

**FILED**

**JUN 21 2023**

*ASW*  
CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

**IN THE SUPREME COURT  
REPUBLIC OF THE MARSHALL ISLANDS**

<b>SONYA TONYOKWE &amp; ROZENA TONYOKWE</b>	)	<b>S.Ct. Case No.2022-00889</b>
<b>for herself and on behalf of TIBYN SAMUEL,</b>	)	
<b>Plaintiffs/Appellees,</b>	)	
	)	<b>ORDER DISMISSING</b>
<b>vs.</b>	)	<b>APPEAL</b>
	)	
<b>ERAKDRIK SAMUEL &amp; MUDGE SAMUEL,</b>	)	
<b>Defendants/Appellants.</b>	)	
_____	)	

TO ALL PARTIES HEREIN THROUGH THEIR COUNSEL OF RECORD

BEFORE FULL PANEL OF THE SUPREME COURT: Cadra, C.J.; Seabright, A.J.<sup>1</sup>; and Seeborg, A.J.<sup>2</sup>

**I. INTRODUCTION**

On or about June 12, 2023, (AST), a single-judge procedural order was entered upon an unopposed motion filed by Appellees DISMISSING the above captioned appeal for Appellants’ failure to timely file their Opening Brief within the 40 days after service/filing of the Record on Appeal allowed by Supreme Court Rule of Procedure (SCRП), Rule 28(b).

On or about June 13, 2023, Appellants filed and served on Appellees what is styled a “[Motion] Requesting Temporary Suspension/Stay of Order Dismissing Appeal.” Appellants argue that the Order Dismissing Appeal should be “temporarily suspended or stayed” because “Plaintiffs/Appellants did not receive any notice or court stamped copies of the Motion to Dismiss from the Clerk of Courts to comply with the SCRП Rule 42(b)(2), (3).”

<sup>1</sup>Hon. J. Michael Seabright, District Judge, United States District Court for the District of Hawaii, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.

<sup>2</sup>Hon. Richard Seeborg, Chief Judge, United States District Court, Northern District of California, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.

Appellees have filed no opposition or response to the instant motion.

The full panel of the Supreme Court liberally construes Appellants' instant motion as an application for vacation or modification of the June 12, 2023, single judge Order Dismissing Appeal pursuant to SCRP, Rule 27 (c).

Upon full-panel review, the Court AFFIRMS THE ORDER DISMISSING THIS APPEAL for the reasons set forth below.

## II. DISCUSSION

### A. Appellants' Contentions.

As best as we can derive from Appellants' instant filing, Appellants are making two arguments that the single-judge procedural order dismissing their appeal should be "temporarily suspended/stayed" (in their words), or otherwise modified or vacated:

1. Appellants first argue that "Plaintiffs/Appellants did not receive any notice and/or Court stamped copies of the [Appellees'] Motion to Dismiss from the Clerk of Courts to comply with the SCRP Rule 42(b)(2),(3)." See "[Motion] Requesting Temporary Suspension/Stay of Order Dismissing Appeal," p. 1.

2. Appellants then attempt to establish "good cause" for their failure to file their Opening Brief within the 40 days allowed by SCRP, Rule 28(b) by claiming that Appellants' counsel was not served by e-mail by the Clerk of Courts "regarding the Filing of Record on Appeal or any Notice of Designation of Records, in (sic) pursuant to SCR[P] 28(b)." See "Declaration of Counsel (Jack Jorbon)," p. 2, para. 5. The apparent theory being that the Clerk's alleged failure to serve Notice of Filing the Record on Appeal did not commence the 40-day time period for filing Appellants' Opening Brief. Therefore, filing of the Opening Brief should be

deemed timely because the 40-day period in which to file had not commenced.

**B. Appellant's First Argument Fails Because The Clerk of the Supreme Court Is Not Responsible for Making Service of Appellees' Motion to Dismiss on Appellants.**

Appellants' counsel states "I was under the impression that the Clerk of Courts would have sent notice and enclosed court stamped copy(s) to me, as she usually does, via e-mail of the Plaintiff's Motion to Dismiss the Appeal Case so that I could have filed an Opposition Motion for the Defendants/Appellants on time." *See*, "Declaration of Counsel (Jack Jorbon)," pp. 1-2, paragraph 4.

The Supreme Court Rules of Procedure, not counsel's impressions, govern service of documents in appellate cases. The Clerk of the Supreme Court is not responsible for serving a party's motions on other parties to the proceeding. In this case the clerk of the Supreme Court was not responsible for serving Appellees' Motion to Dismiss on Appellants.

**SCR, Rule 25(b)** provides:

**Service of All Papers Required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk of the Supreme Court shall, at or before or promptly after the time of filing, be served by a party or person acting for a party on all other parties to the proceeding. Service on a party represented by counsel shall be made on counsel.

The rules do not require the clerk of the Supreme Court to serve the parties with motions filed by another party to the appeal. Thus, Appellants' argument that the clerk of the Supreme Court somehow failed to make service of the Motion to Dismiss is without merit.

Under Rule 25(b) Appellees had the burden of serving Appellants' counsel with the Motion to Dismiss. Review of the record indicates that Appellees complied with their duty by serving Appellants' counsel, Jack Jorbon, with the Motion to Dismiss by e-mail at

jackjorbon19@gmail.com. *See* “Affidavit of Service” accompanying Appellees’ “Motion to Dismiss” dated June 5, 2023. Significantly, Appellants’ counsel does not deny receipt of Appellees’ e-mail serving the Motion to Dismiss.

**C. Appellants’ Second Argument Fails Because The Record Demonstrates the Clerk of Court Served the “Notice of Filing the Record on Appeal” on Appellants Which Was Received by Appellants’ Counsel.**

Appellants’ counsel claims “I have searched my records and I could not find any e-mail from the Clerk of Courts regarding the Filing of Record on Appeal or any Notice of Designation of Records, in (sic) pursuant to SCR Rule 28(b).” Significantly, Counsel does not claim he never received the Notice of Filing of Record on Appeal but, rather, that he cannot find the e-mail.

Appellants’ counsel’s apparent assertion that he never received the Notice of Filing the Record on Appeal is belied by the record. The record reveals:

1. That the Supreme Court Clerk filed the “Clerk’s Certificate In Re: Filing Record on Appeal” on February 17, 2023. *See* Exhibit A attached.

2. That Appellants’ counsel Jack Jorbon, was served with the “Record on Appeal”n February 18, 2023. *See* Exhibit B “Certificate of Service” attached.

3. That Appellants’ counsel Jack Jorbon was served by e-mail at jackjorbon19@gmail.com on February 18, 2023.

4. That Appellants’ counsel Jack Jorbon received the e-mail service of the “Record on Appeal” as is evidenced by Jack Jorbon’s e-mail to the Clerk of Courts dated February 22, 2023. *See* Exhibit C “e-mail exchange between Clerk of Courts and Jack Jorbon” attached.

5. SCR, Rule 25 (c) provides “service by e-mail is complete upon the transmission being received and must be evidenced by the transmittal e-mail and a receipt e-mail.” Exhibit C

evidences service on Appellants of the Notice of Filing of Record on Appeal.

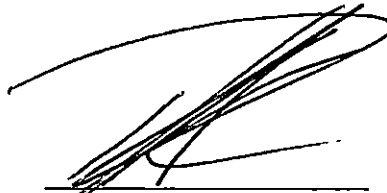
6. The 40-day period for filing Appellant’s Opening Brief commenced on the date of service, February 18, 2023, pursuant to SCRCP, Rule 28(b).

7. Appellants late filed their Opening Brief on April 18, 2023 (19 days past the 40-day deadline imposed by SCRCP, Rule 28(b)).

We find and conclude Appellants were properly served with Appellees’ Motion to Dismiss and failed to file an opposition or response within the five days permitted by SCRCP, Rule 27(a).

We also find and conclude that Appellants’ counsel was properly served with the Clerk’s Notice of Filing the Record on Appeal on February 18, 2023, which commenced the 40-day period for filing the Opening Brief. Appellants did not timely file the Opening Brief and have not demonstrated “good cause” for their failure to timely file. We therefore AFFIRM the single-judge procedural order dated June 12, 2023, dismissing this appeal and ORDER the appeal **DISMISSED**.


Dated: June 21, 2023



Daniel N. Cadra, Chief Justice



J. Michael Seabright, Associate Justice



Richard Seeborg, Associate Justice

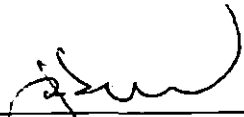
IN THE SUPREME COURT  
REPUBLIC OF THE MARSHALL ISLANDS

SONYA TONYOKWE & ROZENA TONYOKWE	)	Supreme Court No. 2022-00889
for herself and on behalf of TIBLYN SAMUEL	)	High Court Civil Action No. 2020-
Plaintiff-Appellees	)	00983
	)	
Vs	)	
	)	
ERAKDRIK SAMUEL & MUDGE SAMUEL	)	SUPREME COURT CLERK'S
Defendant-Appellants	)	CERTIFICATE IN RE: FILING OF
	)	RECORD ON APPEAL
	)	


This is to certify that a list of all records on appeal (Record on Appeal) is attached hereto and that I have caused it to be filed on this 17<sup>th</sup> day of February 2023 pursuant to Supreme Court Rule 11 (c) and 12 (b).

Parties are hereby notified that the filing of the Record on Appeal begins the time (40 days period) for filing of Appellant's Opening Brief pursuant to Supreme Court Rule 28 (b).

Dated: February 17<sup>th</sup>, 2023



Ingrid K. Kabua  
Supreme Court Clerk, Marshall Islands Judiciary

**FILED**  
FEB 17 2023  
  
CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

# FILED

FEB 17 2023

CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT  
REPUBLIC OF THE MARSHALL ISLANDS

SONYA TONYOKWE & RÖZENÄ ) Supreme Court No. 2022-00889  
 TONYOKWE for herself and on behalf ) High Court No. 2020-00983  
 Of TIBLYN SAMUEL )  
 Appellee/Plaintiff )  
 v. ) RECORD ON APPEAL  
 )  
 ERAKDRIK SAMUEL & MUDGE SAMUEL )  
 Appellant/Defendant )

2023 FEB 17 10:00 AM

No.	Filing Date	No. of Pages	Document Name
			<b>FOLDER 1</b>
1	9/9/2020	13	Summons & Verified Complaint & Exhibits
2	9/9/2020	10	Ex-Parte Motion & Affidavit for a Temporary Restraining Order/Protection Order; Counsel's Certificate; Temporary Restraining Order & Notice of Hearing
3	9/10/2020	3	Order for Hearing on Motion for TRO & Protection Order; COS
4	9/14/2020	1	Return of Service (on Mudge Samuel)
5	9/14/2020	2	Order for Hearing on Motion for TRO & Protection Order; COS
6	9/14/2020	3	Order for Hearing on Motion for TRO & Protection Order; COS
7	9/15/2020	1	Return of Service (on Mudge Samuel)
8	9/16/2020	3	Plaintiff's Proposed Preliminary Injunction & Protection Order
9	9/16/2020	7	Respondent's Opposition Brief Against Petitioner's Ex Parte Motion & Affidavit for a Temporary Restraining Order/Protection Order; Memorandum in Support; Declaration of Respondent; & Certificate of Service
10	9/18/2020	3	Third Order Continuing Hearing on Motion for TRO & Protection Order; COS
11	9/18/2020	4	Subpoena (to Laan Kilma); Protection, Duties, & Fees
12	9/18/2020	4	Subpoena (to Kios Kios); Protection, Duties, & Fees
13	9/21/2020	1	Return of Service (on Mudge Samuel)
14	9/21/2020	7	Plaintiff's Supplemental Filing; Certificate of Service
15	9/21/2020	2	Fourth Order Continuing Hearing on Motion for TRO & Protection Order; COS
16	9/29/2020	5	Motion to Dismiss or for a more Definite Statement and/or for failure to join the third party in interest; Memorandum in Support of Motion to Dismiss or for a more definite statement and/or for Failure to Join the Third Party in Interest; COS
17	9/30/2020	2	Stipulated Order

18	9/30/2020	3	Order; COS
19	10/2/2020	47	Defendant's Answer to Plaintiff's Verified Complaint; Exhibits; COS
20	10/20/2020	7	Opposition to Defendant's Motion to Dismiss; COS
21	10/26/2020	3	Defendant's Opposition Motion to Plaintiff's Motion in Opposition to Motion to Dismiss; COS
22	10/27/2020	7	Answer to Counterclaim
23	11/3/2020	10	Defendant's Reply to Plaintiff's Answer to Counterclaim; COS
24	11/9/2020	3	Order Scheduling Hearing on Defendant's Motion to Dismiss; COS
25	12/2/2020	1	Order Scheduling Hearing on Defendant's Motion to Dismiss
26	1/15/2021	25	First Amended Complaint; Summons
27	2/19/2021	5	Motion to Dismiss for a more definite statement and/or for failure to name the Marshallese custom and traditional practices such a complaint can be relied upon; Memorandum in Support of Motion to Dismiss or for a more Definite Statement and/or for failure to name the Marshallese custom and traditional practices such a complaint can be relied upon; & COS
28	3/15/2021	3	Order regarding Motion to Dismiss .....; COS
29	3/15/2021	4	Opposition to Defendant's Motion to Dismiss and/or Motion for more definite statement; COS
30	3/15/2021	3	Order Vacating Conference; COS
31	3/26/2021	3	Order Scheduling Conference; COS
			<b>FOLDER 2</b>
32	3/29/2021	49	Defendants Erakdrik Samuel & Mudge Samuel's Answer to Plaintiff's First Amended Complaint; COS
33	4/14/2021	4	Order For Briefing & Scheduling Conference; COS
34	5/4/2021	3	Motion for an Order Enlarging Time for filing of Dispositive Motions; Counsel's Declaration; COS
35	5/4/2021	3	Amended Order for Briefing & Scheduling; COS
36	5/12/2021	3	2nd Motion for an Order enlarging time for filing of Dispositive Motions; Counsel's Declaration; & COS
37	5/12/2021	3	2nd Amended Order for Briefing & Scheduling; COS
38	5/26/2021	6	3rd Motion for an Order enlarging time for filing of Dispositive Motions; Counsel's Declaration; & COS
39	5/26/2021	3	3rd Order for Briefing & Scheduling; COS
40	6/4/2021	11	4th Motion for an Order enlarging time for filing of Dispositive Motions; Counsel's Declaration; & COS
41	6/4/2021	3	4th and Final Order for Briefing and Scheduling; COS
42	6/11/2021	86	Motion for Summary Judgment; Memorandum in Support; COS
43	6/29/2021	3	Order Rescheduling Conference; COS
44	6/30/2021	8	Defendant's Opposition Motion to Plaintiff's Motion for Summary Judgment; Memorandum in Support; & Certificate of Service
45	7/8/2021	3	Order Scheduling Hearing on Plaintiff's Motion for Summary Judgment; COS
46	8/24/2021	3	Order for Proposed Hearing Briefing; COS



			<b>FOLDER 3</b>
47	8/17/2021	58	Defendants Brief on Proposed Finding of Facts and Conclusion of Law, Per Order of Court; Exhibits
48	8/17/2021	19	Plaintiffs Proposed Findings of Facts and Conclusion of Law Attached; COS
49	10/18/2021	4	Order; COS
50	10/22/2021	13	Parties Submission and Stipulation as to Death Certificates
51	12/15/2021	22	Order Granting Motion for Summary Judgment
52	12/27/2021	24	Motion to Alter or Amend Summary Judgment, Memorandum of Support, Declaration of Mudge Samuel and Affidavit of Sylvania A. George; COS
53	1/11/2022	3	Order Scheduling Hearing on Defendants Motion to Alter or Amend Judgment; COS
54	1/11/2022	3	Motion and Affidavit for an Order Enlarging Time to File Response to Defendants Motion to Alter/Amend Judgment; COS
55	1/11/2022	3	Order Granting Enlargement of Time to File Opposition; COS
56	1/18/2022	3	2nd Motion and Declaration for an Order Enlarging time to File Response to Defendant's Motion To Alter/Amend Judgment; COS; Proposed Order
57	1/18/2022	3	2nd Order Enlarging Time for Plaintiffs to File Response to Defendants Motion to Amend or Alter Summary Judgment; COS
58	1/21/2022	8	Opposition to Defendants Motion to Alter or Amend Summary Judgment; COS
59	2/8/2022	5	Order Permitting Counsel to Attend Hearing via Zoom; COS
60	2/16/2022	5	Order Rescheduling Hearing on Rule 59(e) Motion; COS; Email (2 pages) from Mr. Jorbon
61	2/24/2022	4	Order Rescheduling Hearing on Rule 59(e) Motion; COS
62	3/17/2022	5	2nd Order Rescheduling Hearing on Rule 59(e) Motion; COS
63	3/18/2022	4	Order Denying Defendants' Rule 59 (e) Motion

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

<u>Sonya &amp; Rozena Tonyokwe</u>	)	Appeal	Case No. <u>2022-00889</u>
	)		
	)		
	)		
<u>Erakdrik &amp; Mudge Samuel</u>	)		
	)		
	)		
	)		

**CERTIFICATE OF SERVICE**

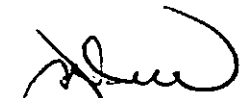
I, Ingrid Kabua, Chief Clerk of the Courts, hereby certify that on 02/18/2023

I served the Record on Appeal & SC Clerk's Certificate

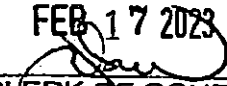
filed 02/17/2023 in the above captioned matter on:

- 1. Tiantaake Beero by  Email  Fax  Personal Hand Delivery
- 2. Jack Jorbon by  Email  Fax  Personal Hand Delivery
- 3. by  Email  Fax  Personal Hand Delivery
- 4. by  Email  Fax  Personal Hand Delivery

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

  
Ingrid Kabua  
 Chief Clerk of the Courts  
 Marshall Islands Judiciary

FILED:

**FILED**  
**FEB 17 2023**  
  
 CLERK OF COURTS  
 REPUBLIC OF THE MARSHALL ISLANDS



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

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## SC Appeal 2022-00889 Record On Appeal

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

Sat, Feb 18, 2023 at 11:37 AM

To: Tiantaake Beero-Sexton <angel.sunz67@gmail.com>, Jack Jorban <jackjorban19@gmail.com>

Iokwe Counsel,

Please find attached the Record on Appeal for the above case Supreme Court Appeal Case 2022-00889 Tonyokwe v. Samuel, starting the time for filing of Opening Brief.

Kindly confirm receipt of this email.

Kommol,

Ingrid

--

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



23.02.17RecordOnAppeal.pdf  
802K



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

## SC Appeal 2022-00889 Record On Appeal

Jack Jorbon <jackjorbon19@gmail.com>  
To: Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com>

Wed, Feb 22, 2023 at 9:49 AM

Melissa,

I would appreciate it very much if you could scan and email me copies of the motion for summary judgment on the following SC appeal cases:

1. SC appeal 2022-00899 and
2. SC appeal 2022-02240

Thanks,

Jack

On Fri, Feb 17, 2023 at 3:37 PM Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com> wrote:  
Iokwe Counsel,

Please find attached the Record on Appeal for the above case Supreme Court Appeal Case 2022-00889 Tonyokwe v. Samuel, starting the time for filing of Opening Brief.

Kindly confirm receipt of this email.

Kommol,

Ingrid

--

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

**EXHIBIT**

C

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

SONYA TONYOKWE & ROZENA TONYOKWE

Civil

Case No. 2022-00889

Plaintiff/Appellees

v.

ERAKDRIK SAMUEL & MUDGE SAMUEL

Defendants/Appellants

CERTIFICATE OF  
SERVICE


I, Kaiboke Iseia, Asst. Clerk of the Courts, hereby certify that on 06/21/2023

I served the ORDER DISMISSING APPEAL

filed 06/21/2023 in the above captioned matter on:

1. Tiantaake Beero-Sexton by  Email  Fax  Personal Hand Delivery
2. Jack Jorbon by  Email  Fax  Personal Hand Delivery
3. by  Email  Fax  Personal Hand Delivery
4. by  Email  Fax  Personal Hand Delivery

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

  
\_\_\_\_\_  
Kaiboke Iseia  
Asst. Clerk of the Courts  
Marshall Islands Judiciary

FILED:

FILED

JUN 21 2023

  
\_\_\_\_\_  
ASSISTANT CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS



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

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**SCT CA2022-00889**

1 message

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

Wed, Jun 21, 2023 at 2:57 PM

To: Tlantaake Beero-Sexton <tsbkirimajol@mlscnet.org>, Jack Jorban <jackjorban19@gmail.com>

Iakwe Counsels,

Please see attached file, Order Dismissing Appeal,  
and kindly confirm receipt of this email,

Komol,  
Kaiboke

--

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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