

TIKERE, Appellant
v.
MUN, SIMICHI and that part of WITO Lineage headed by
SOKOPUA, Appellee

Civil Appeal No. 37
Appellate Division of the High Court
Truk District

December 5, 1968

SHOECRAFT, *Chief Justice*, TURNER, *Associate Justice*

Upon motion of the appellant to dismiss the appeal filed herein the same is hereby considered by the Appellate Division of the High Court and said motion is granted.

JOAQUIN C. ARRIOLA, Defendant-Appellant

v.

IGNACIA ARRIOLA et al., Plaintiffs-Appellees

Civil Appeal No. 21
Appellate Division of the High Court

March 5, 1969

Appeal from -determination of ownership of land. The Appellate Division of the High Court, Per Curiam, held that the Appellate Division of the High Court will not set aside the findings of the Trial Division based upon the evidence unless there is manifest error.

Judgment affirmed.

1. Appeal and Error-Scope of Review-Facts

The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot re-weigh the evidence and decide whether in its opinion it should reach the same or different conclusion as the trial judge did as to the facts. (T.T.C., Sec. 200)

2. Appeal and Error-Scope of Review-Facts

The findings of the trial court based upon the evidence will not beset aside unless there is manifest error. (T.T.C., Sec. 200)

For the Appellant:

WILLIAM B. NABORS

For the Appellees:

FINTON J. PHELAN, JR.

Before TURNER, *Associate Justice*, SHRIVER, *Judge*,
District Court of Guam and CLIFTON, *Temporary
Judge*

PER CURIAM

This action involves a family dispute over land. The Judgment Order sufficiently shows the facts and the basis for the judgment which finds that a valid compromise agreement was reached by the parties to this action, and it is unnecessary to repeat them.

[1,2] The appellant's grounds for the appeal relate to some testimony which he believes is inconsistent with the findings of the trial court, and he states generally that "the judgment was contrary to the weight of the evidence". The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot re-weigh 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. Ernest 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 re-emphasized, and the following language is quoted from *Kenyl v. Tamangin*, 2 T.T.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." , "

See also: *Adelbai v. Ngirchoteot*, 3 T.T.R. 619.

This rule is codified in Section 200 of the Trust Territory Code, which reads in part as follows : -

"The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous,"

The findings of fact in this case are supported by the evidence, and the judgment in this action is affirmed.

JAMES & ALEXANDER MILNE, Appellants

v.

TOMASI, BULA & MOSES, Appellees

Civil Appeal No. 42

Appellate Division of the High Court

March 18, 1969

Trial Court Opinion—4 T.T.R. 44

Motion to dismiss appeal because notice of appeal was not filed within time provided. The Appellate Division of the High Court, Per Curiam, held that timely notice of appeal is necessary to give court jurisdiction and as notice of appeal was filed after time allowed, without excuse, court was without jurisdiction to consider appeal.

Motion to dismiss granted.

1. Appeal and Error-Notice and Filing of Appeal-Excuse for Late Filing

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