

**YIRIG, BY AGATHA RUETENAN, his personal representative,
Plaintiff-Appellant**

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Defendant-Appellee**

Civil Appeal No. 144

Appellate Division of the High Court

Yap District

July 7, 1976

Appeal from judgment entered upon motion of defendant at close of plaintiff's case. The Appellate Division of the High Court, Burnett, Chief Justice, granted defendant's motion to dismiss appeal on ground that notice of appeal was not timely.

1. Courts—Jurisdiction—Filing Notice of Appeal

Appellate jurisdiction is dependent upon timely filing of notice of appeal. (6 TTC § 352)

2. Courts—Jurisdiction—Filing Notice of Appeal

Where case was tried in Yap District Court, attempted filing of timely notice of appeal with clerk of High Court in Saipan did not meet requirements of statute providing for filing of notice "with the presiding judge of the court from which the appeal is taken, or with the Clerk of the Court for the district in which the court was held." (6 TTC § 352)

3. Appeal and Error—Generally

Where notice of appeal filed with clerk of court stated only that an appeal was taken from judgment entered by trial division, notice did not comply with rule which requires that notice of appeal set forth "a concise statement of the grounds on which he appeals". (Rules Civil Procedure, Rule 21)

4. Courts—Jurisdiction—Filing Notice of Appeal

Where case was tried in Yap District Court and judgment was entered on May 28, and an attempted improper filing of notice of appeal within time required by statute was made with clerk of High Court in Saipan, and then notice of appeal was properly filed with clerk of Yap District Court on July 9, and filing was not timely, appellate division had no jurisdiction and appeal would be dismissed. (6 TTC § 352)

BURNETT, *Chief Justice*

Judgment in this matter was entered on May 28, 1976, at

the close of plaintiff's case, upon motion by the defendant. Notice of appeal was filed with the Clerk of Courts in Yap on July 9, 1976.

Defendant-Appellee thereafter moved to dismiss on the grounds that the notice was filed more than thirty days after entry of judgment by the Trial Division of the High Court. Appellant responded by affidavit showing an attempt to file the notice of appeal had been made with the Clerk of the High Court in Saipan; that the clerk refused to file the notice which was thereafter directed to the Clerk of Courts in the Yap District. Clearly, the notice was filed with the clerk in Yap outside of the thirty-day period prescribed by Title 6 TTC Sec. 352.

[1] Section 352 requires that any appeal be taken by filing notice thereof with "the presiding judge of the court in which the appeal was taken, or with the clerk of the court for the district in which the court was held, within thirty days." The court has consistently held that its jurisdiction is dependent on timely filing of the notice. *Abrams v. Johnston*, Civil Appeal No. 131, 7 T.T.R. 341 (App. Div., 1975)

On argument, appellant urged that the facts were similar to those in the case of *Ebas Ngiralois, the Remed lineage and Unknown Owners v. Trust Territory*, 3 T.T.R. 637, in that there had been a clear attempt to file the notice with the presiding judge, that is, with the Chief Justice, and that consequently the failure to timely file in the Yap District should be forgiven, just as it was in *Ngiralois*.

In my view, the two cases are clearly distinguishable. It is true that in *Ngiralois* at page 638, the Appellate Division did refer to "the Chief Justice 'the presiding judge of the court from which the appeal was taken'." What was not noted in that decision of the Appellate Division was that the then Chief Justice was the Presiding Judge in the Trial

Division case from which appeal was taken. See 3 T.T.R. 637.

In the matter now before me, an Associate Justice of the High Court was the "Presiding Judge" in the Trial division disposition, and entered the judgment from which this appeal is taken.

[2] Obviously, an attempt to file notice of appeal in Saipan does not meet the requirements of 6 TTC Sec. 352; the Clerk of Courts for the Marianas has neither authority nor responsibility to accept, for filing, any notice with respect to matters occurring outside of his district-limited jurisdiction.

As noted initially, the Trial Court dismissed this action and entered its judgment on May 28th at the close of the plaintiff's case. Nothing appears which would have precluded timely filing of the appeal.

[3, 4] As a further comment, the notice of appeal filed with the Clerk of Courts, Yap District, stated only that an appeal was taken from the judgment entered by the Trial Division and, as such, does not comply with our rules, which require a notice of appeal to set forth "a concise statement of the grounds on which he appeals." Rules of Civil Procedure, Rule 21.

The Motion is granted and this appeal is hereby Dismissed.