

GAVINO MARQUEZ, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND HILARION T. FELICIANO & SONS, INC., RESPONDENTS.

G.R. No. L-45428. June 30, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

We are constrained to give due course to this Petition for Review and set aside the Resolutions of the respondent Court of Appeals dismissing the appeal of petitioner herein under CA-G.R. No. 56085-R.

Petitioner Gavino Marquez is the defendant in Civil Case No. 1504 of the Court of First Instance of Lanao del Norte filed by Hilarion T. Feliciano & Sons, Inc. for recovery of possession of a parcel of land located in Iligan City. Judgment was rendered by the trial court against defendant Gavino Marquez who in due time appealed to the Court of Appeals.

Gavino Marquez filed his brief with the Court of Appeals. The appellee Hilarion Feliciano & Sons, Inc. now private respondent, moved to dismiss the appeal on the ground that the appellant's brief did not contain "a statement of the case and a statement of facts" in violation of Sec. 16, Rule 46 of the Rules of Court. This motion was opposed by counsel for Gavino Marquez in a pleading dated May 17, 1976.

Respondent court thru its 8th Division,[1] issued on August 4, 1976 a resolution to the following effect:

"Considering the motion filed by counsel for the plaintiff-appellee praying that the appeal be dismissed on the ground stated therein; and it appearing that despite receipt by counsel for the defendant-appellant on May 19, 1976 of the resolution of this Court requiring him to comment, there was no compliance nor response; the Court RESOLVED to CONSIDER the appeal in this case ABANDONED and DISMISSED." (p. 15, rollo)

A motion for reconsideration was filed by petitioner, calling attention that he had filed an opposition to the motion to dismiss appeal which in effect was his comment thereto. (pp. 16-17, rollo)

Notwithstanding the explanation of petitioner, the 8th Division,[2] in a resolution dated December 23, 1976 denied the motion for reconsideration in the following manner:

"Acting upon the motion filed by counsel for the defendant-appellant praying that the resolution of this Court dated August 4, 1976 dismissing the appeal be reconsidered and that the plaintiff-appellee be required to file his brief on the grounds alleged therein: It appearing that the alleged opposition to the motion to dismiss has not been filed in Court and considering the comment of the appellee, Motion for Reconsideration is DENIED." (p. 22, rollo)

We hold that the aforementioned resolutions of the Court of Appeals need to be set aside having been issued with grave abuse of discretion.

First of all, there was no abandonment of the appeal contrary to what was stated in the resolution of August 4,

1976, because petitioner did file his opposition to private respondent's motion to dismiss appeal. Even private respondent itself in its pleading entitled "Comment" dated October 16, 1976, which was in answer to petitioner's motion for reconsideration of the order of dismissal, admitted that petitioner filed an opposition which, to quote respondent, "may be considered as his (petitioner's) comment and therefore has complied with the afore-mentioned (respondent Court's) resolution." (p. 19, rollo) The dismissal of the appeal was therefore based on a wrong premise. Further-more, on the assumption that petitioner failed to comment on the motion to dismiss appeal, a perfunctory dismissal of the appeal on that ground was uncalled for. A resolution requiring compliance or directing counsel to show cause why disciplinary action should not forthwith issue would have been appropriate, although a resolution on the merits of the motion to dismiss appeal would have been more in keeping with a sound and equi-table rendition of justice.

Secondly, while it is true that petitioner's brief suffers from the defects alleged in the "Motion to dismiss appeal", viz: that it does not contain (1) a Statement of the case and (2) a Statement of facts as required in Section 16, paragraphs (c) and (d), Rule 46 of the Rules of Court[3] those infirmities and deficiencies are not to be considered sufficient bases for an outright dismissal of the appeal; rather, appellant, or the petitioner herein, is to be accorded the opportunity to correct, revise, or amend his brief to conform with the pertinent provisions of the Rules of Court. Under these circumstances, a court's action must conform with the time-honored precept that justice is to be rendered on the merits and substance of the litigation between the parties rather than on breach of technical rules on pleadings and procedure. Whatever deficiency there is in the brief of herein petitioner is purely technical which can be either overlooked or ordered corrected in order that the ends of justice may be better served and accomplished.

In the words of Justice Sherman Moreland which have never lost their validity and relevance to present-day problems:

"There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty." (Alonso vs. Villamor, 16 Phil. pp. 315, 321)

And as We said in *Obut vs. Court of Appeals, et al.*, "(W)hat should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities." [4]

"The cardinal rule remains that the discretionary power to dismiss appeals or not must always be exercised 'wisely and prudently, never capriciously, with a view to substantial justice.'" (Concurring Opinion, *Teehankee, J. Lopez vs. CA, et al.*, supra)

PREMISES CONSIDERED, We hereby set aside re-spondent Court's Resolutions of August 4 and De-cember 23, 1976, and order the reinstatement of petitioner's appeal in CA-G.R. No. 56085-R, leaving it however to respondent court to determine if the correction of petitioner's brief is essential for a proper and just conclusion of the issues raised in the appeal, provided that petitioner is given a reasonable length of time to make the correction if found necessary.

With costs against private respondent.

So Ordered.

Teehankee, (Chairman), Makasiar, Martin, Fernandez, and Guerrero, JJ., concur.

[1] Composed of Honorable Justices Conrado Vasquez, Mama Busran, and Samuel Reyes

[2] now composed of Honorable Justices Emilio Gancayco, Mama Busran and Samuel Reyes

[3] Rule 46, Section 16. Contents of appellant's brief. -

The appellant's brief shall contain in the order herein indicated the following:

xxx xxx xxx

(c) Under the heading 'Statement of the Case,' a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters - necessary to an understanding of the nature of the controversy, with page references to the record;

(d) Under the heading 'Statement of Facts,' a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

xxx xxx xxx

[4] L-40535, April 30, 1976, First Division, 70 SCRA 546, 554.

See also Pan American World Airways Inc. vs. Espiritu, et al., L-35401, January 20, 1976, 69 SCRA 36; Aznar, et al. vs. Court of Appeals, et al., L-31740, April 7, 1976, 70 SCRA 330; Gregorio vs. Court of Appeals, et al., L-43511, July 28, 1976, 72 SCRA 120; Lopez vs. Court of Appeals, et al., L-43767, February 28, 1977.

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