

**REPUBLIC OF THE PHILIPPINES (BUREAU OF FORESTRY),
PETITIONER, VS. COURT OF APPEALS, TOMAS CARAG, ANTONIA
BACULING, MUVIEL B. CARAG AND DEVELOPMENT BANK OF THE
PHILIPPINES (ISABE...**

G.R. Nos. L-40495-96. October 21, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent court's challenged resolutions dismissing petitioner's appeals from the trial court's joint decision as being patently erroneous. Petitioner Republic is exempt by decisional law from the requirement of filing an appeal bond and respondent court erred in nevertheless dismissing its appeals on the ground that it should have filed with the trial court a manifestation or motion for such exemption, which imposition is not sanctioned by any law or rule of procedure. The mere absence of a formal order of the trial court expressly granting petitioner's motion for a second extension of time to file the records on appeal in the two cases does not warrant respondent court's dismissal of the appeals, since the records on appeal were duly filed within the requested extension period and were approved without objection by the trial court with an express finding that they were "filed on time."

Petitioner Republic of the Philippines is the plaintiff in two cases for reversion and cancellation of title[1] of the land described and alleged in its complaints against the two sets of defendants (private respondents herein) to be of the public domain and part of the forest zone and therefore incapable of being appropriated by said respondents. Petitioner thus averred that the titles alleged by it to have been fraudulently obtained by the two sets of respondents were null and void ab initio and that the two sets of mortgagees Development Bank of the Philippines and the Philippine National Bank to whom they had respectively mortgaged the titled lands acquired no valid lien thereto.

After a joint trial on the merits of the two cases, the trial court dismissed both complaints in a joint decision dated December 5, 1973. Copy of said decision was received by the Cagayan provincial fiscal representing the Solicitor General as petitioner's counsel on December 17, 1973.

On January 9, 1974 (or twenty-three (23) days after receipt of the decision), the provincial fiscal (with counsel for private intervenor Eliseo Lasam who had intervened in both cases as pasture lessee of the Government) filed a notice of appeal in both cases. Simultaneously, they also filed a Motion for Extension of Time to file Joint Record on Appeal praying the trial court to grant them an extended period of fifteen (15) days from January 16, 1974 within which to do so.

The trial court in its Order dated January 22, 1974 granted the extension thus prayed for.

On January 28, 1974, or three (3) days before the extended deadline on January 31, 1974, the appellants filed a Second Motion for Extension of Time to file their Joint Record on Appeal citing the voluminous records to be

copied, praying for a second extension of ten (10) days from January 31, 1974 within which to do so.

On February 5, 1974 and well within the additional ten-day period requested (which would yet expire on February 10, 1974) the appellants submitted two voluminous Records on Appeal for the two cases. (As printed and filed with the Court of Appeals, the first Record on Appeal contains 128 pages and the second Record on Appeal contains 157 pages.)

In an Order dated and issued in open court on March 18, 1974, the trial court approved both Records on Appeal in an identical order reading as follows:

"Finding that the Record on Appeal was filed on time and that it contains all the necessary pleadings ought to be incorporated therein, the same is hereby approved.

"SO ORDERED."

All the above-recited motions for extension and orders were duly incorporated and appear on the face of the Records on Appeal. The only datum that does not appear in the Records on Appeal is the explicit action, if any, that the trial court took on the second motion for an additional 10-day extension, since appellants filed the Records on Appeal five days ahead of the expiration on February 10, 1975 of the additional period requested before they received notice of the action taken thereon by the trial court. However, as already noted, the trial court per its order in open court of March 18, 1974 expressly found that the Records on Appeal were "filed on time" and approved the same.

After elevation of the case records to respondent Court of Appeals,[2] respondent Philippine National Bank, ironically itself a government-owned corporation, (later joined by the respondents-appellees represented by Atty. Teodoro Mallonga who adopted the bank's motion) filed on November 19, 1974 a Motion to Dismiss Appeal on two grounds, to wit, "I. The printed Record on Appeal fails to show on its face that the appeal was perfected on time" (on the premise that it does not show that the second motion for an additional 10-day extension was granted by the trial court)[3] and "II. The appeal bond of intervenor-appellant and the Joint Record on Appeal of appellants was (sic) not filed within the reglementary period" (on the premise that as appears in the Record on Appeal itself, intervenor-appellant received notice of the decision on December 20, 1973 and had thirty days up to January 19, 1974 within which to file his appeal bond, (never having asked for an extension of time to do so), and having filed his cash appeal bond only on February 5, 1974, the same was filed late and the appeal not timely perfected).[4]

Respondent appellate court in its minute Resolution dated January 24, 1975 overruled petitioner Republic's opposition and dismissed the appeals, stating that

"x x x On February 5, 1974, the intervenor deposited his appeal bond of P120.00. This appeal bond was filed out of time, because neither the plaintiff-appellant nor the intervenor-appellant filed any motion for extension to deposit the same and their period to deposit appeal bond expired on January 16, 1973 and January 19, 1973, respectively."

Upon motion for reconsideration filed by petitioner wherein the Solicitor General pointed out that it was error for respondent court to dismiss the appeal for alleged lateness in the filing of appeal bond by private intervenor, since petitioner Republic is exempt and not required to file an appeal bond and could not therefore be faulted (much less penalized by the extreme penalty of dismissal of its appeals) for not filing an unnecessary extension of time to file appeal bond, respondent court issued its extended seven-page Resolution of April 8, 1975, sustaining respondent-appellee Philippine National Bank's opposition and denying reconsideration "for failure of the plaintiff-appellant to file an appeal bond and for its failure to file its record on appeal within the period provided

by law."[5]

On the appeal bond issue, respondent court rationalized that "(O)n the issue that the government is exempt from filing an appeal bond, this Court fully supports the stand of the movant-appellee that plaintiff-appellant should at least have filed a manifestation that it is exempt from filing an appeal bond or should have asked authority from the court that it be exempt from filing an appeal bond, within the period provided by law, and not having done so, the appeal undertaken by the government suffers from a legal infirmity which did not confer upon this Court the jurisdiction to entertain the appeal."[6]

Respondent court now further ruled the appeal as filed "out of time" by sustaining respondent Philippine National Bank's opposition that "(T)he record on appeal was filed out of time since the second motion for extension of time to file records on appeal was not acted upon by the lower court,"[7] notwithstanding that in its very same Resolution, it reproduced the trial court's Order dated February 7, 1974 expressly stating that "(T)he second motion for extension of time to file records on appeal which was not acted upon due to the absence of the undersigned occasioned by the death of his father is hereby considered moot and academic for the reason that the records on appeal were already filed, "[8] (two days earlier on February 5, 1974 and approved by the Court on March 18, 1974 pursuant to its express finding that they were "filed on time," as already stated above).

Hence, the petition at bar as filed on May 30, 1975. In order to expedite the disposition of the simple issues involved, and not to unduly delay the course and determination of the appeals, the Court resolved to treat the petition as a special civil action and declared the case submitted for decision upon the filing by the parties of their respective memoranda.

Respondent appellate court's challenged resolutions dismissing petitioner's appeals from the trial court's joint decision are patently erroneous and are therefore set aside.

1. As to the first ground of dismissal, not even respondent-appellee Philippine National Bank had moved to dismiss petitioner Republic's appeal on the ground of late filing of private intervenor's appeal bond[9] (which bond could not redound in favor of petitioner) – the bank had simply moved on this ground to dismiss the intervenor's appeal, since it recognized as well as respondent court that under our decisional laws which form part of the legal system of the Philippines pursuant to Article 8 of the Civil Code,[10] the Republic is exempt from the requirement of filing an appeal bond on taking an appeal from an adverse judgment, since there could be no doubt as to the solvency of the Government.

This doctrine of the Government's exemption from the requirement of filing an appeal bond was first enunciated as early as March 7, 1916 in *Government of the P.I. vs. Judge of CFI of Iloilo*[11] and has since been so consistently enforced[12] that it has become practically a matter of public knowledge and certainly a matter of judicial notice on the part of the courts of the land.

Respondent court's ruling that petitioner Republic should have filed a manifestation of its exempt status or should have asked the trial court's authority to be exempt from filing an appeal bond and that its appeal, for its failure to do so, "suffers from legal infirmity which did not confer upon (it) the jurisdiction to entertain the appeal" (sustaining respondent bank's belated line in opposing petitioner's motion for reconsideration) is clear error.

Such imposition of an idle ceremony of filing a manifestation or motion for exemption — when the trial court duly approved petitioner's appeal without an appeal bond and with no objection from the adverse parties, as they could present none since the petitioner Republic is by decisional law exempted from such requirement — is not sanctioned by any law or rule of procedure. Certainly, since the Government is so exempted from the requirement of filing an appeal bond, its mere failure to file such manifestation or motion for exemption cannot legally result

in the dismissal of its appeals, in the absence of an express legal mandate to that effect. It bears emphasis that no reason exists to require an appeal bond from the Government since an appeal bond (of P120.00) answers for costs[13] and our Rules of Court expressly provide that "No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law."[14]

2. Respondent court's second ground of dismissal sustaining respondent Philippine National Bank's flimsy contention that "the Record on Appeal was filed out of time since the second motion for extension of time to file the records on appeal was not acted upon by the lower court"[15] is manifestly erroneous on two scores: Firstly, its own resolution denying reconsideration of dismissal reproduces the trial court's Order dated February 7, 1974, *supra*, and shows that the trial judge did act and correctly hold (although expressing himself imprecisely) that as he could not act earlier on the motion for second extension due to his father's death, he considered it "moot and academic", i.e. no longer necessary to expressly grant the same, as the records on appeal were already filed (on February 5, 1974) well within the second extension requested, which was yet to expire on February 10, 1974; and Secondly, the trial court's Order in open court of March 18, 1974 as duly reproduced in the Records on Appeal records its express finding, in approving the Records on Appeal, that they were "filed on time," and such express finding of timeliness of filing and its correctness and veracity have at no time been questioned, impugned or disputed by any of respondents-appellees.

Petitioner thus correctly contends that the precedent of a 1967 Court of Appeals case cited in respondent court's resolution[16] that an appeal may be dismissed where the motion for extension "is not acted upon or resolved by the court" is a "wrong precedent", for the prevailing doctrine is that as restated unanimously by the Court in the 1973 case of *Berkenkotter vs. Court of Appeals*[17] wherein in setting aside a similar dismissal of appeal, the Court ruled that "the mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court *a quo*. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed".

3. Respondent court's dismissal of the appeal must be set aside likewise by virtue of the more liberal ruling that has been now adopted by the Court in the recent case of *Pimentel vs. Court of Appeals*[18] that where the trial court finds and declares in its Order approving the Record on Appeal that it was filed "on time" or "within the reglementary period" and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the Record on Appeal may not have included the motion for extension of time to file the same nor the trial court's order granting the extension, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a substantial compliance with the material data requirement of Rule 41, section 6, and the appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court.

The background facts in *Pimentel* were as follows:

"Because both the original and printed records on appeal did not include (1) the motion for a 30-day extension within which to perfect the records on appeal, (2) the order of the court granting the 30-day extension from October 25, 1973, and (3) the order of the court of January 14, 1974 giving herein petitioners five [5] days to finalize the amended records on appeal, the respondent Court of Appeals dismissed the appeal for failure to show all the material data indicating that the appeal was seasonably perfected, upon motion of herein private respondents."

In setting aside the appellate court's dismissal of the appeal as "grave abuse of discretion," the Court held:

"But the herein private respondents do not question the correctness of the order of the trial court dated January 24, 1974 approving the records on appeal on the ground that 'there being no more objections to the corrected records on appeal * * * and it appearing that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, * * *.' Inevitably, they admit the facts stated in said order. Hence, implicit in the said order are the data required to show the fact that the appeal was perfected within the reglementary period. Because the said order approving the records on appeal is part of both the original and printed records on appeal and the accuracy and truth of the factual statements therein are not impugned by herein private respondents, the respondent appellate court should have relied on the same and could have determined therefrom that the appeal in both cases was perfected on time.

"The reason for Section 6, Rule 41 of the Revised Rules of Court in requiring that the record on appeal shall include such data as will show that the appeal was perfected on time, was to obviate and eliminate waste of time that would be incurred by the Appellate Tribunal in requiring the lower court to forward the original record and in examining such records to determine the timeliness of the appeal (*Araneta vs. Madrigal & Co., Inc.*, L-26227-28, Oct. 25, 1966, 18 SCRA 446, 449-50; *Government vs. Antonio*, L-23735, Oct. 19, 1962, 15 SCRA 119). With the existence of the aforementioned order of January 24, 1974 approving the records on appeal because the trial court found that the notice of appeal, the records on appeal and appeal bonds were all filed within the reglementary period and because of the absence of further objections to the corrected records on appeal, the veracity of the grounds stated in said order not being disputed by herein private respondents, the reason for the rule ceases; because thereby the Appellate Court can rely thereon without need of sending for, and of any further examination of, the original records of the case." [19]

Obviously, Pimentel signified an abandonment of the previous contrary ruling of this Court in *Director, Bureau of Printing & Real Property Management vs. Court of Appeals* [20] wherein this Court had rejected a similar contention on the part of the Government (as appellant therein) that the trial court's statement in its order of approval that the appeal had been perfected "within the period (appellant) having been granted an extension within which to file a record on appeal" did not constitute sufficient compliance with the material data rule and that the trial court's statement was "a mere conclusion, not a fact indicative of the seasonable perfection of the appeal," notwithstanding that therein plaintiffs-appellees had not questioned, impugned or disputed the correctness and veracity of the trial court's statement and had not raised this at all as a ground for dismissal and the appellate court had *motu proprio* noted this alleged deficiency and made it the basis for its order summarily dismissing the appeal.

Here, as already shown, the indisputable fact of record is that The petitioner's Record on Appeal were "filed on time" as expressly found by the trial court in its Order of approval, since they were filed well within and five (5) days ahead of the requested extension period, and respondents have not questioned, impugned or disputed the correctness, accuracy and veracity of the trial court's factual finding of timeliness of perfection of the appeal (as in fact they could not question or impugn the same without committing a falsehood). As in Pimentel, therefore, respondent court's manifestly erroneous dismissal of the appeal must be set aside as a grave abuse of discretion.

ACCORDINGLY, respondent court's dismissal of petitioner's appeals from the trial court's joint decision per its resolutions of January 24, 1975 and April 8, 1975 is hereby set aside and the same are remanded to respondent court for due course and determination on the merits in accordance with the law and the evidence. SO ORDERED.

Makasiar, Muñoz Palma, Aquino, and Martin, JJ., concur.

- [1] Civil Cases Nos. 368-T and 372-T of the Court of First Instance of Cagayan.
- [2] Fifth division, composed of A. Reyes, J., chairman and ponente, and Godofredo P. Ramos and Mama Busran, JJ., members.
- [3] Motion to Dismiss Appeal, Annex C, Petition, Rollo, pp. 30, 33.
- [4] *Idem*, Rollo, pp. 30, 36.
- [5] Annex G, Petition, Rollo, pp. 49-55.
- [6] *Idem*, pp. 53-54.
- [7] *Idem*, p. 52.
- [8] *Idem*, pp. 52-53, emphasis supplied.
- [9] On the late filing of bond, the bank asked for the dismissal of "the appeal of intervenor," Motion to Dismiss Appeal, Petition, Annex C, page 7; Rollo, p. 36.
- [10] "Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." (Civil Code).
- [11] 34 Phil. 157.
- [12] See *Tolentino vs. Carlos*, 66 Phil. 140; *Gutierrez vs. Camus*, 96 Phil. 114; *Comm. of Immigration vs. Romero*, 10 SCRA 216.
- [13] Rule 41, sec. 5.
- [14] Rule 142, section 1.
- [15] Resolution, Annex G, petition, Rollo, page 52.
- [16] *Idem*, p. 54.
- [17] 53 SCRA 228 (Sept. 28, 1973), emphasis supplied. In this case, the Court found that therein petitioner-appellant (whose appeal was likewise dismissed by respondent Court of Appeals) "actually filed on June 13, 1972 (within the 30-day reglementary period), his notice of appeal, appeal bond and an ex parte motion for extension of five days from June 13th to file the record on appeal. Before the expiration of the time asked, or on June 15, 1972, he filed his record on appeal which was approved by the court after defendant's objection and hearing thereof on November 14, 1972. Admittedly, the court neither approved nor denied the ex parte motion for extension of time to file record on appeal."
- [18] G.R. Nos. L-39423 and L-39684, prom. June 27, 1975, per Makasiar, J. See also *Torribio vs. Montejo*, 63 SCRA 150 (March 31, 1975); *Phil. Bank of Communications vs. CA*, 54 SCRA 217 (Nov. 29, 1973).
- [19] Emphasis supplied.
- [20] L-31054, 38 SCRA 296, 306, 317 (March 31, 1971), invariably erroneously cited as *Reyes vs. Carrasco*, which is the title of the lead case with which it was jointly decided with other cases.

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