

ESTATE OF LANILOBAR BY EJBIL,
SPECIAL ADMINISTRATOR, Plaintiff

v.

KIOJAN, LIA and LOKOBOJ, Defendant

Civil Action No. 63

Trial Division of the High Court

Marshall Islands District

January 31, 1967

Motion of plaintiff for order in aid of judgment and motion of defendant for relief from judgment. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that where motion for relief of judgment related to judgment entered eight years previously such a motion was too late under Rule 18e of the Rules of Civil Procedure.

Defendant's motion for relief from judgment denied.

1. Courts-Master's Report

As any person signing a document must be responsible for its contents, then it is improper for a Clerk of Courts to prepare a Master's Report and then have the Master sign it without giving it the proper attention.

2. Judgments-Relief From Judgment

Where testimony recorded in Master's Report was generally favorable to defendants, and if said testimony had been omitted from the Report it would not have strengthened defendant's position in any way, the defendants had not shown that they were materially prejudiced by the Master's mistake so as to entitle them for relief from judgment under Rule 18e of the Rules of Civil Procedure.

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3. Civil Procedure-Generally

An obligation rests upon all parties to a law suit to keep themselves advised as to its progress and outcome.

4. Judgments-Relief From Judgment

The failure of a Clerk of Court to provide a translated copy of the judgment to the complaining defendant is not ordinarily a sufficient ground for the opening or vacating of a judgment resulting therefrom.

5. Judgments-Relief From Judgment

In order to maintain the stability of judgments in the Trust Territory the provisions of Rule 18e of the Rules of Civil Procedure must be consistently followed.

<i>Assessors:</i>	JUDGE SOLOMON LENEBI, (Nov. 30, 1966), and JUDGE KABUA KABUA by consent (Jan. 31, 1967)
<i>Interpreter:</i>	LANGINMO JACOB
<i>Counsel for Plaintiff:</i>	MONNA
<i>Counsel for Defendants:</i>	JAMON

GOSS, *Associate Justice*

This matter came before the Court on Plaintiff's Motion of December 10, 1965, for an Order in Aid of Judgment and Defendant's Motion filed April 6, 1966, for Relief from Judgment. During the course of the Hearings, Counsel for Plaintiff withdrew his Motion for an Order in Aid of Judgment and stated that a separate suit on the Judgment would be filed. This suit was to be filed in the District Court if the amount claimed was less than \$1,000. Defendant Lokoboj alleged various irregularities as to the proceeding before the Special Master in the case and also alleged that he was not furnished a copy of the decision in the case in time to file his appeal. He admits that the Judgment was furnished to his co-Defendant and niece, Lia.

Defendants' claim herein must be considered to be un-

del' Rule of Civil Procedure 18e which provides that any motion for Relief from Judgment for mistake, inadvertence, surprise or excusable neglect must be made within a reasonable time and in any event must be made not more than one year after entry of the Judgment. Judgment in this case was entered on May 12, 1959. In the ensuing period both the Plaintiff and the then Clerk of Courts have died, making it more difficult to determine the validity of Defendants' claims.

[1,2] There is an indication that the Master's Report was prepared by the Clerk of Courts and was signed by the Master without his giving it the proper attention. Such a procedure is of course highly improper, as any person signing a document must be responsible for its contents. In this instance the Master has admitted that the Report is in error insofar as it pertains to Lia having been a witness in the case. However since the testimony recorded in the Master's Report and attributed to Lia is generally favorable to the Defendants and if said testimony had been omitted from the Report it would not have strengthened Defendants' position in any way, the Defendants have not shown in this hearing that they were materially prejudiced by the Master's mistake.

[3,4] An obligation rests upon all parties to a law suit to keep themselves advised as to its progress and outcome. With the Clerk of Courts deceased and no notation in the record, there is no way of obtaining his answer to the charge of not performing his duty of providing a translated copy of the Judgment to the complaining Defendant Lokoboj. However, the failure of a Clerk of Court to perform such a duty is not ordinarily a sufficient ground for the opening or vacating of a Judgment resulting therefrom. 30-A Am. Jur., p. 637-38, Judgments, § 667.

[5] **If** there is to be stability of judgments in the Trust Territory the provisions of Rule of Civil Procedure 18e must be consistently followed.

RULING

Defendants' Motion for Relief from Judgment was denied.
