

101 Phil. 612

[G. R. No. L-10823. May 28, 1957]

JUAN DE G. RODRIGUEZ, AS SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND HERACLEO R. MONTALBAN, AS ACTING DIRECTOR OF FISHERIES, PETITIONERS, VS. HON. ENRIQUE A. FERNANDEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO AND FELIPE DELUAO, RESPONDENTS.

D E C I S I O N

BENGZON, J.:

Petition for mandamus to compel Hon. Enrique A. Fernandez, Judge of Davao, to give due course to the appeal presented by herein petitioners in Special Civil Case No. 68 of his court of First Instance. The respondents say the appeal was filed out of time. That civil case commenced with an action by Felipe Deluao to modify the award of the Secretary of Agriculture and Natural Resources in an administrative contest

between him and Supremo Deluao regarding fishponds under the control of the Bureau of Forestry, in the Municipality of Padada, Davao. The said Secretary approved. Felipe's fishpond application for Lot No. 3907 (area 38. hectares) and Supremo's fishpond application for Lot No. 3162 (area 20 hectares). Felipe Deluao claimed both lots, for reasons not necessary to mention now.

After hearing the parties and their evidence, the respondent judge rendered judgment for the plaintiff, declaring him to be the rightful applicant and possessor of both lots, and issuing other suitable directives.

Notice and copy of the decision was sent to Atty. Marfori representing the Solicitor General's Office who had appeared for the herein petitioners, had filed the answer and had attended the trial in September and October, 1955; such notice was received on March 27, 1956. The Clerk of Court likewise served notice of the decision on the Assistant Fiscal of Davao on April 11, 1956, because said Fiscal had also appeared in November 1955 for the same officials. On April 12, 1956, the latter filed a notice of appeal, which was objected

to by Felipe Deluao, on the ground that it had been submitted beyond the period of appeal, counted from the receipt by Atty. Marfori of notice of the decision.

The fiscal replied to the objection; but the court found the appeal to be untimely, and turned it down.

It is contended in this petition that Atty. Marfori had previously withdrawn as counsel, that the Provincial Fiscal became the sole counsel of petitioners and that consequently the time for appealing should be reckoned from: April 11, 1956.

This contention is premised on the following incidents, as related by the court itself:

“On October 25, 1955, Atty. Marfori in open court made the following manifestation, which reads, as follows:

‘Atty. Makfori:

I want to make it of record that if this court will ever postpone’ the trial of this case, this representation might, not, be able to come to this Court in view of the fact that the traveling; expenses for our Department has already been exhausted. In view of the importance of these records which are now here, I should like to request this Honorable Court to issue an order to the Department for the submission of these records to this Court in care of the Clerk of Court, because this representation might not be able to come at the time this case will be transferred’ .”,

“On November 5, 1955, the Provincial Fiscal received the following communication which reads as follows:

November 5, 1955

The Provincial Fiscal Davao City

Sir:

This is to request your good office to represent the respondents Secretary of Agriculture and Natural Resources and the Director of Fisheries in Sp. Civil Case No. 63 (Felipe Deluao ve. Honorable Secretary of Agriculture and Natural Resources, et al.) now pending before the Court of First Instance of Davao and

set for hearing on November 25, 1955, in the sala of Judge Fernandez thereat.

In this connection, the District Fisheries Officer at Davao City, on even date, has been instructed to extend his cooperation to your office on the matter,' "

It is clear that there was no substitution. Apart from the fact that no proceedings for substitution of attorneys had taken place, the assistant fiscal herself¹ never claimed in the lower court that there had been such *substitution*. All she claimed was that the Fiscal's Office had actually appeared as counsel for respondents—not provisionally—and was entitled to notice, which was received only on April 11, 1956.

Under the Rules where a party has two attorneys, notice to one of them is notice to such party. (Section 2 Rule :27). "Wherefore the notice to Atty. Marfori on March 27, 1956 was notice to respondents, and the period for appealing—fifteen days²—started from that date.³

Wherefore, the appeal having been interposed on the sixteenth day, (March 27 to April 12) it was late by one day—tardiness which has heretofore been declared sufficient to bar an appeal.⁴

In one case⁵ it is true, we relaxed this rule because notice was given to an attorney who "appeared *provisionally* absence of the attorney who had entered his appearance in the case." And in another⁶ we found reasons not to apply the principle, because the notice had not been given to the *principal* attorney, who was considered as such by the *adverse party itself* and by the court.

However in this litigation no similar circumstances are brought to our attention to justify relaxation of the Rule. Indeed, if any attorney appeared provisionally or "in collaboration," it was probably the assistant fiscal of Davao, because the Fiscal would not have supplanted the Solicitor General's Office, which is supposed to be primarily the legal counsel of national officials and offices.

And if any equitable consideration is to be borne in mind, it is this: the party most directly affected by the court decision was Supremo Deluao who lost Lot No. 3162 to Felipe Deluao. Yet he did not care to appeal.

This petition should be, and it is hereby, denied.

No costs. Padilla, Montemayor, Reyes,. A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia and Felix, JJ., concur.

¹ Reyes vs. Court of Appeals, 74 Phil. 235.

² Ongsiako vs. Judge Natividad, 79 Phil., 3, 45 Off. Gaz. (No. 1) 229.

³ Delgado vs. Judge: Santiago, L-J8935, May 18, 1956.

¹ Annex D “opposition to motion to disallow appeal”.

² Rule 41 section 17.

³ “Venturina vs. Court of First Instance, 75 Phil, 804; Olivares vs. ILeola, 97 Phil., 253.
