

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>JOHNSON TORIBIONG, <i>Appellant,</i> v. SAMUEL NGIRCHOKEBAI, <i>Appellee.</i></p>
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Cite as: 2026 Palau 6
Civil Appeal No. 26-004
Appeal from Civil Action No. 24-051

Decided: April 28, 2026

Counsel for Appellant Pro Se
Counsel for Appellee Allison Nixon, Esq.

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.

ORDER DISMISSING APPEAL

PER CURIAM:

[¶ 1] Before the Court is Appellee Samuel Ngirchokebai’s Rule 38 Motion for Damages and Costs, and Motion to Dismiss Appeal filed on March 23, 2026. Appellant Johnson Toribiong filed his Opposition to Appellee’s Motion to Dismiss Appeal on April 17, 2026. For the reasons set forth below, we **GRANT** the Motion to Dismiss, and we **DISMISS** this appeal.

BACKGROUND

[¶ 2] This dispute between Appellant Johnson Toribiong and Appellee Samuel Ngirchokebai comes to us with a long procedural history.

[¶ 3] On November 11, 2024, the trial court entered default judgment against Appellant and ordered him to pay Appellee compensatory damages amounting to \$1,436.50 and punitive damages amounting to \$25,000.00.

[¶ 4] Appellant subsequently filed a motion on November 19, 2024, under ROP R. Civ. P. 60(b) to set aside the entry of default and default judgment, arguing that his procedural due process rights had been violated and that the punitive damages were exceedingly high (hereinafter, “First Motion”). On December 23, 2024, the trial court denied Appellant’s motion as no good cause was shown and there was no excusable neglect to entitle him to set aside the entry of default or the default judgment.

[¶ 5] On March 31, 2025, Appellant filed another Rule 60(b) motion for relief from judgment, reiterating the same due process and excessive punitive damages arguments as in his First Motion (hereinafter, “Second Motion”). The trial court entered an order on April 25, 2025, denying Appellant’s Second Motion procedurally as an impermissible motion and substantively for a lack of any showing of good cause.

[¶ 6] Appellant subsequently filed an appeal in Civil Appeal No. 25-007, which was dismissed for being untimely on September 22, 2025, in *Toribiong v. Ngirchokebai*, 2025 Palau 12. On October 23, 2025, Appellant filed yet another Rule 60(b) motion before the trial court on the same due process and excessive damages grounds as before (hereinafter, “Third Motion”).

[¶ 7] The trial court denied Appellant’s Third Motion as an unreviewable, successive Rule 60(b) motion on the ground that Appellant yet again failed to present any new arguments. Additionally, the trial court determined that the default judgment did not violate Appellant’s due process rights and reiterated that the award of punitive damages was not excessive. This appeal followed the trial court’s entry of its Order Denying Defendant’s Rule 60(b)(4) Motion for Relief from Void Judgment on January 12, 2026.

DISCUSSION

I. Motion to Dismiss

[¶ 8] Appellee moves to dismiss this appeal on the ground that Appellant’s notice of appeal is untimely and improper, as his Rule 60(b) motion filed on October 23, 2025, was an impermissible and unreviewable motion. We agree.

[¶ 9] Our Rules of Appellate Procedure provide that a notice of appeal challenging an order disposing of a motion for relief under Rule of Civil Procedure 60 will be deemed timely if (1) the Rule 60 motion is filed no later than 28 days after entry of judgment and (2) the appeal is filed within 30 days after the entry of the order disposing of the motion. *See* ROP R. App. P. 4(d)(1)(D); 4(d)(3). The Appellate Division lacks jurisdiction to entertain appeals where the notice of appeal is untimely filed. *Toribiong v. Ngirchokebai*, 2025 Palau 12 ¶ 11; *see also* *Bechab v. Anastacio*, 20 ROP 56, 60 (2013).

[¶ 10] As we held in *Toribiong*, Appellant failed to timely appeal the trial court’s November 11, 2024, entry of default judgment, or the trial court’s December 23, 2024, denial of his First Motion. 2025 Palau 12 ¶ 13. Just as Appellant’s Second Motion did not challenge the trial court’s jurisdiction, Appellant’s Third Motion also failed to raise such jurisdictional challenges, making it another unreviewable, impermissible successive Rule 60(b) motion.

[¶ 11] Appellant is reminded that he cannot rely on constitutional arguments to circumvent procedural shortcomings. The time limits as prescribed by the Appellate Rules are clear and inflexible, and Appellant cannot simply reiterate the same arguments in successive Rule 60(b) motions to extend time limits that have expired. *See* *Edaruchei Clan of Ngerkeyukl v. Edaruchei Clan of Ngerdelolk*, 2024 Palau 12 ¶ 32. Accordingly, since Appellant’s appeal from the denial of his third Rule 60(b) motion is untimely, we **GRANT** Appellee’s Motion to Dismiss.

II. Motion for Damages and Costs

[¶ 12] Pursuant to ROP R. App. P. 38, “[i]f the Appellate Division determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just

damages and single or double costs to the appellee.” We have previously held that “an appeal is frivolous if the result is obvious, or the arguments are wholly without merit.” *Baules v. Kuartel*, 19 ROP 44, 47 (2012); *see also Republic of Palau v. Tmetuchl*, 1 ROP Intrm. 301, 303 (1986) (“A ‘frivolous appeal’ is one presenting no justiciable question or one so readily recognizable as devoid of merit on the face of the record that there is little if any prospect that it can ever succeed.”).

[¶ 13] The appeal before us is frivolous. Appellant simply raises the same due process and excessive damages arguments which have been repeatedly rejected by this Court. Appellant makes no attempt to distinguish this appeal from Civil Appeal No. 25-007, and filing this appeal is a futile exercise.

[¶ 14] Appellee requests that the Court enter an award of damages under ROP R. App. P. 38, in the amount of his attorney’s fees incurred in this appeal and in the first appeal, Civil Appeal No. 25-007, and in opposing the Third Motion, in the total amount of \$2,100.00. Appellee also requests the Court to exercise its direction and award double the costs expended in the amount of \$465.50.

[¶ 15] While we agree to award damages in the form of attorney’s fees and double costs for the instant appeal, we decline to award damages retroactively for the prior appeal (Civil Appeal No. 25-007) or for Appellee’s having to oppose Appellant’s third Rule 60 motion. *See Baules v. Kuartel*, 19 ROP 44, 46 (2012) (holding that just damages under Rule 38 includes attorney’s fees); *Secharmidal v. Ngiraikelau*, 2020 Palau 2 ¶ 3 (ordering payment of attorney’s fees under Rule 38). Appellee could have requested such an award at the conclusion of the prior appeal but failed to do so, and any award under ROP R. Civ. P. 11 for sanctions for the frivolous third Rule 60 motion is more appropriately addressed to the trial court.

[¶ 16] In determining an award of damages (attorney’s fees and double costs), this Court uses the Lodestar method to calculate reasonable attorney’s fees, multiplying the hourly fee—in this case \$175.00, which is consistent with the higher end of the market—by a reasonable number of hours worked. *See Roll ‘Em Prods., Inc. v. Diaz Broad. Co.*, 21 ROP 96, 98 (2014). Based on the documentation submitted, Appellee is entitled to the total sum of \$765.25, which represents the reasonable attorney’s fee of \$743.75 and \$21.50 of double

costs for defending against this frivolous appeal. Accordingly, Appellee's Rule 38 Motion for Damages and Costs is **GRANTED** in part for the reasonable attorney's fees and double costs expended in this appeal.

CONCLUSION

[¶ 17] For the foregoing reasons, we **GRANT** the Appellee's Motion to Dismiss and hereby **DISMISS** this appeal. Appellant is **ORDERED** to pay to Appellees the total sum of \$765.25, which amount represents the reasonable attorney's fees and double costs for defending the frivolous appeal in Civil Appeal No. 26-004 (\$743.75 of attorney's fees and \$21.50 of double the costs expended). Costs shall be taxed as provided by ROP R. App. P. 39(a).

SO ORDERED, this 28th day of April 2026.