

without any opportunity being afforded for judging as to the credibility of witnesses except in so far as discrepancies may appear in the testimony in the record. . . . If a judicial mind COULD, on due consideration of the evidence as a whole, reasonably have reached the conclusion of the court below, the findings must be allowed to stand. Such findings will not be disturbed when supported or sustained by competent evidence, especially where the evidence is conflicting or where different inferences can be reasonably drawn therefrom." , "

See also: *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

This rule is codified in Section 200 of the Trust Territory Code, which reads in part as follows : -

"The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous,"

The findings of fact in this case are supported by the evidence, and the judgment in this action is affirmed.

JAMES & ALEXANDER MILNE, Appellants

v.

TOMASI, BULA & MOSES, Appellees

Civil Appeal No. 42

Appellate Division of the High Court

March 18, 1969

Trial Court Opinion—4 T.T.R. 44

Motion to dismiss appeal because notice of appeal was not filed within time provided. The Appellate Division of the High Court, Per Curiam, held that timely notice of appeal is necessary to give court jurisdiction and as notice of appeal was filed after time allowed, without excuse, court was without jurisdiction to consider appeal.

Motion to dismiss granted.

1. Appeal and Error-Notice and Filing of Appeal-Excuse for Late Filing
Filing of a notice of appeal within the time limited is essential to the jurisdiction of the court upon appeal. in the absence of some most

unusual circumstances, the most clearly recognized exception being where the failure to file is the result of the default of some officer of the court.

2. Appeal and Errox-Notice and Filing of Appeal-Excuse for Late Filing
Mere ignorance of or failure to inquire about the law is clearly insufficient excuse for late filing of the notice.

Counsel for Appellants:

ROGER ST. PIERRE

Counsel for Appellees:

No Appearance for Appellees on Hearing of Motion

Before BURNETT and TURNER, *Associate Justices*,
CLIFTON, *Temporary Judge*

PER CURIAM:

The plaintiffs and appellees have moved to dismiss the appeal in the above action on the ground that the notice of appeal was not filed within the sixty days following entry of the judgment, as provided in the judgment order.

[1,2] The judgment order was entered on July 12 and the notice of appeal was filed on September 11, one day late. Therefore this court is without jurisdiction to hear the appeal and the motion to dismiss must be granted. The law regarding the necessity of the timely filing of notices of appeal was well stated by then Chief Justice Furber in *You v. Gaameu*, 2 T.T.R. 264, as follows:-.

"The right of appeal is one granted by the Code and not a matter of inherent right or requirement of substantial justice. Filing of a notice of appeal within the time limited is essential to the jurisdiction of the Court upon appeal in the absence of some most unusual circumstances, the most clearly recognized exception being where the failure to file is the result of the default of some officer of the court. Mere ignorance of or failure to inquire about the law is clearly insufficient excuse for such late filing. 3 Am. Jur., Appeal and Error, § 417."

Nearly identical language to that quoted above was used in the case of *Aguon v. Rogoman*, 2 T.T.R. 258. This was commented upon in the recent decision of the Appellate Division of this court in *Ebas Ngiralois et al. v. Trust Territory of the Pacific Islands*, 3 T.T.R. 637.

No unusual circumstances have been shown in this case. Appellants in their Answer to Motion to Dismiss merely stated that the "appeal was filed well ahead of the expiration date" and their counsel at the hearing of the motion to dismiss the appeal blamed the late filing upon the appellants' difficulty in obtaining counsel and upon the lateness in transmitting to them of the entry of the judgment, reducing their time to file notice of appeal. As to the latter contention, Justice Goss had already taken cognizance of possible delays in the transmittal of the judgment order by providing for filing of the notice of appeal within sixty days of the entry of the order, instead of the thirty days allowed by Section 198 of the Trust Territory Code.

On hearing, counsel for appellants conceded that the notice of appeal had been filed out of time, but urged the court to assume jurisdiction nevertheless in the interests of substantial justice. In support he cited various alleged deficiencies in the judgment in that it contains ambiguities or uncertainties, as well as judgment for items which are either speculative or left open for later determination, and, in some respects, is inconsistent with the Findings of Fact. As we have said, however, timely notice of appeal is necessary in order to give the court jurisdiction; without jurisdiction we are unable to inquire into the matters urged by counsel.

This is not to say that appellants are left without possibility of relief. Proper application for relief from judgment under Rule 18e, Rules of Civil Procedure, would appear to be appropriate if the situation is as urged by appellants.

The motion to dismiss the appeal is granted.