

RECEIVED
 FSM Supreme Court
 Date: 8/16/13
 Time: 11:00 am
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**IN THE SUPREME COURT OF THE
 FEDERATED STATES OF MICRONESIA
 APPELLATE DIVISION- KOSRAE STATE**

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3	KERSIN TILFAS, et., al.,) Appeal Case N0. K5-2013
4	Appellants,) Civil Action N0. 84-11
5)
6	vs.	) MEMORANDUM IN OPPOSITION
7	HEIRS OF KILAFWAKUN	) TO APPELLANTS/APPELLEES'
8	LONNO,	) MOTION TO STAY AND REQUEST
9	Appellees.	) TO FILE BY FACSIMILE
10)

On July 16, 2013, the undersigned received a non- file stamped motion to stay proceedings in Civil Action N0. 84-11, Heirs of Kilafwakun Lonno vs. Kersin Tilfas, et., al., in the Kosrae State Court, Trial Division and not the Appellate Division as Kosrae State Court has yet to establish its Appellate Division. The appellants/appellees filed a similar motion in the Kosrae Trial Division and was denied. See Exhibit A of the appellants/appellees as attached to their motion.

MEMORANDUM OF POINTS AND AUTHORITIES

The appellants/appellees motion to stay the proceeding in the court below is identical to their previous motion filed and disposed of in the Kosrae State Court, Trial Division, a copy is attached and marked Exhibit "One" for the appellees/appellants and made part of this submission. The appellants/appellees are forum shopping for a second chance, but the issue before this court is well settled with the Kosrae State Court, Trial Division.

In fact, in the July 11, 2013, decision of the Kosrae State Court, Trial Division, the oral arguments had been set for August 11, 2013, but since August 11, 2013 will be a Saturday, the oral arguments are expected to be held on August 12, 2013 or soon thereafter by virtue of Rule 6 (a) of the

FILED

DATE 6/3/13
TIME 11:18 am
BY [Signature]
CLERK STATE COURT
KOSRAE

IN THE KOSRAE STATE COURT
STATE OF KOSRAE
FEDERATED STATES OF MICRONESIA

HEIRS OF KILAFWAKUN LONNO,)
)
)
Appellants,)
vs.)
)
KERSIN TILFAS, MAXWELL SALIK,)
ESTHER HEUVER,)
)
Appellees.)

Civil Action No. 84-11
Land Court Case No.: 45-04

MOTION TO STAY PROCEEDING
PENDING DISPOSITION OF
APPELLEE'S INTERLU-
CUTORY APPEAL TO APPELLATE
DIVISION OF THE FSM SUPREME
COURT

RECEIVED
6/03/13
[Signature]

MOTION TO STAY PROCEEDING PENDING DISPOSITION
OF APPELLEE'S INTERLOCUTORY APPEAL TO THE APPELLATE
DIVISION OF THE FSM SUPREME COURT

The Appellees by and through their counsel Lipar L. George and Yoslyn G. Sigrah, hereby bring this Motion to Stay Proceeding Pending Disposition of Appellee's Interlocutory Appeal to the Appellate Division of the FSM Supreme Court. This motion is brought pursuant to Rule 10 of the Kosrae Rules of Appellate Procedure, the following Memorandum of Points and Authorities, the Notice of Appeal filed with on May 30, 2013, with the FSM Supreme Court Appellate Division attached hereto, and any other files and records in this case.

FACTUAL BACKGROUND

This is a boundary line dispute case and not an attorneys' dispute case. Thus, Appellees wish to re-formis once again the argument in this case on the real substantive issues before this court, which is that of the landowners' boundary lines dispute case. This boundary lines dispute case involves four land claimants or parties: 1) Esther Euver; 2) Maxwell Salik; 3) Heirs

of Kilafwakun Lonno; and 4) Kersin Tilfas. The ownership of these parcels is not disputed. The only dispute to these parcels is the boundary line. Appellees Esther, Maxwell and Kersin Tilfas have fully consented to the legal counsel representing their interests, all have fully consented to the facts presented by their counsel in their appellate brief. This court's order issued and entered by the Clerk on May 17, 2013, drastically altered the direction in which this case is progressing. To protect Appellees' legal interests in this boundary line dispute case, an appeal to the FSM Supreme Court Appellate Division is necessary to allow a determination of the legality of this court's May 17, 2013 order, before any further proceeding of this boundary line dispute case takes place.

MEMORANDUM OF POINTS AND AUTHORITIES

1. On May 17, 2013, this court issued an Order Granting Motion to Strike Appellees' Brief and Request for Sanction under Rule 24.
2. The effects of the Order of May 17, 2013, if proceeding is not stayed, will enable the state court to limit its appellate review of this land dispute appeals case to only the Heirs of Kilafwakun Lonno's brief and appendices, and not the adverse parties Kersin Tilfas, Maxwell Salik, and Esther Euver's Brief and appendices.
3. The state court's Order of May 17, 2013, lacks legal basis which is one of the grounds of appeal filed with the FSM Supreme Court Appellate Division. Clearly, any one-sided review of parties' submissions is unfair and contrary to Kosrae State law codified under Title 11, Chapter 6 on Determination and Registration of Interests in Land.
4. By striking Appellees' brief and sanctioning attorney, the Appellees and their attorney are greatly prejudiced, unfairly and unjustly treated and are deprived of their constitutional due process rights. If a court strikes one party's brief, it is almost as if the

court is also announcing its inclination that it is interested in reviewing only one party's submission and ready to proceed on a review of only one-party brief. Therefore, in the interest of justice and fairness, this court must stay this proceeding pending a ruling by the FSM Supreme Court pertaining to the Order of May 17, 2013.

5. The matters of striking Appellees brief and sanctioning Appellees' attorney will not be reviewable upon final disposition of the case therefore, an appeal is necessary and a stay of the proceeding must be put in place to allow disposition of the issues on appeal.
6. The collateral order doctrine permits appeals before a final decision. The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment Heirs of George v Heirs of Tosie, 15 FSM Intrm 560, 567 (App. 2008).
7. The issue of striking Appellees' brief and Appendices and sanctioning attorney is not a matter that would be reviewable on appeal from a final decision pertaining to the substantive issues before this court, which is the boundary lines dispute of the landowners in this case.
8. This motion is brought in good faith and is sought to protect the interests and the rights of the Appellees and their legal counsel.

DATED: _____

June 7, 2013



YOSLYN G. SIGRAH
LIPAR L. GEORGE
Legal Counsel for APPELLEES

FILED

DATE 06/25/13
TIME 9:45
BY [Signature]
CLERK, STATE COURT,
KOSRAE

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KOSRAE STATE COURT

TRIAL DIVISION

TOFOL, KOSRAE STATE, FM 96944

HEIRS OF KILAFWAKUN LONNO,)	CIVIL ACTION NO. 84-11
)	
Appellants,	)	APPELLANTS' OPPOSITION
	)	TO APPELLEES' MOTION
Vs.	)	TO STAY PROCEEDINGS
	)	PENDING DISPOSITION OF
KERSIN FILEAS, et., al.,	)	APPELLEES' INTEROCUTORY
	)	APPEAL AND MEMORANDUM
Appellees.	)	IN SUPPORT THEREOF
)	

The appellants, by and through the undersigned counsel, hereby files this memorandum of points and authorities in opposition to appellees' motion to stay all proceedings in this matter, pending the disposition of the appeal they filed with the FSM Appellate Division. This motion must be denied by this court based on the grounds as will be discussed below.

MEMORANDUM OF POINTS AND AUTHORITIES

A. The FSM Supreme Court Appellate Division Lacks Jurisdiction on the Appeal filed by the Appellees.

This court on May 17, 2013, entered an order, struck out the brief filed by the appellees and further admonished and sanctioned the counsel for the appellees.

1 The May 17, 2013 order is not a final judgment,
2 therefore, the Notice of Appeal filed by the appellees
3 is premature. As stated, the May 17 order was not a
4 final judgment within the meaning of Rule 3 (a) (1) (A)
5 of the FSM Supreme Court Appellate Proceduro. This court
6 lacks jurisdiction over the appeal. On May 30, 2013,
7 Counsel Yoslyn G. Sigrah filed and served on the
8 undersigned a Notice of Appeal (K5-2013). The notice of
9 Appeal did not request for any record to be certified for
10 purposes of this appeal and nor did it state as to the
11 bases for which she took on the appeal. That in the
12 absence of any request for the record or the transcript
13 to be certified at the time the Notice of Appeal was
14 filed, the appellants/appellees at the lower court can
15 still timely submit her request for the record to be
16 certified within 10 days from the date of service of the
17 Notice of Appeal. She did not file for any record or
18 transcript to be certified within 10 days from the date
19 of filing the Notice of Appeal as prescribed by Rule 10
20 and its subsequent sections of the FSM Appellate Rules.
21 The time to request for such record or transcript had
22 lapsed without such request made. The inactions or
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1 omissions of the appellees to follow the rules of this
2 court should be construed as if the appeal is not
3 grounded on factual or legal grounds, thus dismissal is
4 the appropriate course of action as far as the Appeal
5 filed in the FSM Supreme Court, thus denial of the motion
6 to stay by the appellees is the appropriate recourse.

8 **B. The Notice of Appeal filed by the Apellees is not an**
9 **Interlocutory Appeal.**

10 Further, the counsel for the appellees claimed that
11 the Notice of Appeal filed in the FSM Supreme Court is an
12 interlocutory appeal, which is not. "An interlocutory
13 appeals are such that requires an interpretation of the
14 national Constitution, national law, or a treaty" Rule 4
15 (a) (1) (A) of the FSM Supreme Court, Rules of Appellate
16 Procedure. The Notice of Appeal filed in the FSM Supreme
17 Court Appellate Division does not involve any issues that
18 require the interpretation of the national Constitution,
19 national law, or a treaty. Additionally, the Notice of
20 Appeal does not involve granting, continuing, modifying,
21 refusing, or dissolving injunctions, or refusing to
22 dissolve or modify injunctions. See Rule 4 (a) (1) (B).
23 Further, the order or the Notice of Appeal do not involve
24 any issues bearing on Rule 4 ((a) (1) (C) & (D)).

1 The Notice of Appeal filed by the appellees on May
 2 30, 2013 is not a final judgment or order. It is
 3 premature and further failed to follow the proper
 4 procedure prescribed by the FSM Supreme Court, Rules of
 5 Appellate Procedure, thus renders her motion at the lower
 6 court moot, null and void. On those bases, this court
 7 should deny their motion to stay.
 8

9 **C. MOTION TO STAY FILED BY THE APPELLEES MUST BE**
 10 **DENIED.**

11 The appellees' motion to stay all proceeding in
 12 this matter until the appeal is disposed of is
 13 without factual and legal bases. Generally, there
 14 are four factors to weigh before granting a stay
 15 pending appeal: 1. Whether the appellant has made a
 16 strong shown that he is likely to prevail on the
 17 merits of the appeal: 2. Whether the appellant has
 18 that without the stay he will be irreparably harmed:
 19 3. Whether issuance of the stay would substantially
 20 harm other parties interested in the proceedings,
 21 and 4. Whether the public interest would be served
 22 by granting a stay. Ordinarily, the first factor is
 23 the most important, but a stay may be granted upon a
 24 lesser showing of a substantial case on the merits
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does not prevail will always has the right and the opportunity to appeal the decision.

CONCLUSION

Having said the above, this court will find it inescapable to deny the motion to stay and call the case for oral arguments at the earliest possible time.

Dated: June 25, 2013.

Respectfully submitted,
Micronesia Legal Services Corp.



Canney Palsis
Attorney for the Appellants
P.O. Box 38
Kosrae State, FM 96944
Tel: 370-3032
Fax: 370-2232
Email: canney.palsis@mls.com

CERTIFICATE OF SERVICE

This is to certify that the above document was personally served on the attorneys for the appellees this 25th day of June, 2013 by personally deliver a copy to Lipar L. George at his place of work and to Yoslyn G. Sighray by mailing the same to P.O. Box 117, Kosrae State, FM 96944.

1 Kosrae State Court, Rules of Civil Procedure. The July 11, 2013 order, further allowed counsel Lipar
 2 George to submit his oral argument even if the brief and the appendix for the appellants/appellees were
 3 stricken. Now that the appellants/appellees are given the opportunity to submit their oral submission,
 4 thus, their repeated argument for fairness and justice is satisfied.

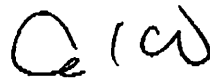
5 Further, given the similarities of the impending motion, the appellees/appellants hereby
 6 resubmit their memorandum in opposition to the motion to stay filed in the Kosrae State Court, Trial
 7 Division marked appellees/appellants' Exhibit "two" and incorporated it herein by reference.

8 In addition, in the order denying the stay in the Kosrae State Court, Trial Division in C.A. N0.
 9 84-11, the Kosrae State Court, Trial Division had advised the appellants/appellees that their counsel
 10 Lipar George would be allowed to do oral argument, which is the final stage for the lower court to issue
 11 a final judgment. Granting the motion would not be in the best interest of justice, instead it would
 12 unnecessarily prolong the final disposition of this matter by the lower court. For the reasons addressed
 13 above and in the Exhibits, it would only be proper for this court to deny the motion and allow the trial
 14 court to proceed with the oral arguments and issues it final decision.

15 Moreover, because of financial constraints and in order for the memorandum to be filed in a
 16 timely manner, the appellees/appellants further request that they be allowed to file their opposition to
 17 the motion to stay by facsimile.

21 Dated: July 22, 2013.

Respectfully submitted,
 Micronesian Legal Services
 Corporation



 Canney Palsis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion will be duly served upon the following party via regular mail or hand-delivery to the party's last known address on the date of filing with this court or soon thereafter:

CANNEY PAL SIS, ESQ.
Micronasia Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

Attorney for HEIRS OF KILAFWAKUN LONNO

DATED: July 2, 2013


YOSLYN G. SIGRAH

1 when the balance of the equities identified in
2 factors 2, 3, & 4 weighs heavily in favor of
3 granting the stay. Department of Treasury v. FSM
4 Telecom. Corp., 9 FSM Intrm. 353, 355 (App. 2000),
5 Estate of Mori v. Chung, 12 FSM Intrm. 3, 7-8 (Chk.
6 2003), FSM Dev. Bank v. Arthur, 16 FSM Intrm. 132,
7 136 ((Pon. 2008).

9 As discussed in sections A & B above and from
10 the motion to stay filed by the appellees, there is
11 a clear showing that the appellees are unlikely to
12 prevail on the merits of the appeal as she failed to
13 follow the proper procedure when filing an appeal in
14 the FSM Appellate Court. Additionally, the facts as
15 provided by the appellees failed short to show if
16 they will face irreparable harm if the stay is not
17 granted; that that the only two parties involved in
18 this case are those specified on the captioned of
19 the case so no other parties interested in the
20 proceedings. And finally, the public interest is for
21 the trial court to deny the motion and moves forward
22 with the oral arguments on the briefs and dispose
23 the case on its merits. That whichever party that

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Dated: June 25, 2013.



Canney Palsis

Attorney for the Appellees/Appellants
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 P.O. Box 38
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 Tel: 370-3032
 Fax: 370-2232
 Email: cpalsis@mlscnet.org

CERTIFICATE OF SERVICE

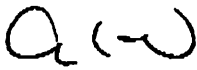
I, Canney Palsis, hereby certify that on this 22nd day of July, 2013, I have caused to be served on the counsel for the appellants/appellees and the court, a true and correct copy of appellees/appellants' memorandum in opposition to motion to stay by mail and facsimile at the numbers provided below: The original, plus four (copies) one copy for the appellees/appellants are put in the mail to the Chief Clerk of Courts, Kohsak, Keller.

Mail: Yoslyn G. Sigrah
 Attorney for the Appellants/Appellees
 P.O. Box 3018
 Kolonia, Pohnpei FM 96941
 Fax: Not available

Mailed: Kohsak Keller
 Chief Clerk of the FSM Supreme Court
 P.O. Box PS-J
 Palikir, Pohnpei, FM 96941
 Fax: (691) 320-2756

It should also be noted that the opposing counsel does not have a fax number so a copy was provided to Lipar George.

Dated: July 22, 2013.



 Canney Palsis