

EL JUEZ DE PRIMERA INSTANCIA DE BAGUIO, LUIS L. LARDIZABAL Y SINFOROSO FAÑGONIL COMO ABOGADOS, Y EN REPRESENTACION DE VARIOS OPOSITORES, ROSEMARIE DE REMORIN Y OTROS, RECURRENTE...

G. R. No. L-4948. April 29, 1953

Ponente: PABLO, J.

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PABLO, J.:

En la actuacion especial No. 128 del Juzgado de Primera Instancia de Baguio, titulada "In re testate estate of the deceased R. Joseph Vda. de Ramon Valles," el Juez dicto una orden en 27 de marzo de 1950, denegando la legalizacion del testamento de la finada sobre el fundamento de que el lenguaje usado en el mismo no era conocido por la testadora. De esta ordon fue notificado el abogado de Jose Valles en 30 de marzo.

En 14 de abril del mismo año se presento una mocion de reconsideration y nueva vista, que fue denegada en 25 de agosto, y de dicha denegacion fue notificado el abogado de Jose Valles en 31 de agosto.

Antes de expirar el plazo de 30 dias para perfeccionar la apelacion, el abogado de Jose Valles presento una mocion pidiendo 20 dias adicionales para presentar el expediente de apelacion, mocion que fue concedida en 7 de septiembre. Fuera de los 30 dias de plazo original, pero dentro del plazo adicional de 20 dias, Jose Valles presento en 29 de septiembre de 1950 el correspondiente aviso de apelacion, fianza de apelacion y expediente de apelacion. Con la oposicion de los opositores a la legalizacion del testamento, el Juez desaprobo el expediente de apolacion y sobreseyo la apelacion en su orden de 28 de noviembre de 1950.

Porque la mocion de reconsideracion fue denegada, el recurrente Jose Valles presento ante el Tribunal de Apelacion el recurso de mandamus pidiendo la revocacion de la orden que sobreseyo la apelacion y que se ordene al Juez que apruebe y eleve a dicho Tribunal la fianza y expediente de apelacion.

En 29 de mayo de 1951 el Tribunal de Apelacion revoco la orden del Juez de Primera Instancia de Baguio y ordeno a dicho Juez que aprobase la fianza y expediente de apelacion y que se les diese el curso correspondiente. Contra esta order apelan el Juez de Primera Instancia de Baguio, los abogados Lardizabal y Fañgonil y los opositores a la legalizacion del testamento.

Los apelantes atribuyen al Tribunal de Apelacion seis errores, que pueden reducirse a uno solo: que erro al considerar extendido el plazo de la presentacion de la fianza de apelacion a otros 20 dias cuando el Juez de Primera Instancia concedio 20 dias de plazo adicional para presentar el expediente de apelacion.

Los plazos de apelacion son fatales, la falta de perfeccionamiento de la apelacion dentro del plazo fijado hace firme la decision. (Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Estate of Cordoba and Zarate vs. Alabado, 34 Phil., 920; Bermudez vs. Director of Lands, 36 Phil., 774; y Salaveria contra Albindo, 39 Jur. Fil., 945.)

Vencido el plazo, ipso facto queda firme la decision y automaticamente el tribunal pierde su jurisdiccion sobre el asunto. " * * * el que mas tarde se certifique la pieza de excepciones no puede restablecer una competencia que se ha perdido." (Layda contra Legaspi, 39 Jur. Fil., 89.)

"The view very generally held is that statutes which limit the time for appeals or proceedings in error are mandatory and jurisdictional (doctrina adoptada por 98 decisiones) and hence, in the absence of express provision to the contrary, an appeal or proceeding in error which is not sued out within the prescribed time will be disallowed or dismissed." (Adoptada por 201 decisiones) (4 Corpus Juris Secundum 925-927.)

"Los reglamentos de los tribunales que prescriben el plazo dentro del cual deben ejecutarse algunos actos, o en que deben practicarse ciertos procedimientos, son muy conocidos, y a menudo se han declarado tan absolutamente indispensables para impedir demoras innecesarias y para el ordenado y rapido despacho de los asuntos." Shioji contra Harvey, 43 Jur. Fil., 348.)

Cuando Jose Valles no presento la fianza de apelacion dentro del termino de 30 dias, ipso facto la decision ha quedado firme y necesariamente el Juzgado perdio jurisdiccion sobre el asunto: la aprobacion despues del expediente de apelacion era nula y de ningun valor y no podia conferir jurisdiccion al Tribunal de Apelacion. Por el hecho de que a Jose Valles se le concedieron 20 dias adicionales ademas de los 30 dias reglamentarios para presentar el expediente de apelacion, no quedo el apelante relevado de la obligacion de presentar la fianza de apelacion dentro de los 30 dias. Se permite y este Tribunal permitio en varias ocasiones un plazo adicional en la presentacion de la pieza de apelacion cuando, por lo voluminoso del expediente, se requiera mas tiempo y que realmente no haya lo suficiente para prepararlo; pero para presentar una fianza de apelacion de P60 no se necesita mucho tiempo como se necesita para preparar un expediente de apelacion. Por tanto, la concesion judicial de 20 dias de plazo adicional-a los 30 dias de plazo reglamentario-para la presentacion del expediente de apelacion no incluye la presentacion de la fianza de apelacion. La concesion de plazo adicional no se deduce, ni se presume: tiene que ser expresa. La orden apelada concedio plazo adicional para la presentacion del expediente de apelacion y nada mas: suponer que tambien concedia plazo adicional para la presentacion de la fianza de apelacion es darle un sentido que no lo tiene. La presentacion de la fianza es requisito indispensable para perfeccionar la apelacion. (Reyes contra Corte de Apelacion, 74 Jur. Fil., 235.)

La falta de presentacion de la fianza para la apelacion hace que la decision quede firme y pueda sobreseerse la apelacion motu proprio por el tribunal o a peticion del apelado. (Medran contra Corte de Apelaciones,[*] 46 Gac. Of., 4277.)

El articulo 3 de la Regla 41 dispone que "La apelacion se interpondra sirviendo a la parte adversa y presentando al juzgado que entendio del asunto dentro de treinta dias desde la notificacion de la orden o sentencia, un aviso de apelacion, una fianza para la apelacion, y un expediente de apelacion."

A falta de presentacion de la fianza de apelacion dentro del termino reglamentario, la decision quedo firme. Estando firme la decision, ya no tenia el Juez sentenciador jurisdiccion o facultad para aprobar el expediente de apelacion.

Se revoca la decision del Tribunal de Apelacion de 29 de mayo de 1951, con costas contra el recurrido.

Paras, Pres., Feria, Bengzon, Jugo, Bautista Angelo, y Labrador, MM., estan conformes.

DISSENTING

PADILLA, J.,

There is no dispute that the notice of appeal and the record on appeal were filed the day before the last of the 20-day period granted by the probate court to file the record on appeal from and after the expiration of the original or reglementary period of 30 days and that the appeal bond was filed the following day or on the last day of such extension or additional period of 20 days.

The prevailing party in the probate court of Baguio and the herein petitioners contend that the failure of the defeated party to file the appeal bond within the reglementary period of 30 days, notwithstanding the grant by the probate court of an extension or additional period of 20 days to file the record on appeal after the expiration of the reglementary period of 30 days, caused the decree which disallowed the probate of a will to become final and executory—the probate court losing thereby its jurisdiction to allow the defeated party to appeal from its decree.

Upon petition to compel the probate court to allow the record on appeal the Court of Appeals ruled in effect that the extension of the period to file the record on appeal carried with it that of the period to file the appeal bond. This judgment is now before us for review.

The majority is of the opinion that the steps to perfect an appeal must be taken within the period provided for in the rules, and that failure to do so causes the decree to become final and executory. The *raison d'être* of the rules of procedure is the laudable purpose and aim of disposing and deciding promptly and expeditiously litigations brought to courts for determination and adjudication. The basis or foundation of such rules must be either logic or expediency. If the construction, of a provision of the rules is unreasonable it must be changed. Strict adherence to the letter of the rules which runs counter to the very objective the rules intend or seek to accomplish and attain must be altered. Construing the same provisions under consideration this court has laid down the rule that the filing of the record on appeal carries with it that of the notice of appeal, so that failure to file it does not have the effect of causing the judgment to become final and executory. Strict adherence to the letter of the rule would run counter to its very purpose, aim and objective, which is to afford the defeated party in a litigation an opportunity to resort to a higher court for review of the judgment rendered against him. And because it is against reason and logic to rule that for failure to file a notice of appeal, which is one of the express requirements for the perfection of an appeal, within the period of 30 days after notice of judgment, the judgment becomes final and executory, where the defeated party has filed the record on appeal within such period of time, so this court has ruled in accord with reason, logic and justice, that the filing of the record on appeal within the period provided for in the rules carries with it that of the notice of appeal.[1] It is also the rule in this jurisdiction that such period or limitation of time which is intended to hasten the disposal of cases may be extended by the trial court upon petition filed before the lapse of the reglementary period.[2] In the case before us the probate court granted an extension of 20 days from and after the expiration of the reglementary period and it is not disputed that the notice of appeal and the record on appeal were deposited in the post office at Manila and sent by registered mail to the clerk of the probate court on the 19th day of the extension of time or additional period granted by the probate court and that the appeal bond was filed the following or last day of the additional period. To construe that the additional period of 20 days granted by the probate court to the party who is appealing from its decree disallowing the will referred only to the record on appeal would be illogical and devoid of reason, for what use would the appealing party have of such additional period for filing his record on appeal if after all the decree from which he is appealing has already become final and executory for his failure to file the appeal bond within the reglementary period of 30 days? Would it not be more in consonance with reason and logic to construe that an extension or additional period of 20 days to file the record on appeal granted by the probate court carried with it the same

extension to file the notice of appeal and the appeal bond? The principle that the right of appeal is only statutory and its preservation or enjoyment is made to depend upon compliance with the statutory provisions creating it is no argument against the view that the rule under consideration must be so construed as to accomplish its purpose and aim. And if to achieve that objective it is necessary to adopt a construction which after all does no violence to its letter and spirit but on the contrary comports with logic and reason, such interpretation must be adopted.

For these reasons I am of the opinion that the filing of the notice of appeal, of the record on appeal and of the appeal bond within the extension or additional period of 20 days granted by the probate court complies with the rule; that the appeal was duly perfected; and that the probate court is in duty bound to allow it.

The judgment of the Court of Appeals should be affirmed.

Tuason, J., concurs.

DISSENTING

REYES, J.,

This appears to me to be a clear case where legal technicality should yield to reason in order to serve the ends of justice.

Before the expiration of the 30 days allowed by the rules for perfecting an appeal, the herein respondent, as appellant in a probate case decided by the Court of First Instance of Baguio, asked and was given an extension of 20 days for filing his record on appeal, and within this additional period he was able to file not only the record on appeal but also the notice of appeal and the appeal bond. The court, however, disapproved the appeal bond and the record on appeal and dismissed the appeal on the grounds that the decision to be appealed from had already become final, because the appeal bond was not filed on time. But the Court of Appeals, on proper petition, issued an order commanding the trial court to approve the appeal bond and to approve and certify the record on appeal filed by the appellant.

For a very technical reason the majority opinion would revoke a well-considered decision of the Court of Appeals and deprive the appellant of his recourse to a higher court, this despite the appellate court's pronouncement that the appeal "does not appear to be frivolous" and that the dismissal thereof "could amount to an actual miscarriage of justice."

The Rules of Court have, indeed, prescribed a period of time for perfecting an appeal and have also provided that if the notice of appeal, appeal bond or record on appeal is filed not within the prescribed period the appeal shall be dismissed. But the period is extendible in the discretion of the court, and in the instant case an extension has been granted and within the extended period the notice of appeal, the appeal bond and the record on appeal were all filed. Ostensibly, it was for the filing of the record on appeal that an extension of time was asked and given with no mention made of the notice of appeal and the appeal bond. But bearing in mind that all three are required for the perfection of an appeal, and that any one of them would be useless without the others (with the possible exception of the notice of appeal which may be logically dispensed with when the record on appeal is filed on time (*Lopez vs. Lopez*,[*] 43 Off. Gaz., 2040; *Pablo vs. Enage et al.*, 53 Phil., 328; *Luengco vs. Herrero* 17 Phil., 29), it may well be supposed that the extension granted could also be availed of for the filing of the notice of appeal (if still needed) and the appeal bond without which the record on appeal would serve no purpose.

This supposition is reasonable and works no prejudice to anyone. What after all would be gained by having the appeal bond filed earlier than the record on appeal when without the latter the appeal cannot be perfected? In

outlawing the appeal bond just because it was filed not within the original period of 30 days fixed by the rules and thus pinning the appellant down to the letter of the law albeit there is good reason for allowing him to file the bond after the said period but not later than the record on appeal for which an extension was expressly granted, the majority opinion would make a fetish of a legal technicality and contribute to a possible miscarriage of justice. To me it is a plain mockery of justice to appear to allow a party more time to perfect his appeal and yet deny him the use of that additional time to perform an act without which the appeal cannot be perfected.

I vote to affirm the decision of the Court of Appeals.

Se revoca la decision del Tribunal de Apelacion.

[*] 83 Phil., 164.

[1] Luengo vs. Herrero, 17 Phil., 29, 34; San Pablo vs. Enage et al., 53 Phil. 328, 330-1; Lopez vs. Lopez, 43 Off. Gaz. 2040.

[2] Moya vs. Barton, 43 Off. Gaz. 836, 837; see also Lim vs. Singian, 37 Phil., 817; Layda vs. Legaspi, 39 Phil. 83; Santiago vs. Valenzuela, 44 Off. Gaz. 3291.

[*] 77 Phil., 133.

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