

BENJAMIN M. ABRAMS, Appellant

v.

**EDWARD E. JOHNSTON, High Commissioner, Trust Territory
of the Pacific Islands, Appellee**

Civil Appeal No. 131

Appellate Division of the High Court

November 14, 1975

Appeal from dismissal of petition for writ of mandamus. The Appellate Division of the High Court, Brown, Associate Justice, held that appeal would be dismissed where it was filed fifty-seven days late.

1. Appeal and Error—Notice and Filing of Appeal—Late Filing

Where appeal was to be filed within thirty days after the entry of judgment and was not filed for eighty-seven days, it would be dismissed. (6 TTC § 352)

2. Appeal and Error—Notice and Filing of Appeal—Generally

The right of appeal is neither inherent nor a requirement of substantial justice, but is granted and governed by the statutes.

3. Appeal and Error—Notice and Filing of Appeal—Relief

The only circumstance recognized by high court as entitling one to relief from requirement of timely filing of appeal is failure to timely file due to some default on the part of an officer of the court. (6 TTC § 352)

For the Appellant: ARRIOLA & CUSHNIE, by WILLIAM FITZGERALD, ESQ.
For the Appellee: RICHARD I. MIYAMOTO, ESQ., Attorney General, by CARLOS H. SALII, ESQ.

Before BROWN, Associate Justice, HEFNER, Associate Justice, and WILLIAMS, Associate Justice

BROWN, Associate Justice

In the trial court, Appellant sought a Writ of Mandamus to compel the Appellee to issue a corporate charter. After hearing, and on October 21, 1974, the court ordered that the petition be, and it was dismissed.

On December 27, 1974 a purported Notice of Appeal was signed, as was an affidavit executed by Appellant alleging that the latter had not received a copy of the said Order of Dismissal until December 26, 1974, although he had advised the Clerk of Courts on September 7, 1974 that on and after that date his address was Post Office Box X, Agana, Guam 96910. Both the purported Notice of Appeal and the Affidavit were filed with the Clerk of Courts, Mariana Islands District, on January 16, 1975.

[1] The sole question with which we may be concerned is whether or not appellant is entitled to consideration of his purported appeal when notice of the same was filed some eighty-seven days after entry of the trial court's judgment.

Appellant is not entitled to such consideration here, and the purported appeal must be dismissed.

6 TTC 352 provides in part that notice of appeal in a civil action shall be filed within thirty days after entry of judgment. It is clear that the running of time commences as of the date of entry of judgment and not as of the date counsel is in receipt of notice thereof.

[2] In construing this provision of the Trust Territory Code, this Court has held consistently that its jurisdiction depends upon timely filing of the notice. *You v. Gaameu*, 2 T.T.R. 264, 266; *Aguon v. Rogoman*, 2 T.T.R. 258, 260-261; *Milne v. Tomasi, et al.*, 4 T.T.R. 488. As pointed out by the court in *You v. Gaameu* (supra), the right of appeal is neither a matter of inherent right nor a requirement of substantial justice; instead, it is a matter granted and governed by the provisions of the Code.

[3] Relief from the requirement of timely filing is available only under the most unusual circumstances. The only such circumstance recognized by this court has been that the failure to file on time was the result of some default on the part of an officer of the court. *Ngiralois v. Trust Territory*, 3 T.T.R. 637. No such circumstance is present here.

Accordingly, and upon its own motion, the Court hereby orders that the purported appeal herein be, and it is dismissed.