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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED *pk*

2019 MAY 22 AM 11: 12

STEVEN SALII,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2019 Palau 16
Civil Appeal No. 18-043
Appeal from Civil Action No. 12-118

Decided: May 22, 2019

Counsel for Appellant Ronald K. Ledgerwood
Counsel for Appellee Caroline Baird

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

ORDER DISMISSING APPEAL¹

PER CURIAM:

[¶1] This case arises out of the automatic resignation of Appellant, who worked as a Safety Officer for the Bureau of Public Works. He was deemed to have automatically resigned from his post when the Government found that he had been away without official leave from his duty station from June 11 to mid-August 2006.

[¶2] Appellant, challenging the Government’s determination regarding his resignation, filed a Complaint on June 8, 2012. His Amended Complaint alleged four claims: (1) Breach of Implied-in-Fact Employment Contract, (2) Wrongful Termination, (3) Violation of Constitutional Right to Procedural

¹ Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP. R. App. P. 34(a).

Due Process, and (4) Violation of Constitutional Right to Substantive Due Process. Appellant filed a Motion for Summary Judgment, which the Trial Division granted regarding Appellant's claim of procedural due process and denied with respect to the other three claims.

[¶3] A trial was held starting September 8, 2015, after which Appellant was awarded \$78,753.42 in damages; the Government appealed and the Appellate Division reversed, determining that summary judgment should have been entered in favor of the Government.

[¶4] In the first appeal, this Court determined that Appellant's automatic resignation was effective in law and supported by the facts. *ROP v. Salii*, 2017 Palau 20. We found that because Appellant did not dispute the factual basis for the Government's decision to terminate him, there was no requirement of a hearing: "If an employee is not going to contest the salient facts regarding a constructive resignation or disclose any additional facts for consideration, but instead simply demands a hearing in the abstract, due process does not require one." *Id.* at ¶ 20.

[¶5] Appellant now appeals the Trial Division's decision to deny his motion for a new trial following remand to the Trial Division from this Court's hearing of the first appeal in this matter. This is now the second appeal. Appellant asks this Court to require the Trial Division to entertain his claims of Breach of Contract, Wrongful Termination, and Violation of Substantive Due Process, which he asserts remained after the Trial Division initially entered summary judgment in his favor on the issue of procedural due process.

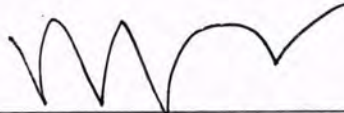
[¶6] Appeals are generally only available as a means to review a final judgment, and we have found that certain appeals are inappropriate. *Luii's Children v. Koror State Pub. Lands Auth.*, 2019 Palau 9 ¶¶ 4–5 (determining, for example, that interlocutory appeals are generally not appealable because such "[p]iecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts") (quoting *Salii v. Etpison*, 18 ROP 41, 43 (2011)). Similarly, an appeal is also inappropriate in this case. Here, there is absolutely no action in the lower court for this Court to review.

[¶7] Where there is no action in the lower court to review, the appropriate remedy is to petition for writ of mandamus, provided for in Rule 21 of the Rules of Appellate Procedure. Appellant could have used that tool to seek to compel the Trial Division to take a particular action, but he did not. *See In re Beard*, 811 F.2d 818 (4th Cir. 1987) (holding a writ of mandamus available only when the Appellant has no other means to obtain the requested relief and when he has shown a clear right to that relief). Instead, he filed an appeal, which is wholly inappropriate under the circumstances of this case.

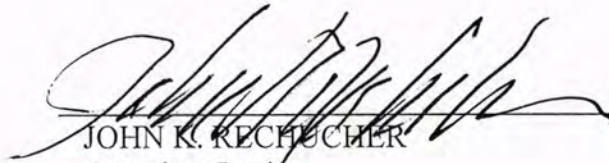
CONCLUSION

[¶8] This appeal changes nothing about the first appeal's reasoning and result. Moreover, an appeal is an inappropriate avenue to compel the lower court to act in this instance. The appeal is, therefore, **DISMISSED**.

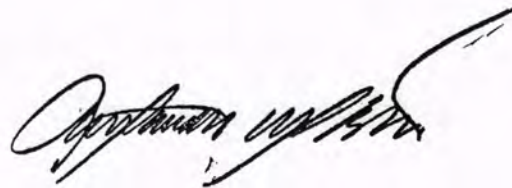
SO ORDERED, this 22 day of May 2019.



ARTHUR NGIRAKLSONG
Chief Justice



JOHN K. RECHUCHER
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice