

**MUNICIPALITY OF TIWL, ALBAY; ORIEL CLUTARIO, IN HIS
CAPACITY AS MAYOR OF TIWL, ALBAY; CIPRIANO COMPETENTE, IN
HIS CAPACITY AS VICE-MAYOR OF TIWL, ALBAY; THE MUNICIPAL
COUNCIL OF...**

G.R. No. L-37520. December 26, 1973

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/451e7b371dd3/>

TEEHANKEE, J.:

The Court herein sets aside the appellate court's summary dismissal of petitioners' appeal from an adverse judgment of the Albay court of first instance even before receipt of the records of the appealed case as ordered by it in a prior mandamus case overruling the trial court's refusal to give due course to the appeal on the ground that it issued such dismissal precipitously and without considering and appreciating the unavoidable cir-cumstances of record not attributable to petitioners (appellants) that caused the delay in the transmittal of the records of the appealed case.

In an action for retirement benefits filed in the Albay court of first instance by respondent as plaintiff upon expiration of his two elective terms as mayor of petitioner municipality (January 1, 1960 to December 31, 1967), the trial court presided by Judge Perfecto Quicho rendered its decision of June 5, 1969 sentencing petitioner municipality to pay respondent the total sum of P10,217.55 as retire-ment benefits, attorney's fees and expenses of litigation.[1]

As the trial court subsequently issued its orders of August 1, 1969 and August 14, 1969 refusing to give due course to petitioners' appeal from its adverse judgment and to approve the record on appeal, petitioners had to secure a writ of mandamus from the Court of Appeals. The appellate court in its decision of March 5, 1970 granting mandamus, overruled the trial court's rulings that petitioners' timely motion for reconsideration and new trial to admit newly dis-covered evidence had not tolled the period for appeal and directed the trial court "to give due course to the appeal taken in the main case by the petitioners." [2] The decision was received by the trial court on August 17, 1970.[3]

The trial court thereafter failed nevertheless for a considerable period of time to transmit the records of the case as appealed by peti-tioners to the appellate court, notwithstanding the writ of mandamus issued by it and inquiries made by the provincial fiscal as counsel for petitioners. Several fortuitous circumstances were behind this delay, inter alia, serious injuries suffered in a train mishap by Judge Quicho of the trial court as a result of which he was unable to hold session for almost a year and no other judge was designated in his sala, besides the fact that Judge Quicho kept the records of the case in his personal possession; the declaration of martial law in September, 1972, a few months after Judge Quicho had returned to duty and the acceptance of his resignation in October, 1972, which left his court without a presiding judge once more.

In a motion dated March 8, 1973, respondent asked the trial court, then presided part-time (Mondays and Tuesdays) since February 13, 1973 by Judge Jose B. Madara, (who was appointed to another branch of the Albay

court), to dismiss the appeal. Judge Madara in an order dated May 21, 1973, upon consideration of the municipality's opposition and of the appellate court's order to forward the appeal to it, denied the motion to dismiss appeal and ordered that the record be so forwarded to the appellate court.

Respondent, without informing the appellate court of the trial court's action of May 21, 1973 denying his motion to dismiss the appeal and ordering the forwarding of the records to the appellate court, then filed under date of May 28, 1973 with the Court of Appeals a "Motion to Dismiss Appeal and/or Abandoned (sic)"[4] stating that the records of the case "are up to now still with the trial court and not transmitted to the appellate court, within the period allowed by law." He thus suppressed the fact that the records had already been ordered elevated to the appellate court in the trial court's order issued just a week earlier on May 21, 1973.

The Court of Appeals required comment from the clerk of the trial court and from petitioners. The clerk filed his comment stating that the record of the case was forwarded by mail to the appellate court on June 26, 1973.

Petitioner municipality filed its comment explaining the circumstances beyond its control and due to no fault on its part, as above related, which caused the delay in the transmittal of the records of the case. Such comment filed timely on July 9, 1973, by petitioner municipality was for some unexplained reason not brought to the appellate court's attention, and on August 2, 1973, it issued a resolution ordering the dismissal of the appeal, stating that "(S)ince no comment of the appellants was up to now brought to attention of this Court, and since really, since 1970, they have succeeded via mandamus to give due course to their appeal, should have exerted efforts to elevate record but did not, and it was only after plaintiff filed motion to dismiss appeal that clerk of lower court forwarded the record."[5]

Petitioners forthwith filed their motion for reconsideration dated August 8, 1973 calling the appellate court's attention to the fact of record that they had actually filed their comment, (stamped received at 3:46 p.m. of July 9, 1973, by the docket division), which fully explained the unavoidable circumstances that caused the delay in the transmittal of the records as above stated.

The appellate court required comment per its resolution of August 23, 1973, wherein it required the docket division "to report within ten days why petitioners' comment had not been reported to this Division."

Short shrift was however dealt petitioners' motion in the appellate court's resolution of August 17, 1973 (sent actually a month later on September 17, 1973,) wherein it considered the opposition thereto "well founded" and denied reconsideration -- and apparently without having received a satisfactory explanation from the docket division, simply stated "Explanation of docket is noted; when E. de Castro reports for duty, let him give his explanation."[6]

Hence the present petition for review. The Court, upon receiving respondent's comment, resolved on November 29, 1973 for an expeditious determination hereof to consider the present case as a special civil action and said comment as an answer and to declare the case submitted for decision.

The appellate court's summary dismissal of the appeal even before receipt of the records of the appealed case as ordered by it in a prior mandamus case must be set aside as having been issued precipitously and without an opportunity to consider and appreciate the unavoidable circumstances of record not attributable to petitioners that caused the delay in the elevation of the records of the case on appeal.

Such justifiable circumstances as above related were duly explained in petitioners' comment of July 9, 1973, but the appellate court took no note thereof for the simple reason that the comment was not brought to its attention. Yet when petitioners did so call the attention thereto in their motion for reconsideration, it summarily rejected the unavoidable circumstances that caused the delay in the elevation of the records for which petitioners could not be

blamed and denied reconsideration. This constitutes grave abuse of discretion.

Thus, the appellate court failed to rectify its basis for ordering the dismissal of the appeal that "it was only after plaintiff filed motion to dismiss appeal that clerk of lower court forwarded the record" when the fact of record is that Judge Madara had, in his earlier order of May 21, 1973 denying respondent's motion below to dismiss the appeal already ordered his clerk to so forward the records.

The appellate court likewise failed to appreciate that respondent had in reality imposed on its good faith in re-filing with it, one week after the trial court's denial, practically the same motion to dismiss appeal and suppressed from it the justifying factors as well as the essential fact that the records were already ordered forwarded by the trial court.

The causes for the delay in the transmittal of the records could readily be seen from the records which were before Judge Madara, who was apprised thereof in petitioners' opposition and obviously took them into consideration in denying respondent's motion to dismiss the appeal. Had the appellate court but waited for the records of the case to reach it before summarily and hastily ordering the dismissal of the appeal even before receiving the records or justly heeded the justifiable causes for the delay as explained in petitioners' comment, petitioners would have been spared the ordeal of this second action just to uphold their right to have their appeal determined on the merits.

The Court is constrained once more to refer to the case of *Mintu vs. Court of Appeals*[7] wherein the Court observed that: "(T)he appellate court's inattention in the cited instances leading it to issue patently erroneous dismissals that find no support in the record and to refuse to correct the glaring errors notwithstanding timely motions for reconsideration filed by the party adversely affected is hardly reflective of the diligence, circumspection and thoroughness expected of the second highest court of the land. The Court has herein dwelt at length on these time-consuming and need-less errors which negate the very purpose of motions for reconsideration of giving the court concerned an opportunity to itself correct its own errors, in the expectancy that the appropriate remedial measures indicated will be taken to avoid their recurrence and thus enhance the judiciary's great task of rendering a just, orderly, inexpensive and efficient determination of every action and proceeding."

Petitioner municipality justifiably submits that its appeal cannot be tainted with disinterest or laches under the circumstances of record. It rightfully contends that its hard-won right to have its appeal determined on its merits -- in the mandamus case which it won in 1970 in the appellate court - should not be wrongfully denied a second time, considering the amount of the judgment which is a large amount for a fifth class municipality that it is and the issues of substance raised in the appeal, viz, respondent's previous conviction and removal (as a public school teacher) in an administrative case which according to the civil service commissioner disqualifies him from receiving retirement benefits.

ACCORDINGLY, the appellate court's resolutions of August 2, 1973 and August 17, 1973 dismissing petitioners' appeal are hereby set aside, and the appellate court is directed to proceed with the prompt determination of petitioners' appeal on the merits.

The appellate court is further directed to conduct an administrative investigation of the reason why petitioners' comment of July 9, 1973 on respondent's motion to dismiss appeal was not timely reported or brought to its attention and to take the necessary action against the personnel responsible therefor, informing this Court of the results within thirty (30) days.

SO ORDERED.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Civil Case No. 3681 of the Albay court of first instance entitled "Mariano Cirujales, plaintiffs vs. Municipality of Tiwi, Albay et al., defendants."

[2] CA-G.R. No. 43948-R, entitled "Municipality of Tiwi, Albay et al., petitioners vs. Hon. Perfecto Quicho, judge of the Court of First Instance of Albay, et al., respondents."

[3] Rollo, p. 15.

[4] Rollo, p. 52.

[5] Annex C, petition, Rollo, pp. 43-44.

[6] Annex D, petition; Rollo, pp. 43-44.

[7] L-36854, September 19, 1973.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.