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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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| <p>JOHNSON TORIBIONG, <i>Appellant,</i> v. SAMUEL NGIRCHOKEBAI, <i>Appellee.</i></p> | <p>SUPREME COURT OF THE REPUBLIC OF PALAU</p> |
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Cite as: 2025 Palau 12
Civil Appeal No. 25-007
Appeal from Civil Action No. 24-051

Decided: September 22, 2025

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| Counsel for Appellant | Pro Se |
| Counsel for Appellee | Allison Nixon |

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] Before the Court are Appellee Samuel Ngirchokebai’s Motion to Dismiss Appeal, as well as Appellant Johnson Toribiong’s Motion for Extension of Time to File Response to Appellee’s Motion to Dismiss.

[¶ 2] For the reasons set forth below, we **DENY** the Motion for an Extension of Time, we **GRANT** the Motion to Dismiss, and we **DISMISS** this appeal.

BACKGROUND

[¶ 3] This appeal stems from a trial court decision denying Mr. Toribiong’s March 31, 2025, Rule 60(b) motion to set aside the court’s entry of default and default judgment in Civil Action No. 24-051.

[¶ 4] Significantly, the March 31 motion was not the first Rule 60(b) motion Mr. Toribiong filed in Civil Action No. 24-051. Indeed, following entry of default by the Clerk of Courts on October 31, 2024, the trial court entered default judgment against Mr. Toribiong on November 11, 2024. On November 19, 2024, Mr. Toribiong filed his first motion to set aside the entry of default and default judgment pursuant to Rules 55(c) and 60(b) of the ROP Rules of Civil Procedure (the “First Motion”). The trial court denied the First Motion on December 23, 2024. Mr. Toribiong failed to appeal either the entry of default judgment or the denial of the First Motion. Instead, on March 31, 2025, Mr. Toribiong filed his second Rule 60(b) motion, raising many of the same arguments as the first (the “Second Motion”).

[¶ 5] On April 25, 2025, the trial court denied Mr. Toribiong’s Second Motion as an impermissible, successive Rule 60(b) motion. It further found a lack of good cause to amend the default judgment. This appeal followed.

DISCUSSION

I. Motion for Extension of Time to Respond to Motion to Dismiss

[¶ 6] As an initial matter, we dispense with Mr. Toribiong’s request to extend the time to respond to Mr. Ngirchokebai’s Motion to Dismiss. Mr. Toribiong’s response was initially due for filing on August 29, 2025. On September 8, 2025, Mr. Toribiong requested we extend the filing deadline by ten days, citing his busy schedule. Mr. Ngirchokebai opposed the request.

[¶ 7] For good cause, we may extend the time to perform any act, or permit an act to be done after that time expires. *See* ROP R. App. P. 26(b). “Good cause” is a lenient standard, “requiring any legally satisfying and sufficient reason to show why a request should be granted.” *Fritz v. Koror State Pub. Lands Auth.*, 17 ROP 294, 298 (2010).

[¶ 8] The mere assertion of a busy schedule, without more, does not rise to the level of good cause, particularly where that assertion appears to serve only as the reason for failing to timely file the request for extension. Moreover, Mr. Toribiong’s late-filed request appears to be due to a misunderstanding of the applicable deadline for responding to motions, as he assigned some significance to the fact that September 5, 2025, fell fourteen days after Mr. Ngirchokebai filed the Motion to Dismiss. The Rules of Appellate Procedure expressly provide that responses to any motion filed under Rule 27 “must be filed within 7 days after service of the motion.” ROP R. App. P. 27(a)(3). Mr. Ngirchokebai filed his Motion to Dismiss on August 22, 2025. Thus, Mr. Toribiong’s response was due by August 29.

[¶ 9] Although he is proceeding *pro se*, Mr. Toribiong is a seasoned attorney undoubtedly familiar with the Appellate Rules. Regardless, despite any good faith belief that the response deadline fell on September 5, Mr. Toribiong still failed to timely request an extension. Accordingly, for failure to show good cause, the Court declines to grant an extension.

II. Motion to Dismiss

[¶ 10] We turn now to Mr. Ngirchokebai’s unopposed Motion to Dismiss. In his Motion, Mr. Ngirchokebai argues that the Appellate Division lacks jurisdiction to hear Mr. Toribiong’s appeal because it is untimely. We agree.

[¶ 11] We lack jurisdiction to entertain an appeal where the notice of appeal is untimely filed. *Bechab v. Anastacio*, 20 ROP 56, 60 (2013); *see also Salii v. Mariur*, 2024 Palau 18 ¶ 4 (Palau’s appellate “jurisdiction” arises from the Rules of Appellate Procedure). Our Rules of Appellate Procedure dictate that a notice of appeal which challenges an order disposing of a motion for relief under Rule of Civil Procedure 60, if such motion is filed no later than 28 days after judgment is entered, must be filed within thirty (30) days after the entry of the order disposing of the motion. *See* ROP R. App. P. 4(d)(1)(D); 4(d)(3).

[¶ 12] Mr. Toribiong failed to timely appeal either the trial court’s November 11, 2024, entry of default judgment or the trial court’s December 23, 2024, denial of his First Motion. Rather, Mr. Toribiong waited over three months to file his Second Motion, which the trial court found raised the same arguments as the First Motion. While we have held that a party can file a

successive Rule 60(b) motion that potentially affects the trial court's jurisdiction, *see Gibbons v. Cushnie*, 8 ROP Intrm. 3, 6 n.6 (1999), here Mr. Toribiong's Second Motion merely reiterated his argument that the punitive damages awarded by the trial court were excessive. Inasmuch as the Second Motion did not challenge the trial court's jurisdiction, it was an impermissible successive Rule 60(b) motion.

[¶ 13] Courts in the United States have looked unfavorably upon successive Rule 60(b) motions which raise substantially similar grounds as earlier motions, finding them inappropriate substitutes for timely notices of appeal and, thus, unreviewable. *See Sadang v. Ongesii*, 10 ROP 100, 102 n.2 (2003) (because Rule of Civil Procedure 60(b) is derived from the Federal Rules, it is appropriate to look to United States authorities for guidance); *Green v. Clerk of Court, Parish of Orleans*, 1995 WL 71254, at *1 (5th Cir. 1995) (“Any Rule 60(b) motion raising substantially similar grounds as urged, or could have been urged, in an earlier [Rule 60(b)] motion is deemed successive, and any appeal based on such a motion is not reviewable.”); *Matios v. City of Loveland*, 2023 WL 6127895, at *2 (D. Co. 2023) (“A successive Rule 60(b) motion is an inappropriate vehicle to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion.” (internal quotations omitted) (quoting *Servants of the Paraclete v. John Does*, 204 F.3d 1005, 1012 (10th Cir. 2000))).

[¶ 14] So, too, have we looked unfavorably upon ostensible attempts to circumvent the notice of appeal filing deadlines through the filing of piecemeal Rule 60(b) motions. *See Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 30 (2001) (holding that appellant could not file an independent action for relief from judgment under Rule 60(b) after the Court had previously denied the appellant's Rule 60(b) motion stating “[a]t some point you can no longer flog a dead horse.”). Accordingly, we find that Mr. Toribiong's appeal from the denial of his second Rule 60(b) motion is untimely and unreviewable.


CONCLUSION

[¶ 15] For the foregoing reasons, we **DENY** the Appellant's Motion for Extension of Time to File Response to Appellee's Motion to Dismiss, **GRANT** the Appellee's Motion to Dismiss, and hereby **DISMISS** this appeal.

SO ORDERED, this 22nd day of September 2025.



OMDAIS NGIRAIKELAU
Chief Justice, presiding



FRED M. ISAACS
Associate Justice



KEVIN BENNARDO
Associate Justice