

SANTOS NGODRII, Appellant

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, and
its ALIEN PROPERTY CUSTODIAN, Appellees**

Civil Action No. 169

Trial Division of the High Court

Palau District

October 25, 1960

Appeal from District Land Title Determination of ownership and release adverse to claimant. Appellee moved to dismiss on ground notice of appeal was filed more than three years after determination. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where District Land Title Officer promises to send notice of his determination to claimant, but personal notice is not given and claimant had no actual notice of determination until one year from date it was filed, claimant's right of appeal is not cut off by expiration of time for appeal.

Motion to dismiss denied.

1. Appeal and Error—Notice and Filing of Appeal

Filing of notice of appeal within time specified by law is ordinarily essential for jurisdiction to hear appeal.

2. Appeal and Error—Notice and Filing of Appeal—Excuse for Late Filing

Appeal is not to be denied if failure to file notice within time limit is result of default of irregularity of public official for which appellant is not responsible, and appellant has acted with due diligence upon learning of situation.

3. Trusteeship—Administering Authority—Obligations

Administering authority of Trust Territory assumes obligation under trust of protecting inhabitants of territory against loss of their lands and resources, promoting their well-being, and assuring their just treatment and protection against abuse. (Trusteeship Agreement, Article 6(2); United Nations Charter, Article 73)

4. Trusts—Obligation of Trustee

One of prime obligations of trustee is to be scrupulously fair and frank with those for whom he is acting and not mislead them or take advantage of their ignorance.

5. Trusteeship—Administering Authority—Obligations

Although international trusteeship system is not in all respects analogous to legal trust, administering authority of trust territory is expected to act to some extent like a trustee.

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6. Trusteeship—Administering Authority—Obligations

Administering authority of trust territory is expected to show at least as careful consideration of rights and properties of inhabitants of trust territory as it would for those of its own citizens in same situation.

7. Trusteeship—Administering Authority—Obligations

Inhabitants of trust territory are entitled to rely upon reasonable assurances of officials in responsible positions with regard to matters they are handling.

8. Trusteeship—Administering Authority—Obligations

Administering authority of trust territory should not expect to profit, either directly or through one of its officers, from inhabitants' reliance upon assurances of officials in responsible positions.

9. Trusteeship—Administering Authority—Obligations

Assurances of government officials are particularly important in area where spoken word carries greater weight than written word with majority of population and when assurance is about such fundamental and reasonable matter as notice of action intended to limit time within which inhabitant may exercise important right.

10. Administrative Law—Land Title Determination—Notice of Determination

Where District Land Title Officer fails to give claimant or his representative notice of determination of land ownership, after promising to do so, until after time for appeal has expired, failure to give such notice in accordance with promise constitutes default of public official.

11. Administrative Law—Land Title Determination—Notice of Determination

Where District Land Title Officer promises to notify claimant of his determination or instructs claimant to wait for such notice, and claimant or his representative had no actual notice of determination until one year after date it was filed, claimant's right of appeal is not cut off by time limited in applicable regulation. (Office of Land Management Regulation No. 1)

12. Administrative Law—Land Title Determination—Appeal

Where party's failure to appeal in time from determination of District Land Title Officer is due to Title Officer's default, claimant may still file appeal if he does so promptly after receiving actual notice of determination from any source.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreters:</i>	SYLVESTER F. ALONZ, HARUO I. ROMELIHK
<i>Reporter:</i>	VIRGINIA F. MOSHER
<i>Counsel for Appellant:</i>	GEORGE W. GROVER, ESQ., <i>Public Defender</i>
<i>Counsel for Appellee:</i>	ALFRED J. GERGELY, ESQ., <i>District Attorney</i>

FURBER, *Chief Justice*

So far as the merits of the motion to dismiss were concerned, counsel for the appellees relied upon the written brief filed October 10, 1960, in Civil Action No. 161, which the court agreed to consider as if filed also in this action, counsel for the appellant having stated he had no objection to such consideration.

Counsel for the appellant claimed that, although the notice of appeal was filed more than three years after the date the Determination of Ownership and Release was filed with the Clerk of Courts, it should be considered sufficient to give this court jurisdiction because the appellant had notified the District Land Title Officer, within a few months after the hearing on the claim and more than two years before the determination, that he, as trustee, had succeeded to the interests of the deceased claimant, and requested that all notices concerning the land be sent to him, and the District Land Title Officer had stated that they would send him any word or notice concerning the land.

The court thereupon stated it would hear evidence on the matter of what notice, if any, had been given of the determination and what the appellant had been told by the Land Office.

FINDINGS OF FACT

1. The original claimant Ongelungel died during the night before the hearing scheduled on his claim, and before he had even signed or sworn to his statement of claim.

2. The present appellant notified the Palau District Land Title Officer in February 1954 that he had been appointed as trustee by the family, in accordance with Palau custom, to represent the interests of his deceased brother Ongelungel, and to hold the land in question in trust for Ongelungel's two sons, and that he was the one to whom all papers concerning the land should be sent. The Palau District Land Title Officer, through an interpreter employed by the Land Office, then told the appellant that they would send him any word or notice concerning the land and to go home and wait for further word.

3. The appellant inquired further at the District Land Office about the land in June of 1943, again in 1956, and again in 1958, but received no word of any determination concerning this land until January 1960, when he was given a copy of the determination by the Magistrate of Airai, and promptly thereafter sought the assistance of the Public Defender's representative and filed the notice of appeal now in question.

OPINION

[1] The general principle that filing a notice of appeal within the time specified by any law providing for such appeal is ordinarily essential for jurisdiction to hear the appeal, is well established and recognized by this court. 3 Am. Jur., Appeal and Error, § 417, note 16.

[2] This principle, however, has repeatedly been recognized in the United States to be subject to the qualification, as an essential of justice, that an appeal is not to be denied if the failure to file notice of it within the time limited is the result of the default or irregularity of some public official for which the appellant is not responsible, and the appellant has acted with due diligence upon learning of the situation. 2 Am. Jur., Appeal and Error, § 201, note 12. 3 Am. Jur., Appeal and Error, § 417, note 17.

Hill v. Hawes, 320 U.S. 520, 64 S.Ct. 334 (discussed in 1960 Cumulative Supplement to 3 Am. Jur., Appeal and Error, § 418, p. 23.

[3, 4] This exception to or qualification of the general principle mentioned above would seem to be even more clearly called for in the Trust Territory of the Pacific Islands. Here the administering authority has specifically agreed in subdivision 2 of Article 6 of the Trusteeship Agreement that it shall "protect the inhabitants against the loss of their lands and resources" and, by assuming the administration of the Territory, has undertaken, in accordance with Article 73 of the Charter of the United Nations, to "recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a *sacred trust* the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end: a. to insure . . . *their just treatment* and their protection against abuse . . ." (emphasis added). Certainly one of the prime obligations of a trustee is to be scrupulously fair and frank with those for whom he is acting and not mislead them or take advantage of their ignorance. This is clear as to legal trusts administered under the supervision of courts. See Restatement of Law, Trusts 2d, Sec. 170(2). 54 Am. Jur., Trusts, § 311.

[5, 6] While it is recognized that the international trusteeship system is not in all respects analogous to a legal trust, and is designed to be supervised largely through the Trusteeship Council rather than through a court, the use of the words "sacred trust" and "trusteeship", the basic objectives of the trusteeship system outlined in the United Nations Charter, and the declaration in the Charter regarding non-self-governing territories,

seem to make clear that the administering authority of a trust territory is expected to act to some extent like a trustee and show at least as careful consideration of the rights and properties of inhabitants of the trust territory as it would for those of its own citizens in the same situation. See: "Charter of the United Nations, Commentary and Documents", by Goodrich and Hambro, 1946 edition, p. 226, 227, and 234-236.

[7-9] If the relation of the administering authority to the inhabitants of a trust territory bears any resemblance to that of an ordinary trustee to the beneficiaries of the trust, inhabitants should be entitled to rely upon reasonable assurances of officials in responsible positions with regard to matters they are handling and the government should not expect to profit, either directly or through its Alien Properties Custodian, from an inhabitant's reliance upon such an assurance. This would seem to be particularly so in an area such as this where the spoken word obviously registers better and carries greater weight than any written word, with the great majority of the population, and when the assurance is about such a fundamental and reasonable matter as notice of action intended to limit the time within which an inhabitant may exercise an important right.

[10-12] Here the determination sought to be appealed from was not made by the Title Officer until over two and a half years after the hearing on the claim, during which time the appellant called at the Land Office about the matter three times. It is difficult to believe that the Director of Political Affairs for the Trust Territory in issuing Office of Land Management Regulation No. 1, and the representative of the High Commissioner in approving it, can have intended that in such a situation a claimant's right to judicial review of a title determination should be

cut off before the claimant or his representative had any actual notice of the determination, when the District Land Title Officer, representing the Government in the matter, had promised to give the claimant or his representative notice, or told him to go home and wait for notice, and had then failed to give him any personal notice of the determination until after the time prescribed for appeal had expired. It is believed that "just treatment" in such a situation requires that the regulation here in question be construed in the light of and subject to the qualification discussed above, and that failure to give notice in accordance with such a promise or instruction by the Title Officer be considered a default within the meaning of that qualification. The court holds that, where such a promise or instruction has been given by the Title Officer and personal notice is not given and the claimant or his representative had no actual notice of the determination until after one year from the date it is filed in the office of the Clerk of Courts, such claimant's right of appeal is not cut off by the expiration of the time limited in Section 14 of Office of Land Management Regulation No. 1, but that he may still appeal provided he does so promptly after receiving actual notice of the determination from any source.

The court accordingly holds that it has jurisdiction over the appeal here in question.

ORDER

Motion to dismiss appeal is denied. Hearing on the merits will be held by this court.