

5. This judgment shall not affect any rights of way there may be over any of the lands in question.

6. No costs are assessed against any party.

CARLUS V. AGUON, Appellant

v.

ROGOMAN, Appellee

Civil Action No. 24

Trial Division of the High court

Yap District

October 26, 1961

Appeal from judgment of District Court in which notice of appeal was filed long after expiration of thirty days allowed for filing. The Trial Division of the High Court, Chief Justice E. P. Furber, held that failure to file notice of appeal within time limit set by Trust Territory Code is essential element in jurisdiction of court and, in absence of sufficient excuse for late filing, appeal will be dismissed.

Dismissed.

1. Appeal and Error—Generally

Right of appeal granted by Trust Territory law is not inherent right or requirement of substantial justice.

2. Appeal and Error—Notice and Filing of Appeal

Filing of notice of appeal within time limitation of Trust Territory Code is essential to jurisdiction of court in absence of most unusual circumstances. (T.T.C., Sec. 198)

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

Exception to requirement of timely filing of appeal in Trust Territory is recognized where delay is result of default of officer of court. (T.T.C., Sec. 198)

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

Clerk of Courts has no obligation to volunteer information about possibility of appeal in civil action.

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

Neither failure of Clerk of Courts to volunteer information as to possibility of appeal in civil action nor appellant's apparent ignorance of time limit for appeal is sufficient excuse for late filing. (T.T.C., Sec. 198)

6. Appeal and Error—Notice and Filing of Appeal

Where party in civil action fails to show interest in prosecuting appeal, it is unfair to opposing party to leave matter pending indefinitely.

7. Appeal and Error—Notice and Filing of Appeal

Where appellant in civil action fails to file notice of appeal within time permitted by law, appeal will be dismissed for want of jurisdiction and want of prosecution. (T.T.C., Sec. 198)

8. Appeal and Error—Notice and Filing of Appeal—Discretionary Review

In order to avoid substantial injustice, appellate court may in its discretion review record in cases where appeal is not timely filed. (T.T.C., Sec. 199)

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| <i>Assessor:</i> | JUDGE FALAYOOR |
| <i>Interpreter:</i> | FEICHIN C. FAIMAU |
| <i>Counsel for Appellant:</i> | FALEWAATH |
| <i>Counsel for Appellee:</i> | LINUS RUUAMAU |

FURBER, *Chief Justice*

This appeal had been continued at the April 1961 sitting of the Trial Division of the High Court for the Yap District at the request of the appellant who had personally notified the Clerk of Courts that he was going to Saipan and would not be able to present this appeal at the April sitting, but would be prepared to present it at the next sitting.

At the call of the list on the opening day of this next sitting, which commenced on October 16, 1961, no one responded on behalf of the appellant and the Clerk informed the court that he had received no further word from the appellant since the April 1961 sitting, except for a letter stating that the appellant would be here for the current sitting. The Clerk had further sent notice of this sitting to the appellant personally since Falewaath, listed as the appellant's counsel in the Notice of Appeal had stated he was not prepared to act for the appellant. The court therefore delayed assignment of this appeal for hearing until after the Pan American flight to Yap scheduled for October 19,

1961, that being the last flight scheduled to arrive in Yap from Guam before the expected ending of the October 1961 sitting. No further word having been received from the appellant on that flight, the appeal was set down for hearing on October 24, 1961, and Falewaath, as well as counsel for the appellee, was so notified.

At the hearing Falewaath appeared and stated that the appellant, before he left Yap, asked Falewaath to represent him in this appeal and that Falewaath had told the appellant he would do so provided the appellant supplied him with full information on the case, but that the appellant had left without supplying Falewaath with this information, Falewaath stated he had heard nothing further from the appellant about this matter, and therefore had nothing to say on the appeal.

Counsel for the appellee requested that the judgment of the District Court be affirmed.

OPINION

The court notes of its own motion the Notice of Appeal in this case was filed January 26, 1961, and that the judgment appealed from was entered October 7, 1959, so that the notice was filed long after the expiration of the thirty days allowed for appeal by the provisions of Section 198 of the Trust Territory Code. The only suggestion of any justification for this delay which has reached the court is a statement by the Clerk of Courts that the appellant had told him he did not agree with the judgment and did not intend to comply with it, although nothing was said about an appeal.

[1-6] The right of appeal is one granted by the Code and not a matter of inherent right or requirement of substantial justice. Filing of notice of appeal within the time limited by the Code provisions is essential to the jurisdiction of the court upon appeal in the absence of some

most unusual circumstance. Exception is recognized where the failure to file is the result of default of some officer of the court, but the Clerk has no obligation to volunteer information about the possibility of an appeal in a civil action, and neither his failure to volunteer such information, nor the appellant's apparent ignorance of the time limit for appeal is sufficient excuse for late filing. 3 Am. Jur., Appeal and Error, § 417. Furthermore, the appellant has failed to show the interest expected of him in prosecuting his appeal. It is not fair to the opposite party to leave such a matter pending indefinitely. 3 Am. Jur., Appeal and Error, § 726, note 3.

ORDER

[7] The appeal in this action is hereby dismissed for want of jurisdiction owing to the failure of the appellant to file his notice of appeal within the time permitted by law, and also for want of prosecution.

ACTION UPON REVIEW

[8] No appeal having been taken within the proper time in this action, the court, in order to avoid the danger of any substantial injustice, has carefully reviewed the record in the exercise of its discretion under Section 199 of the Trust Territory Code, and finds no ground for upsetting or modifying the judgment of the District Court. As a matter of review, therefore, the judgment of the District Court entered in its Civil Action No. 17, is affirmed this 26th day of October 1961.