HIDEO MEREB, et al., Plaintiffs-Appellants

v.

ADELBAI ORRENGES and BANK OF HAWAII, Defendants-Appellees

Civil Appeal No. 245

Appellate Division of the High Court

Palau District

October 1, 1980

Appeal from a judgment denying plaintiffs' claim of membership in a clan. The Appellate Division of the High Court, Gianotti, Associate Justice, held that where Notice of Appeal did not comply with Appellate Procedure rule, and did not raise specific errors of law and fact which the court could examine, but merely stated bare allegations as to error, the Appellate Division had no alternative but to affirm the judgment of the trial court.

1. **Appeal and Error—Generally**

   In an appeal the burden is on the appellant to affirmatively show that there has been some error and that he has been prejudiced thereby.

2. **Appeal and Error—Scope of Review**

   Appellate court has a duty to reverse the trial court if its judgment was clearly erroneous.

3. **Appeal and Error—Scope of Review**

   Appellate Division of the High Court on appeal from a decision of the Trial Division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts.

4. **Appeal and Error—Generally**

   It is necessary, in assignments of error, to show specifically wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant.

5. **Appeal and Error—Affirmance—Grounds**

   Where Notice of Appeal did not raise specific errors of law and fact which the court could examine, but merely stated bare allegations as to error, Appellate Division had no alternative but to affirm the judgment of the trial court.

Counsel for Appellants: MOSES ULUDONG, *Trial Assistant*, Koror, Palau 96940

Counsel for Appellees: CARLOS SALII, ESQ., Koror, Palau 96940

Before BURNETT, *Chief Justice* and GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

This appeal raises a problem which continually comes before the Appellate Division of the High Court and which causes the court a great deal of frustration in attempting to render an opinion.

Appellants have appealed from the judgment of the trial division which denied plaintiffs' claim of membership in a clan known as "Ochedaruchei." The clan resides on Angaur Island, presently within the District of Palau, soon to be known as the Republic of Belau. Appellants' Notice of Appeal raises four issues:

1. This notice of appeal is taken in pursuance of 6 Trust Territory Code, Section 352.

2. The Court in rendering its judgment committed errors in the facts as well as the laws concerning this matter.

3. The Court further violates Palauan customary laws by excluding the plaintiffs from membership in the clan.

4. There are essential information stated in the judgment which were never testified to during trial.

A reading of the Notice shows a complete failure on the part of the appellants to comply with the Trust Territory Rules of Appellate Procedure, Rule 3, which states:

> The Notice of Appeal shall . . . contain a concise statement of the questions presented by appeal . . . . Only questions set forth in the notice of appeal or fairly comprised therein will be considered by the Court.

Appellants' first paragraph of the Notice of Appeal pertains only to that section of the Trust Territory Code stating when appeals may be filed. See 6 TTC § 352. This section, of course, has been supplemented by the Trust Territory Rules of Appellate Procedure regarding any appeals filed subsequent to January 1, 1977, as this case was.

[1] Paragraph 1 of the Notice of Appeal does not raise any issue of law or fact, nor does it raise any question of error. Therefore, the Appellate Court would have nothing to decide.

In an appeal the burden is on the appellant to affirmatively show that there has been some error and that he has been prejudiced thereby. *Eram v. Trust Territory*, 3 T.T.R. 442, 444 (Trial Div. 1968).

[2] Paragraph 2 of the Notice of Appeal alleges the trial court has committed error in the facts as well as the law in rendering its, the court's, judgment. The Appellate Court thus has a duty to reverse the trial court if, in fact, the judgment was clearly erroneous. See the case of *Jatios v. Levi*, 1 T.T.R. 578 (App. Div. 1954).

However, here we have a situation where appellants, after filing their notice of appeal, did nothing further. Neither appellants nor appellees filed briefs which in itself should be sufficient to dismiss this appeal. Rule 20, Trust Territory Rules of Appellate Procedure. However, because of appellants' counsel's standing as a Trial Assistant rather than a duly admitted attorney in the Trust Territory Bar, the appeal was not dismissed (Order of Chief Justice Burnett, May 24, 1979). No oral argument was allowed and the case has been submitted.

We have before us the bare allegations as to error in the facts (Notice of Appeal, paragraph 2); violation of Palauan custom (Notice of Appeal, paragraph 3); essential facts not brought into the trial by way of evidence (Notice of Appeal, paragraph 4).

[3] As this court has said many times before and which it should not be necessary to repeat again and again,

The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts. The rule which is

followed by appellate courts is set forth in the recent case of *Lajutok v. Kabua*, 3 T.T.R. 630 at p. 633, as follows:

The findings of the trial court based upon the evidence will not be set aside unless there is manifest error. The function of the Appellate Division in its review of the record has been stated in this court in prior cases. Most recently in the case of *Hasumi Osawa and Kintoki Joseph v. Ernist Ludwig*, 3 T.T.R. 594, we find the following:

It is believed the function of the Appellate Division in considering appeals from the Trial Division should be reemphasized, and the following is quoted from *Kenyul v. Tamangin*, 2 T.R.R. 648:—

Superior appellate courts are, primarily, constituted for the purpose of dealing with questions of law; the consideration of any question of fact by such a court involves a decision on the record 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. *Arriola v. Arriola*, 4 T.T.R. 486, 487–488 (App. Div. 1969).

[4] With special consideration given to paragraph 3 relative to a violation of Palauan custom, the court has reread the transcript and has examined all prior authority to see if it can determine whether custom was in fact violated. The appellants have failed to advise the court how or why the customary laws of Palau were not followed.

It is necessary, in assignments of error, to show specifically wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant. *In re Estate of Wisley*, 5 T.T.R. 81, 82 (App. Div. 1970).

[5] By its examination, the court failed to find evidence of such a violation. The appellants could have raised specific errors of law and facts which the court could then examine; however, by appellants' failure to so do, this

court has no alternative but to AFFIRM the judgment of the trial court.

An appellate court does not weigh conflicting evidence and if there is reasonable evidence in support of the trial court's findings and conclusions, they will not be disturbed. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619, 623 (App. Div. 1968); *Hasumi Osawa and Kintoki Joseph v. Ernist Ludwig*, 3 T.T.R. 594 (App. Div. 1966); *Kenyul v. Tamangin*, 2 T.T.R. 648 (App. Div. 1964).

Finally, there is *dictum* to be found in the case of *Eram v. Trust Territory*, supra, which might appropriately be considered at this time. In that case, the Honorable Chief Justice Furber, then acting judge, stated as follows:

These loose practices by trained trial assistants is considered an undue imposition on the court. It is believed the time has come when trial assistants with substantial training should be expected to use greater diligence in preparing appeals and having taken care to see that the record accurately sets forth the facts on which they rely, should then restrict their arguments to matters shown on the record. *Eram v. Trust Territory*, supra, at 443.

Judgment AFFIRMED.