

In the Matter of the ANGAUR TRUST
Civil Appeal No. 430
Appellate Division of the High Court
Palau District
July 6, 1987

Challenge to the propriety of the dismissal of an untimely appeal. The Appellate Division of the High Court, per curiam, held that dismissal was proper, where relevant thirty-day period allowed for filing notice of appeal expired before petitioner filed its notice, even allowing three days for use of the mails.

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

Where relevant thirty-day period allowed for filing notice of appeal expired before petitioner filed its notice, even allowing three days for use of the mails, dismissal of the appeal was proper.

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

Timely filing of a notice of appeal is jurisdictional.

3. Judgments—Service—Mail

Argument that Trust Territory Rules of Procedure do not permit service of a judgment by mail was rejected.

Counsel for Respondents: CARLOS H. SALIH

Before KENNEDY¹, *Associate Justice*, HEFNER², *Associate Justice*, and NAKAMURA³, *Associate Justice*

PER CURIAM

In this case we are asked to overturn the dismissal of an untimely appeal. As the dismissal is supported by law, we decline to do so.

Petitioner filed a motion in the trial division, seeking reformation of the Angaur Trust. The trial division denied

¹ Judge of the United States Court of Appeals, Ninth Circuit, designated as Temporary Associate Justice by Secretary of Interior.

² Chief Judge of the Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

³ Chief Justice of the Supreme Court, Republic of Palau, designated as Temporary Associate Justice by Secretary of Interior.

the motion on August 13, 1986. The same day, a copy of the court's order was mailed to petitioner's attorney. On September 17, 1986, petitioner filed its notice of appeal. The Clerk of the High Court initially accepted the notice. Upon review, however, Justice Miyamoto deemed the filing untimely, vacated it, and dismissed the appeal. Petitioner now seeks en banc review, challenging the propriety of the dismissal and urging the disqualification of Justice Miyamoto.

Without questioning Justice Miyamoto's conduct in the matter, we exercise our discretion to review the timeliness of the appeal *de novo*. In view of this decision, the motion seeking disqualification of Justice Miyamoto, and the motion challenging the dismissal on the grounds that it was issued by a single judge, are rendered moot.

Turning to the merits, we find the dismissal consonant with the Trust Territory's Rules of Procedure. Appellate Rule 4 requires that a notice of appeal be filed within thirty days of service of the judgment in a civil case. Civil Rule 5 permits service by mail and provides that such service shall be complete upon mailing. Finally, Civil Rule 6 states that in computing time periods, the day of the event shall not be included and three days shall be added to all deadlines if service is by mail.

[1] In this case, the judgment was mailed to petitioner's attorney on August 13. Excluding the day of the event, mailing of the judgment, the time for filing a notice of appeal began running August 14. Even adding three days for use of the mails, time expired before petitioner filed its notice of appeal on September 17. Petitioner's notice of appeal was thus untimely. As the timely filing of a notice of appeal is jurisdictional, *United States v. Robinson*, 361 U.S. 220, 224 (1960), dismissal was proper.

[2] Petitioner argues that the rules do not permit service of a judgment by mail. In support of this argument, petitioner relies on Appellate Rule 5, which provides that

[w]henver any pleading, motion, notice, brief or other document is required by these rules to be served, said service shall be accomplished in accordance with Rule 5, Trust Territory Rules of Civil Procedure [which permits service by mail].

Because service of judgments is not required, petitioner argues, the rules permitting service by mail do not apply, and actual delivery is necessary. Plainly, however, service of judgments must be required or parties would never learn the disposition of their cases. Even if service of judgments were only permitted, and not required, there is no reason to support that service by mail would be unacceptable.

[3] The petitioner's argument that there was good cause for the untimely filing cannot be entertained by the court and was not presented properly to the trial division, so this argument too must be rejected.

Petitioner's counsel, Douglas F. Cushnie, shall pay the sum of \$500.00 directly to counsel for respondents, Carlos H. Salii, to reimburse him for travel costs and expenses. Such payment shall be made within 30 days. This sanction is for failure to appear.

AFFIRMED.