ‘fees and costs must be settled before the judgment is final is equally futile.”).

United States federal decisional authority also holds that final judgments or orders are immediately appealable even though attorney fees and costs have not been decided. *See, e.g., Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 201-203 (1988)(Discussing finality of a judgment for purposes of appeal under statute allowing appeal from final judgments and stating at p. 202 “...[a]n unresolved issue of attorneys’ fees for the litigation in question does not prevent judgment on the merits from being final.”); *see also Lobatz v. U.S. West Cellular of California, Inc.*, 222 F.3d 1142, 1145 (9th Cir. 2000)(“Rule 4(a) of the Federal Rules of Appellate Procedure requires that an appellant file her notice of appeal ‘within 30 days after the judgment or order appealed from is entered. The Supreme Court has adopted a ‘bright line rule ...that a decision on the merits is a final decision for purposes of section 1291 whether or not there remains for adjudication a request for attorney’s fee attributable to the case. *Citing Budinich, supra.*”)

Because the High Court's order of dismissal of plaintiff's complaint with prejudice is a "final judgment" it is immediately appealable pursuant to SCROP Rules 3 and 4(a)(1) even though a decision regarding imposition of attorneys' fees and costs remains to be decided.

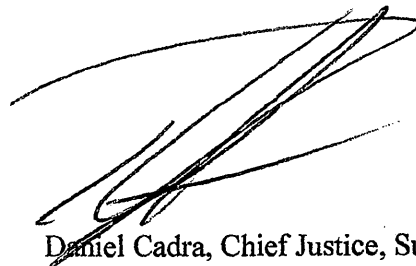
C. The vexatious litigant prefiling order is immediately appealable because the merits of the case have been determined by final judgment or decision.

The federal courts have held that vexatious litigant prefiling review orders are interlocutory and not appealable until after final judgment on the merits. *See, e.g., Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1055 (9th Cir. 2007)("[P]re-filing orders entered against vexatious litigants are not conclusive and can be reviewed and corrected, if necessary, after final judgment.) Because there is a final judgment on the merits of plaintiff's claims, the vexatious litigant prefiling order is no longer interlocutory and is also immediately appealable.

III. CONCLUSION & ORDER

This Court has the inherent authority to control the matters coming before it and therefore **ORDERS** the clerk to accept the filing of plaintiff's Notice of Appeal. The High Court retains jurisdiction to determine the issue of attorneys' fees and costs.

Dated this 27th day of September 2026. (AST)

A handwritten signature in black ink, appearing to read "Daniel Cadra", is written over a horizontal line.

Daniel Cadra, Chief Justice, Supreme Court

Entered as a Memorandum Opinion subject to SCROP 35(b), (c).