

ELPIDIO JAVELLANA, PLAINTIFF-APPELLANT, VS. NICOLAS LUTERO, JUDGE OF THE MUNICIPAL COURT OF ILOILO CITY AND THE ROMAN CATHOLIC ARCHBISHOP OF JARO, DEFENDANTS-APPELLEES.

G.R. No. L-23956. July 21, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal from a decision of the Court of First Instance of Iloilo (CC 6425) dismissing a petition for re-lief directed against the judgment rendered by the municipal court of Iloilo City in its civil case 7220.

On March 29, 1963 the Roman Catholic Archbishop of Jaro, Iloilo filed a detainer complaint against Elpidio Javellana with the municipal court of Iloilo City, presided by Judge Nicolas Lutero. The hearing, originally set for April 30, 1963, was postponed to May 24 for failure of the defendant to receive summons, and then postponed again to June 27 for the same reason. It was thereafter postponed to July 16, then to July 24, and finally to August 27, all at the behest of the defendant's Atty. Jose Hautea, on the grounds that "he has not finished his business transactions in Manila" and that "he hurt his right foot toe". The last postponement was granted by the municipal court with the warning that no further postponement would be entertained.

When the case was called for trial on August 27, 1963, neither the defendant nor his counsel Atty. Hautea appeared although one Atty. Romy Peña who was present in court verbally moved for the postponement of the trial on the ground that Atty. Hautea was in Manila attending to a business transaction. The plaintiff's counsel objected to the motion on the ground that the defendant and his counsel were well aware of the court's previous admonition that no further postponement of the case would be granted, and then manifested that the witnesses and the evidence for the plaintiff were ready for presentation on that date. The verbal motion for post-ponement was denied and the plaintiff was directed to adduce his evidence. During the presentation of the plaintiff's evidence, the municipal court received a telegram from Atty. Hautea requesting postponement of the hearing. The trial proceeded nevertheless, and, on the basis of the plaintiff's evidence, the court on the same date rendered judgment for the plaintiff and against the defendant. The latter's counsel received a copy of the decision on September 9, 1963. On the following September 11, he filed a motion to set aside judgment and for new trial. This motion was denied on September 26; a copy of the order of denial was received by him on the same date.

On November 16, 1963, or about 50 days later, the defendant thru his same counsel filed a petition for relief (from the judgment of the municipal court) with the Court of First Instance of Iloilo, praying that the decision in question be set aside, that the detainer case be set for trial on the merits, and, pending determination of the petition, that an injunction issue restraining the enforcement of the decision. Counsel for the petitioner averred that his absence on the date of the trial was excusable as he attended to a very urgent business transaction in Manila; that before his departure for the latter city, he verbally informed the respondent judge that his return to Iloilo might be delayed and that he might not arrive on time for the trial of the case as set; that he called at both

the law office and the residence of the counsel for the private respondent to inform him of the desired postponement and the reason therefor, but the latter was in Bacolod at the time; that he exercised utmost diligence and precaution in the sense that while in Manila he sent a telegram to the respondent judge, asking for postponement; and that notwithstanding all the foregoing, the municipal court nevertheless proceeded with the trial in his absence and that of his client, allowed the private respondent to present his evidence *ex parte*, and rendered a decision against the petitioner, thus depriving the latter of his day in court. Counsel for the petitioner further asserted that his client has a good and substantial defense, which is, that the complainant had given his client an option to buy the premises subject-matter of the complaint below, and that a reopening of the case would cause the private respondent no real injury.

This petition was given due course, the respondents were required to file their answers, and a cease-and-desist order was issued as prayed for. On February 22, 1964, after due hearing, the Court of First Instance rendered judgment dismissing the petition.

Hence the present recourse.

From the perspective of the environmental circumstances obtaining in this case, the present appeal is palpably devoid of merit.

A counsel for any party in a judicial controversy, by mandate of the canons of legal ethics, and with due regard for the elementary standards of fair play, is duty bound to prepare for trial with diligence and deliberate speed. This norm of conduct is no less applicable in a detainer case, such as the one at bar, even if the issues are essentially simple and uncomplicated. It is obvious that the counsel for the petitioner-appellant has been remiss in this respect.

The case was set for trial six times. Thrice it was postponed at the behest of the said counsel. The last postponement was granted on July 24, 1963 with the unequivocal admonition by the judge that no further postponement would be countenanced. The case was reset for hearing on August 27, 1963, which means that the appellant's counsel had more than a month's time to so adjust his schedule of activities as to obviate a conflict between his business transactions and his calendar of hearings. Came August 27, and neither he nor the appellant appeared at the trial. His absence on the latter date was not occasioned by illness or some other supervening occurrence which unavoidably and justifiably prevented him from appearing in court.

In our view, it was the bounden duty of the said counsel, under the circumstances, to give preferential attention to the case. As things were, he regarded the municipal court as a mere marionette that must ever await his pleasure. This attitude on his part is censurable as it reveals more than just a modicum of disrespect for the judiciary and the established machinery of justice.

Nor is his censurable conduct mitigated by the appearance in court on August 27 of another attorney who verbally moved for postponement nor by his telegram received by the municipal judge on the same date asking for continuance. These circumstances, upon the contrary, emphasize his presumptuousness vis-a-vis the municipal judge.

It is thus crystal-clear from the foregoing disquisition that the petitioner-appellant was not deprived of his day in court, and that the respondent municipal judge did not err in proceeding with the trial, allowing the private respondent to present his evidence *ex parte*, and thereafter rendering decision for the plaintiff-appellee. It follows that the petitioner was not entitled to the remedy of a petition for re-lief.

Moreover, after the denial of his motion to set aside judgment and for new trial, the appellant had ample time to appeal; instead he allowed the judgment to become final and executory. His argument that an appeal would have

been futile as there was no evidence upon which such appeal could be based, merits scant consideration. An appeal from the decision of a municipal court to the Court of First Instance has the effect of vacating the decision (sec. 9, Rule 40, new Rules of Court; sec. 9, Rule 40, of the old Rules), and the action is to be tried de novo without regard to the proof presented in the municipal court or the conclusions reached thereon (*Colegio de San Jose vs. Sison*, 56 Phil. 344, 351; *Lizo vs. Carandang*, 73 Phil. 649; *Crisostomo vs. Director of Prisons*, 41 Phil. 368). To grant the appellant's petition for relief would amount to reviving his right to appeal which he had irretrievably lost through the gross inaction of his counsel (see *Espinosa vs. Yatco, etc., et al.*, L-16435, Jan. 31, 1963, and the cases therein cited). This in law cannot be done.

ACCORDINGLY, the decision appealed from is affirmed. As this appeal is patently frivolous and dilatory, this Court, under the authority of section 3 of Rule 142 of the Rules of Court, hereby assesses treble costs against the petitioner-appellant Elpidio Javellana, said costs to be paid by his counsel, Atty. Jose Hautea.

Reyes, JBL, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, JJ., did not take part.

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