

**CONSUELO AMUNATEGUE VDA. DE GENTUGAO, PETITIONER, VS.
HONORABLE COURT OF APPEALS, HONORABLE JUDGE JOSE R.
QUERUBIN AND HEIRS OF SANCHO GENTUGAO, RESPONDENTS.**

G.R. No. L-30340. June 30, 1976

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision of the Court of Appeals dated October 7, 1968 in CA-G.R. No. 39413-R, Consuelo Amunategue Vda. de Gentugao vs. Hon. Jose R. Querubin, etc. et al., dismissing the petition for mandamus filed by herein petitioner to compel the trial court to give due course to her appeal which was refused on the ground that her motion for reconsideration of the judgment was pro-forma and since her period for appeal was not suspended, said judgment had already become final and executory.

From the pleadings and briefs of the parties, it can be gathered that the main case relates to the correctness or incorrectness of the account submitted on January 26, 1965 to the trial court by petitioner, as Administratrix of the Intestate Estate of the late Sancho Gentugao, corresponding to the periods from July 30, 1959 to June 30, 1960 and from July 1, 1960 to April 30, 1961.[1] It appears that herein private respondents, as heirs of the said decedent, had objections to certain items of expenditures in said account for not being proper expenses of administration. Resolving this opposition, respondent judge issued on June 10, 1966, the following order:

"For reasons stated in the motion of counsel of the heirs of Sancho Gentugao dated May 28, 1966, the same is hereby granted, and the administratrix is hereby ordered to pay to the heirs the sum of P22,356.50 within a period of fifteen (15) days from receipt of this order.

SO ORDERED." (Page 9, Record.)

It is this brief order that petitioner sought to be reconsidered thru the motion of five (5) pages the nature of which, whether it is pro-forma or not, is the bone of contention in the instant case. Considering that it is precisely the tenor of said motion that has to be passed upon by the Court, it is inevitable to quote the same in full. It runs thus:

"MOTION FOR RECONSIDERATION

COMES NOW the judicial administratrix, by the undersigned counsel, and to this Honorable Court respectfully moves for the reconsideration of its Order dated June 10, 1966 and in support thereof respectfully alleges:

1. That on January 11, 1965 this Honorable Court issued an Order, the dispositive portion of which reads as follows:

‘Wherefore, the Judicial Administratrix is hereby ordered to amend her account by eliminating the items expended by her which redounded to her personal benefit and in lieu thereof, the amount of P100.00 per month as her allowance is hereby allowed and therefore it should remain as legitimate expenses of the estate in her amended account. The amended account should also include as net proceeds of the sugar produced in

1959-1960 sugar crop the amount of P678.11 and for the 1960-1961 sugar crop, the amount of P1,072.75. The Administratrix should submit her amended account within a period of ten (10) days from the date of the receipt of this order.

SO ORDERED.

Bacolod City, Philippines, January 11, 1965.

(SGD.) JOSE R. QUERUBIN
Judge'

2. That in compliance with the above-mentioned, order, the judicial administratrix on January 26, 1965 submitted the amended final statement of accounts from July 30, 1959 to June 30, 1960 and from July 1, 1960 to April 30, 1961;

3. That in their motion for reconsideration to the above-mentioned order of this Honorable Court dated January 11, 1965, the heirs of the late Sancho Gentugao claimed that the judicial administratrix should be held accountable in the sum of P20,019.84. This motion for reconsideration was dated February 4, 1965 or more than one (1) year after the amended final statement of account alleged in paragraph 2 hereof was submitted by the judicial administratrix.

4. That on February 23, 1965 the judicial administratrix through counsel filed their opposition to the motion for reconsideration and that on November 18, 1965 this Honorable Court issued an order ordering the administratrix to make adjustments of her amended account with the view to conform with the foregoing order and further that the administratrix is further ordered to submit her adjusted amended account within a period of ten (10) days from her receipt of said order including the receipts for the payment of the estate and inheritance tax. This order was complied, with by the herein judicial administratrix;

5. That in a certain pleading, dated January 26, 1966 the heirs of the late Sancho Gentugao submitted an opposition to the amended account of the judicial administratrix praying that the said accounts be disapproved and that the judicial administratrix should only submit items of expenses which should be paid by the estate and that the expenses over and above these items should be charged against her. The judicial administratrix on the other hand filed her reply to said opposition dated February 18, 1966 asking that the amended account submitted by her be approved and allowed;

6. That the heirs of Sancho Gentugao in their pleadings dated February 25, 1966 entitled 'Amended Opposition' claimed another sum in the amount of P22,558.96, praying that judicial administratrix be ordered to pay the said sum. Said amended opposition objected to certain items such as lumber, hand grinder, trailer accessories and others which are clearly the expenses in connection with the administration of the estate;

7. That on March 8, 1966 the judicial administratrix filed her reply to said amended opposition alleging that those expenses objected to are valid and legitimate in connection with the duties of the judicial administratrix in the preservation of the estate, and

8. That on the basis of the motion of the heirs of Sancho Gentugao which was set on June 4, 1966, this Honorable Court issued an order dated June 10, 1966 which is the subject of this motion for reconsideration.

ARGUMENT

It is submitted that the items objected to in the amended statement of accounts with the total sum of P14,024.50 are expenses in connection with the duties of the judicial administratrix in the preservation of the estate.

The heirs could not expect that the judicial administratrix can produce the total amount of P36,620.86 corresponding to the two (2) years production of the estate without paying the necessary and indispensable

expenses of sugar and palay owned by the intestate estate, without spending in the production of the same. In fact the purpose of the crop loan is the financing of the sugar cane crop and all necessary expenses in connection with the production of the crop owned by the intestate estate.

The heirs could not say that out of nowhere the intestate estate could produce the whole amount of P36,620.86 considering that the estate is agricultural in nature without the judicial administratrix paying the laborers who worked in the production of the sugar cane and producing the same in the above-mentioned amount, without paying or spending for the laborers, fertilizers and necessary cost of production until the crop is manufactured into sugar.

An accountant was hired by the judicial administratrix for the purpose of placing in order and in detail the expenses of the administration for the heirs to see for themselves where the amount received by the judicial administratrix goes and to convince them that the judicial administratrix had placed the money financed by the Philippine National Bank on a real and productive enterprise for these services she also pays the bookkeeper out of the estate fund.

With respect to the amount of P800.00 which the administratrix borrowed from Mrs. Maria Vda. de Montilla on June 30, 1960, the herein administratrix alleges that this amount was spent for the best interest of the estate and for which the estate was benefited. This is so because the production of sugar requires that the judicial administratrix has to meet the expenses incidental to sugar cane plantation until its final conversion into sugar, and such other expenses which require the judicial administratrix to preserve and protect the interest of the estate such as clearing, canalization and plowing. This amount was borrowed because during that time she was not able to get the crop loan from the bank, otherwise, the estate would have suffered for the delay in the clearing of the crops.

The expenses of administration should be those necessary for the management of the property; for protecting it against destruction, and possibly for the production of fruits. (*Lizarraga Hermanos vs. Abada*, 40 Phil. 124.)

The administrator shall be allowed necessary expenses in the care, management and settlement of the estate. (*Intestate of Daniel Quiambao and Gerardo Bondoc*, 40 Off. Gaz. 3317.)

As a general rule the representative will not be allowed credit for improper or unnecessary payments or expenditures made by him, especially in the case of a small and simple estate, and although disbursements which ultimately prove to have been unnecessary may be sometime allowed if made in good faith, and under a reasonable belief of their necessity.

It has already been stated, that for the purpose of administration growing out of a contract or obligation intended into by the personal representative he is to be reimbursed out of the estate, and that his claim for reimbursement must be superior to the rights of the beneficiaries. They are subject only to the lien of mortgage executed on specific property by the deceased in his lifetime. The expenses under this category include those paid for probate of the will, as well as in probate court as on appeal, or other proceedings in a contract, if carried in good faith, all expenses necessary in the preservation and protection of the estate, which have been held to include the cost of establishing a claim against the estate * * * repairs necessary upon a real estate of which the executor or administrator has lawful possession also constitute expenses of administrator. (*American Law of Administration* by Walmore; Vol. 2, page 1197, par. 362, third edition; italics supplied.)

The expenses of administration should be those necessary for the arrangement of the property, for protecting it against destruction or deterioration, and possibly for the production of fruits. (*Lizarraga Hermanos vs. Abada*, 40 Phil. 124.)

A perusal of the items embodied in the statement of accounts will show that the said items opposed are legitimate expenses in the administration of the intestate estate, considering the fact that they are legitimately incurred in and during the time the judicial administratrix was administering the property of the estate, in connection with the care, management and settlement of the estate.

WHEREFORE, in view of all the foregoing, it is respectfully prayed that the Order of this Honorable Court dated June 10, 1966 be reconsidered and set aside, and that the amended final statement of accounts submitted by the judicial administratrix be approved.

RESPECTFULLY SUBMITTED." (Pp. 10-14, Rec.)

In respondents' opposition to the foregoing motion, their principal contention was:

1. Motion for Reconsideration states no basic grounds:

In the said motion for reconsideration of the administratrix, she mentions, as supposed grounds supporting the same, the different orders of this Honorable Court and pleadings presented by the parties. There are eight (8) paragraphs by which are, according to her, the grounds for the reconsideration of the order. But all these pars. from 1 to 8, we repeat, only mention pleadings and orders which, in no way or manner show that the order of this Honorable Court dated June 10, 1966, has been issued wrongfully." (Page 16, id.)

Both the trial court and the Court of Appeals found such contention well taken, hence the instant petition.

Our considered view is that petitioner is correct. While her motion for reconsideration above-quoted is not artistically drawn and may be considerably improved upon in order to be more explicit in pointing out the errors in the impugned order, in substance, it adequately suffices as a motion for new trial which suspends the period for appeal. It is to be noted that the order against which the motion was directed was rather laconic and merely adopted by reference the "reasons stated in the motion of counsel for the heirs of Sancho Gentugao dated May 28, 1966" which order, to be sure, was not exactly as it should have been. Considering that from the nature of the incident being passed upon, the likelihood of an appeal by whosoever might be aggrieved thereby should have been obvious to the presiding judge, he should have known that in such appeal, because of the inadequacy of the form of his order, the appellate court would be at a loss or at least unnecessarily inconvenienced in trying to ascertain the definite basis of his order. It is the better practice, if it is not the imperative duty of any judge issuing a final and appealable order to take pains in stating clearly and comprehensively the reasons for its issuance, with specific references to the facts and the law relied upon, necessary for the full understanding of the action taken. No less than the Constitution enjoins that "(E)very decision of a court of record shall clearly and distinctly state the facts and the law on which it is based." (Art. X, Sec. 9, 1973 Constitution.) Indeed, where the court itself has not fully stated the exact bases of its order, as in the case of that involved here, to be very strict in requiring the party moving to reconsider the same to be more detailed and explicit in the statement of the grounds for reconsideration is expecting too much. Since the judge himself did not care to be specific, a certain degree of liberality in exacting from counsel strict compliance with the rules may be justified. In any event, We believe that the last paragraph of the above-quoted motion in question under the heading "Argument" sufficiently complies with the requirement of the applicable rule and jurisprudence, for it substantially indicates the basic justification for the items of expenditures objected to by respondents, namely, that they constitute actual expenses undertaken in the interest of the proper administration of the estate and are legitimately chargeable against the estate. Upon the foregoing premises, We hold that petitioner's motion is not pro-forma and should have been considered as having suspended her period to appeal from the order subject of said motion.

There is, however, another aspect of this case which makes it necessary for Us to rule that the appeal of petitioner was properly denied due course. In respondents' brief, Our attention is directed to the failure of the Court of

Appeals to pass upon a decisive point which was raised in the petition before it and which was in fact stated in the court's opinion as one of the issues to be resolved, and that is, whether or not the appeal bond of petitioner is fatally defective. Of course, it may be surmised that the inter-mediate court must have deemed it superfluous to resolve such question after it had held that the judgment had already become final, considering its opinion regarding the supposed pro-forma character of petitioner's motion for reconsideration.

Although this matter of the allegedly defective appeal bond of petitioner is not discussed in the petition filed with this Court and has been raised only in the brief of respondents, We see no legal impediment to Our considering the same. To be sure, there is no specific cross-assignment of error in respondents' brief covering the point, but it is sufficient, that in the exercise of their recognized right to bring to the attention of the appellate court any error committed by the court a quo, to the end that the judgment in their favor may be maintained [2] , for the respondents, as appellees, to refer to and discuss the ground upon which they would want the Court to base an affirmatory decision. In principle and by analogy, We can apply here Our ruling in *Relativo vs. Castro*, 76 Phil. 563, wherein We held that, "It is not incumbent on appellee, who occupies a purely defensive position, and is seeking no affirmative relief, to make assignments of error. When the trial judge decides a case in favor of a party on certain ground, the appellate court may base its decision upon some other point, ignored or erroneously decided in favor of appellant by the trial court. (*Garcia Valdez vs. Soteraña Tuason*, 40 Phil., 943.) An appellee does not have to file an assignment of errors but it is incumbent upon him to point out in his brief any errors against himself into which the court may be supposed to have fallen. (*Lucero vs. De Guzman*, 45 Phil., 852.)"

Anent the alleged defect of petitioner's appeal bond, it is true that in the decision of the Court of Appeals under review, no reference at all is made as to the nature of such alleged defect. But respondents have attached to their brief as Appendix "1" thereof a purported copy of the bond wherein it appears that although it is an undertaking of herein petitioner, as principal, and the Luzon Surety Company, Inc., as surety, the one who signed for petitioner is a certain Eugenio T. Sanicas, whose authority to act for her is not shown, and what is worse, he happens to have been, as said copy indicates, the notary public before whom said bond was acknowledged by the signatories thereof. Withal, in Annex G of the instant petition, reference is made not only to the fact that respondents objected to the bond but also to the disapproval thereof by the court below.

Relatively, it may be stated that after petitioner's counsel was served with respondents' brief of only six pages, he thrice asked for extension of time (totalling 25 days) to file a reply brief, alleging that the preparation thereof had already been started and that counsel was too busy with other legal work to finish the same on time, only to manifest three days after the last extension granted had expired that he was submitting the case without any reply brief. Such patent lack of candor on the part of counsel, Atty. Amanio D. Sorongon, is looked with disfavor by the Court, and counsel as well as all lawyers resorting to such practice, certainly inimical to the interests of justice, if only because of the unnecessary protraction of the case it entails and the element of irresponsibility of the lawyers concerned it involves, are warned that the Court will not hesitate to take appropriate disciplinary and other measures against those guilty of such fault. Thus, in the case at bar, We will take it, in the light of the circumstances aforementioned, that the omission of Atty. Sorongon to file a reply wherein he could have disputed respondents' factual representations as to the defect of petitioner's appeal bond is an implied admission of the flaw so indicated by respondents.

Accordingly, notwithstanding the silence of the decision under review on the point, We feel justified to rule now on the validity of petitioner's appeal bond. Otherwise, We would have to remand this case to the Court of Appeals for appropriate proceedings, which would just be a time-wasteful and circuitous way of administering justice, it being manifestly inevitable that a different result is well nigh impossible, a reliable and undisputed copy of the bond wherein its fatal defect is patent being in the record before Us.

Accordingly, following the view the Court adopted in *Marinduque Mining & Industrial Corporation vs. Enriquez*, 39 SCRA 369, We hold that petitioner's appeal bond filed with the court below was fatally defective, and incurably so. We held there:

"* * * Of the three appellants only MARINDUQUE appears as principal in the bond, and the one who signed in its behalf is its lawyer, Attorney Arsenio B. Yulo, Jr. whose authority to do so is not otherwise indicated, and in fact has not been shown to exist at the time, such that to cure the defect the board of directors of the company had to pass a resolution on June 11, 1966 ratifying and approving the action he had taken. It may thus be seen that if the failure to serve a copy of the appeal bond upon private respondents had not been raised by them and had been treated as an inconsequential matter the defect aforementioned would not have been brought to the fore and no steps to cure it would have been taken, to the possible prejudice of said respondents.

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"* * * The attempt to cure that defect does not excuse such non-compliance; otherwise hardly any objection would prosper, considering that an appellant could always neutralize it, as by amending the terms of the bond, or increasing its amount if insufficient or even filing a new bond altogether, and then saying that after all no substantial right or interest of the appellee has been affected.

In their memorandum petitioners make reference to an affidavit purportedly executed by the secretary of Attorney Arsenio Yulo, Jr. and submitted to the lower court to show that the failure to serve a copy of the appeal bond upon respondents was due to an honest mistake and inadvertence. No copy of said affidavit is attached to the record before us; nor do petitioners explain just what such mistake or inadvertence consisted of. However, from the discussion of this particular point in the memorandum for private respondents, it appears that Atty. Yulo instructed his secretary to take 'charge of perfecting the appeal,' and that the latter in turn gave the copy of the appeal bond to a messenger for him to serve it on respondents. No reliable explanation for his failure to do so is given, no statement by him having been presented. Under the circum-stances the claim of excusable negligence cannot be accepted."

In consequence, the instant petition must be dismissed. We realize that perhaps the court below might have been quite precipitate and inaccurate in analyzing petitioner's statements of account in controversy, but any thought of relief from this Court at this stage seems vain for as former Chief Justice Querube C. Makalintal postulated in *Marinduque*, *supra*:

"Nor is petitioners' plea that they have been unduly deprived of the right to appeal from the order dismissing their petition below of sufficient weight to grant the writ they pray for. The right to appeal is purely statutory, which must be prosecuted within the time and pursuant to the procedure prescribed for it. It is not an inherent right and is not a necessary element of due process. *Bello vs. Fernando*, 4 SCRA 135; *Santiago vs. Valenzuela*, 78 Phil. 397."

Before closing, We deem it appropriate to incidentally call the attention of counsel for respondents, Atty. Jose M. Estacion, that his reiteration in his brief and subsequent manifestations of his claim that petitioner's brief was filed out of time, which the Court had already ruled upon unfavorably to his contention as far back as in its resolutions of August 5, 1969 and September 3, 1969, is uncalled for and could constitute contempt, particularly since it is patently obvious that contrary to the unusual computation of said counsel, from June 18 to June 28, 1969, there were only ten (10) days, and not eleven (11), as contended by him. Such petulant attitude towards the Court must not be repeated.

PREMISES CONSIDERED , the petition is dismissed. No costs.

Fernando, (Chairman), Antonio, and Muñoz Palma, JJ., concur.

Aquino, J., concurs in the result. It does not appear that at the hearing of petitioner's accounts she was examined under oath and that she presented evidence in support of her disbursements (Sec. 9, Rule 85). Her appeal would be frivolous because the Appellate Court would have no basis for reviewing the probate court's order.

[1] Paragraph 2, Annex B of Petition.

[2] Moran, Rules of Court, Vol. 2, 1970 ed., pp. 502-503.

CONCURRING

AQUINO, J.:

I concur in the result. It does not appear that at the hearing of petitioner's accounts she was examined under oath and that she presented evidence in support of her disbursements (Sec. 9, Rule 85). Her appeal would be frivolous because the Appellate Court would have no basis for reviewing the probate court's order.

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