

YOU, Plaintiff
v.
GAAMEU, Defendant
Civil Action No. 26
Trial Division of the High Court
Yap District
October 26, 1961
See, also, 2 T.T.R. 98

Appeal from judgment of Yap District Court. Appellant moved for leave to file late notice of appeal on ground he and his counsel did not understand whether second appeal, after first appeal resulted in remand, is allowed. The Trial Division of the High Court, Chief Justice E. P. Furber, held that mere ignorance or failure to inquire about the law is insufficient excuse for late filing of appeal.

Motion denied.

1. Appeal and Error—Generally

Right of appeal is one granted by Trust Territory Code and is not matter of inherent right or requirement of substantial justice.

2. Appeal and Error—Notice and Filing of Appeal

Filing of notice of appeal within time limited is essential to jurisdiction of court upon appeal 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 rule regarding late filing of appeal is where failure to file is result of default of officer of court. (T.T.C., Sec. 198)

4. Appeal and Error—Notice and Filing of Appeal

Mere ignorance of or failure to inquire about the law is insufficient excuse for late filing of appeal. (T.T.C., Sec. 198)

5. Appeal and Error—Scope of Review—Newly-Discovered Evidence

Newly-discovered evidence is not good ground for either first or second appeal.

6. Appeal and Error—Second Appeal

Second appeal may be taken after new trial on remand after prior appeal, provided second appeal is on new ground not covered in decision on previous appeal.

7. Appeal and Error—Notice and Filing of Appeal

Notice of second appeal after first appeal results in remand must be filed within time limited by Code after judgment based on new trial. (T.T.C., Sec. 198)

YOU v. GAAMEUL

<i>Assessor:</i>	JUDGE FALAYOOR
<i>Interpreter:</i>	FEICHIN C. FAIMAU
<i>Plaintiff acted for himself</i>	
<i>Counsel for Defendant:</i>	LINUS RUUAMAU

FURBER, *Chief Justice*

The judgment in question was entered September 2, 1960. The motion in question for leave to file notice of appeal late was filed October 9, 1961. The only ground alleged for late filing was that the defendant and his counsel did not understand whether they could appeal again after the case had once been appealed and remanded for a new trial subject to directions and that, therefore, defendant had waited until the next sitting of the Trial Division of the High Court in the Yap District to inquire about this matter, that next sitting being after the thirty days allowed for appeal by Section 198 of the Trust Territory Code had expired.

The court gave notice before hearing counsel that it was unlikely the motion could be allowed, but that, if the motion for late filing of notice of appeal could not be allowed, the court, in order to avoid the danger of any substantial injustice, would be willing to look into the merits of the matter as a matter of review under Section 199 of the Trust Territory Code. The court therefore requested both parties to be ready to present whatever arguments they had on that basis. Counsel for the defendant argued on this point that the evidence was not sufficient to support a judgment for the amount entered by the District Court after remand, while the plaintiff maintained that evidence presented by him would have justified a far larger judgment.

OPINION

[1-4] The right of appeal is one granted by the Code and not a matter of inherent right or requirement of sub-

stantial 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.

No default of any officer of the court has been claimed or suggested in this action.

[5] The court disagrees most emphatically with the assertion of counsel for the defendant that a second appeal may be taken if it is on the ground of newly discovered evidence. Newly discovered evidence is not a good ground for either a first or second appeal. 3 Am. Jur., Appeal and Error, § 835. This assertion by the defendant's counsel seems entirely beside the point in this action, however, as the defendant has not alleged any newly discovered evidence.

[6, 7] The court believes the correct rule to be that a second appeal may be taken after a new trial following a remand upon a prior appeal provided the second appeal is on a new ground which has not been covered in the decision on the previous appeal. 3 Am. Jur., Appeal and Error, §§ 985 and 986. Notice of such second appeal, however, must be filed within the time limited by Section 198 of the Code after the judgment based upon the new trial.

ORDER

The defendant's motion for leave to file late a notice of appeal in this action is denied.

ACTION UPON REVIEW

The court, in accordance with its offer made before hearing arguments, has carefully reviewed the record and

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finds ample proper evidence therein to support the judgment of the District Court. As a matter of review therefore the judgment of the District Court entered September 2, 1960, is affirmed this 26th day of October, 1961.