

DON LINO GUTIERREZ & SONS, INC., PETITIONER, VS. HON. COURT OF APPEALS AND JESUS ALVENDIA, RESPONDENTS.*G.R. No. L-39124. November 15, 1974*

Ponente: AQUINO, J.

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In 1963 a judgment based on a compromise was rendered by the City Court of Manila in a case instituted by Don Lino Gutierrez & Sons, Inc. against Jesus Alvendia. In 1968 the said corporation again sued Alvendia in the City Court of Manila for the revival of the judgment. The City Court rendered a judgment in favor of Don Lino Gutierrez & Sons, Inc. Alvendia appealed to the Court of First Instance of Manila, which, after a trial de novo (there being no stenographic notes of the hearing in the City Court), affirmed the judgment of the City Court with some modifications in its decision dated June 5, 1973.

In all those proceedings, Alvendia's counsel of record was Escolastico Viola. The law firm of Baizas, Alberto & Associates, through Rodolfo A. Espiritu, collaborated with Attorney Viola. The copy of the decision was served on Viola and not on Baizas, Alberto & Associates.

Alvendia, through Viola, appealed by record on appeal to the Court of Appeals from the decision of the Court of First Instance of Manila. Viola and Rosendo J. Tansinsin, the lawyer of Don Lino Gutierrez & Sons, Inc., were advised by the Clerk of Court of the lower court in a notice dated February 20, 1974 that the record on appeal had been forwarded to the Court of Appeals.

In a letter dated February 26, 1974 the Court of Appeals notified Viola that the docket fee of forty-eight pesos and the legal research fee of five pesos should be paid within fifteen days from notice and that forty copies of the printed record on appeal should be filed within sixty days, with the warning that failure to do so would constitute an abandonment of the appeal and cause the dismissal thereof. Viola received that notice on February 28, 1974.

In view of Alvendia's failure to comply with that notice, the Court of Appeals in its resolution of May 3, 1974 dismissed his appeal. A copy of that resolution was served upon Viola on May 8, 1974.

On June 26, 1974 or forty-nine days after the order of dismissal was served on Attorney Viola, Alvendia, through Rodolfo A. Espiritu of the Baizas law office, filed a motion for the reconsideration of that order on the ground that Viola had ceased to be Alvendia's counsel since September, 1973 and that Attorney Crispin D. Baizas had taken his place and it was allegedly agreed that the latter would handle Alvendia's appeal. The motion was verified by Alvendia and Viola and was supported by their affidavits, the gist of which is that, due to the death of Attorney Baizas on January 16, 1974, Alvendia failed to follow up his appeal.

Viola in his affidavit admitted that he received on February 28, 1974 the notice to pay the docket fee and to file forty copies of the record on appeal but he allegedly "did not give any importance to it" because he was then no longer Alvendia's counsel and his impression was that the Baizas law office was also given a copy of that notification.

Don Lino Gutierrez & Sons, Inc. opposed the motion for reconsideration. It insisted that Viola was Alvendia's counsel of record for purposes of the appeal and that Baizas had never entered his formal appearance as Alvendia's counsel. It claimed that the resolution had already become final and that the Court of Appeals had no more jurisdiction over the case.

Furthermore, it argued that Alvendia had admitted in all his pleadings that he was indebted to Don Lino Gutierrez & Sons, Inc. in the amount stated in the judgment, which was originally rendered in 1963, and that Alvendia only claimed that he was not bound to pay that obligation.

The Court of Appeals, in its resolution of July 15, 1974, granted the motion and reinstated Alvendia's appeal. At that time the docket fee had already been paid. Later, the printed record on appeal was filed. The motion of Don Lino Gutierrez & Sons, Inc. for the reconsideration of the resolution of July 15, 1974 was denied.

On August 19, 1974 the said corporation filed in this Court a petition for certiorari and mandamus to set aside the resolution reinstating Alvendia's appeal and to compel the Court of Appeals to remand the record to the lower court for the execution of its final judgment.

We are of the opinion that the petition is meritorious.

The Rules of Court provides:

"SECTION 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee on the following grounds:

xxx xxx xxx

(d) Failure of the appellant to pay the docketing fee as provided in section 5 of Rule 46;

xxx xxx xxx" (Rule 50).

"SEC. 5. Duty of appellants upon receipt of notice. – It shall be the duty of the appellant within fifteen (15) days from the date of the notice referred to in the preceding section, to pay to the clerk of the Court of Appeals the fee for the docketing of the appeal, and within sixty (60) days from such notice to submit to the court forty (40) printed copies of the record on appeal, together with proof of service of fifteen (15) printed copies thereof upon the appellee.

xxx xxx xxx." (Rule 46).

"SEC. 2. Effect of dismissal. – Fifteen (15) days after the dismissal of an appeal, the clerk shall return to the court below the record on appeal with a certificate under the seal of the court showing that the appeal has been dismissed.x x x" (Rule 50).

The Court of Appeals did not err in motu proprio dismissing Alvendia's appeal for failure to pay on time the docket fee and to submit forty copies of his printed record on appeal (*Alvero vs. De la Rosa*, 76 Phil. 428, 434; *Salaveria vs. Albindo*, 39 Phil. 922; *Dorego vs. Perez*, L-24922, January 2, 1968, 22 SCRA 8).

Attorney Viola was negligent in not apprising Alvendia of the notice to pay the docket and legal research fees and to file forty copies of the printed record on appeal. Alvendia is bound by his lawyer's negligence (*Robles vs. San Jose*, 99 Phil. 658).

Viola was also negligent in not making a formal withdrawal as Alvendia's counsel and in not apprising the Court of Appeals that Baizas was supposedly appellant's new counsel. In the absence of a formal withdrawal, he continued to be Alvendia's counsel of record (*Fojas vs. Navarro*, L-26365, April 30, 1970, 32 SCRA 476; *Domingo, Jr. vs. Aquino*, L-28078, April 29, 1971, 38 SCRA 472, 477). His alibi that it was his honest impression

that the Baizas law office was also notified by the Court of Appeals to pay the docket and legal research fees is flimsy because he could have easily ascertained from the notice itself that Baizas' name did not appear therein.

Moreover, "where a party is represented by two attorneys, the rule is that the notice may be made either upon both attorneys or upon one of them, regardless of whether they belong to the same law firm or are practising one independently of the other" (1 Moran, Comments on the Rules of Court, 1970 Ed. 423, citing *Ortega vs. Pacho*, 98 Phil. 618).

The death of Attorney Baizas was not a valid excuse on the part of his associates for not attending to Alvendia's appeal, supposing *arguendo* that his office was solely entrusted with the task of representing Alvendia in the Court of Appeals. Attorney Espiritu (not Attorney Baizas) was the one actually collaborating with Viola in handling Alvendia's case. He did not file a formal appearance in the Court of Appeals.

Under the environmental circumstances of this eleven-year-old litigation, it was a grave abuse of discretion on the part of the Court of Appeals to reinstate Alvendia's appeal and to relax the rule regarding dismissal of an appeal for appellant's failure to pay on time the docket and legal research fees and to file forty copies of his record on appeal within the sixty-day period (Cf. *Chavez and Celeste vs. Ganzon and the Court of Appeals*, 108 Phil. 6, 10, and *Urdaneta Rural Bank vs. San Juan*, L-28346, June 29, 1968, 23 SCRA 1390).

It is necessary to impress upon litigants and their lawyers the necessity of a strict compliance with the periods for performing certain acts incident to the appeal and that transgressions thereof, as a rule, would not be tolerated; otherwise, those periods could be evaded by subterfuges and manufactured excuses and would ultimately become inutile.

Whether Alvendia's appeal by record on appeal is warranted under section 45 of the Judiciary Law as amended by Republic Act No. 6031, in relation to section 29 of the same law as amended by Republic Act No. 5433, is a point which we do not decide in this case. It was not raised by the petitioner. It suffices to note that, according to section 45, generally, the decision of the Court of First Instance in cases falling under the exclusive original jurisdiction of municipal and city courts, which are appealed to it, "shall be final".

WHEREFORE, the resolution of the Court of Appeals dated July 15, 1974, reinstating the appeal of respondent Jesus Alvendia, is set aside and its resolution of May 3, 1974, dismissing his appeal for failure to pay the docket and legal research fees within the reglementary period, is affirmed with costs against him.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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