

**SPOUSES CLAUDIO ILAGA AND FRANCISCA ILAGA, PETITIONERS,
VS. REGIONAL TRIAL COURT, BR. 41, PINAMALAYAN, ORIENTAL
MINDORO, SPOUSES CLARITA ILAGA AND PERFECTO DIONISIO,
RESPONDENTS.**

Ponente: BARRIOS, J.

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BARRIOS, J.:

The petitioners Claudio and Francisca Ilaga (or spouses Ilaga) ask through certiorari that the Orders dated December 18, 2001 and January 28, 2002 issued by Branch 41 of the the Regional Trial Court of Pinamalayan, Oriental Mindoro (or RTC) in its Civil Case No. R-15040-99, be reversed and set aside for having been issued with grave abuse of discretion. The earlier Order denied the spouses Ilaga's Petition for Relief from Judgment while the later Order denied their concomitant Motion for Reconsideration.

On September 27, 1999 the spouses Ilaga filed a suit for Quieting of Title and Recovery of Possession with Damages against the respondent spouses Perfecto and Clarita Dionisio (or spouses Dionisio) with the RTC which was docketed as Civil Case No. R-1540-99.

The case was set for pre-trial initially on April 12, 2000, but the conferences were postponed several times for one reason or another. On the scheduled pre-trial conference of August 23, 2001, the spouses Ilaga and their counsel Atty. Sancho Ferrancullo, Sr. (or Atty. Ferrancullo) failed to appear prompting the RTC to dismiss the case for failure to prosecute. It held:

The above-entitled case has been pending for a (sic) quite a long time and yet the pre-trial conference has not even reached its termination due mostly to the various postponements interposed by both parties, not to mention, the frequent non-appearance of the plaintiffs.

The repeated absence of the plaintiffs clearly indicate that they are no longer interested in prosecuting their case.

ACCORDINGLY, for failure to prosecute their action for unreasonable length of time, this court has no other alternative but to dismiss the above-entitled case pursuant to Section 3, Rule 17 of the Revised Rules of Court. (p. 32, rollo)

Atty. Ferrancullo received a copy of the order of dismissal on August 28, 2001, but he did not move for its reconsideration nor file an appeal. Also Atty. Ferrancullo allegedly did not inform the spouses Ilaga of the dismissal of their case.

When the spouses Ilaga discovered on October 19, 2001 this mishap, they filed a motion for reconsideration but subsequently withdrew it and instead filed on November 12, 2001 a Petition for Relief from Judgment. Invoked as grounds for its grant are the policy of liberality in the application of the rules and the alleged negligence of Atty. Ferrancullo.

After going over the spouses Ilaga's petition, the RTC denied it in the first assailed Order holding that:

After a careful study of the grounds averred and argued by plaintiffs in their petition for relief to the mind of the Court cannot be considered as valid grounds that said omission particularly of not being informed by his counsel of the dismissal of the case was committed due to mistake, accident or excusable negligence as contemplated under Section 3, Rule 38 of the Revised Rules of Court.

WHEREFORE, the Petition for Relief filed by the plaintiffs is hereby DISMISSED for lack of merit without prejudice to vindicate his right over the subject land under litigation covered by TCT No. T-82020 registered in his name as defendant in Civil Case No. R-1691-2001.

SO ORDERED. (p. 51, rollo)

A motion for its reconsideration was filed but floundered too with the Order of January 28, 2002.

This prompted the spouses Ilaga to file this petition for certiorari and prohibition with prayer for the issuance of writ of preliminary injunction, positing these issues for Our resolution:

- The Honorable Public Respondent Gravely Abused Its Discretion Amounting To Lack and/or Excess of Jurisdiction when It Summarily Dismissed without the Benefit of Any Answer or Comment to the Petition for Relief for Judgment, and Despite the Fact that the Petition is Sufficient in Form and Substance, in its Order dated December 18, 2001;
- The Honorable Public Respondent Gravely Abused Its Discretion Amounting To Lack and/or Excess of Jurisdiction when It Denied Petitioners' Motion for Reconsideration, Without Hearing the Motion and Declaring the Same as Pro Forma Without Even Requiring the Private Respondents to File their Comment or Opposition to the Same. (p. 11, rollo)

The spouses Ilaga anchored their petition for relief from judgment on Atty. Ferranculo's excusable negligence, and asseverated that they should not suffer the consequences of their counsel's negligence. But the RTC denied the spouses Ilaga's petition, reasoning that the ground relied upon by them is not within the contemplation of Rule 38 of the 1997 Rules of Court.

Section 1 Rule 38 provides that (W)hen a judgment or final is entered, or any other proceedings is thereafter taken against a party in court through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. In order to be entitled to the relief under Rule 38, fraud, accident, mistake or excusable negligence must be adequately demonstrated.

Indeed, Atty. Ferranculo was negligent in failing to appear at the pre-trial conference. This was compounded by the failure to take prompt and timely measures to obtain redemption from the adverse consequences of his absence. But negligence, to be excusable must be one which ordinary diligence and prudence could not have guarded against (*Fukuzumi vs. Sanritsu Great International Corporation*, 436 SCRA 228). Atty. Ferranculo's omission could hardly be characterized as excusable, much less unavoidable, which would warrant the relief that spouses Ilaga are praying for.

Jurisprudence teems with pronouncements that clients are bound by the mistakes, negligence and omission of their counsel (*Fukuzumi vs. Sanritsu Great International Corporation*, 436 SCRA 228; *Gold Line Transit Inc. vs. Ramos*, 363 SCRA 262). Client's should suffer the consequences of the negligence, mistake or lack of competence of the counsel whom they themselves hired, and whom they had full authority to fire at any time and replace with another (*Del Mar vs. Court of Appeals*, 379 SCRA 295). While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to take the exception.

Relief cannot be granted on the flimsy excuse that the adverse Order of Judgment was rendered due to the neglect

of the petitioners' counsel. Otherwise, all that a defeated party would have to do to salvage his case would be to claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment and there would be no end to litigation as every shortcoming of counsel could be the subject of challenge by his client through another counsel, who if he were found wanting could be disowned by the same client through another counsel, and so on ad infinitum, thereby rendering the proceeding indefinite (*Insular Life Savings and Trust Company vs. Runes, Jr.*, 436 SCRA 317). In fine, no grave abuse of discretion, as the term is understood, can be imputed in the assailed Orders –

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

[*]Lampas Peralta and Romilla-Lontok, JJ., concur.

[*] Acting member per Office Order No. 154-06-RTR

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