

**AMERICAN HOME ASSURANCE COMPANY AND AMERICAN
INTERNATIONAL UNDERWRITERS (PHIL.) INC., PETITIONERS, VS.
HONORABLE COURT OF APPEALS, INSURANCE COMMISSION AND
VERA I. WITTE, REPRES...**

G.R. No. L-45026. November 12, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The decision of the Court of Appeals dated September 8, 1976, and its resolution of October 27, 1976, are premised on its finding "that the petition for review was indeed filed in this Court (of Appeals) out of time." And relying on a decision of this Court - Villarica vs. Court of Appeals, G.R. No. L-28363, May 15, 1974, 57 SCRA 24 - the Court of Appeals dismissed the petition as time-barred.

In the present petition exception is taken of the Court of Appeals finding that the petition was filed out of time. I do not see any reason to review the finding of fact of the Court of Appeals which is based on substantial evidence. For to do so will be opening the gates to a flood of petitions to review decisions not only of the Court of Appeals but also of other entities. We are not tasked to do this.

Petitioners claim that they would have raised a novel and important question in the Court of Appeals. Any petitioner can make a claim of novelty and importance. However, I take notice that insurance companies have been inventing excuses to avoid their just obligations. This is the reason why the third party liability insurance required of motor vehicle owners has not been successful.

The petition is obviously not impressed with merit.

In view of the foregoing, the resolution of the Court dated March 7, 1977 giving due course to the petition is reconsidered and another one is hereby entered dismissing it for lack of merit. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, and Concepcion, Jr., JJ., concur.

De Castro, J., concurs in separate opinion.

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Concurring Opinion

DE CASTRO, J.:

I am of the opinion that this petition does not present only a question of fact - whether the copy of the decision was deemed received by counsel for petitioner on June 15, 1976 when he actually received it from a certain Agnes Avaricio, or on June 14, 1976, when Agnes Avaricio received it from the mail carrier Luis Encarnacion but also whether, even assuming that the petition was filed one (1) day late, the Court of Appeals gravely abused its discretion in not accept-ing the appeal in the light of jurisprudential rulings, pre-sently to be cited, which is a question of law.

Petitioners contend that "while the question of whether petitioners' appeal to respondent Court was perfected on time is one of fact and factual findings of the said Court are generally not reviewable by certiorari, however, expec-ted from this rule are the instances, among others, where the finding is not supported by substantial evidence, where it is made without regard to evidentiary and procedural rules, and where there is a grave abuse of discretion. This case comes within the exceptions mentioned."

The records show that petitioners filed a notice of appeal with respondent Insurance Commissioner and a petition for review with respondent Court of Appeals on July 15, 1976. There is no dispute that petitioners' counsel actually re-ceived Registered Letter No. 76204 containing copy of the decision of respondent Insurance Commissioner only on June 15, 1976, when it was delivered to them by a certain Agnes Avaricio, an employee of PADCOM Condominuim Corporation holding office at the ground floor of the same Padilla Building where petitioners' counsel hold office at the sixth floor. There is also no dispute that this Agnes Avaricio is not and never was an employee of petitioners' counsel. Agnes Avaricio appeared to have received the mail matter in question since the letter carrier, Luis Encarnacion, is pro-hibited by postal regulations to go up the floors of any building. So, he requested Miss Avaricio to deliver for him the mail matter in question to petitioners' counsel's office. Miss Avaricio accommodated him.

In dismissing the petition for review filed by peti-tioners, the Court of Appeals must have sustained private respondent's stand that Registered Letter containing copy of the questioned decision was delivered to the petitioners' counsel on June 14, 1976 as evidenced by the verified cer-tification of the Postmaster of the Greenhills Post Office to the effect that Registered Letter No. 76204 was delivered to the "authorized representative" of the addressee on June 14, 1976, and that the counting of the period to appeal begins from the date the letter was actually received by Agnes Avaricio for the addressee, and not from the time Miss Avaricio turned over this letter to the addressee (Pelaez, Jalandoni, and Adriano Law Office).

This contention is without merit. In the case of Vecino vs. Court of Appeals[1], this Court held that service of court's decision or order upon a person other than counsel on record, even on the party-in-interest himself is not legally effective and does not start running of period for appeal. In the words of this Court:

"On this score, it is the rule that service upon any person other than the counsel of record, even actually upon the party is interest himself, is not legally effective and may not serve to start the corresponding reglementary period for the subsequent procedural steps he is supposed to take. In the case of Chainani vs. Tansinco, 90 Phil. 862, Chainani himself, instead of his counsel secured and signed for the copy of the decision. This Court held that the period for appeal was nevertheless to be counted from the date counsel was served."

It cannot be otherwise in the case at bar, considering that Agnes Avaricio is not even a party.

Even assuming, however, that there was really a one-day delay in filing the notice of appeal and petition for review, still it is evident from the records of the case that the delay was far from being intentional and dilatory. At least it could be deduced from the conduct of petitioners' counsel of filing their notice of appeal and petition for review on the 30th day that is, within the reglementary period for perfecting appeal, after their actual receipt of

the registered mail in question. A one-day delay does not justify the dismissal of the appeal under the circumstances obtaining in this case.

In the case of *Bagalanon vs. Court of Appeals*[2] and reiterated in the case of *Paulino vs. Court of Appeals*,[3] We stated:

"It has been held in a number of cases that pleadings, as well as remedial laws should be construed liberally, in order that litigants may have ample opportunity to prove their respective claims and that a possible denial of substantial justice, due to legal technicalities may be avoided (*Quibuyen vs. Court of Appeals*, 9 SCRA 741; *Luzteveco Employees Association SCLU vs. Luzteveco, Inc.*, 15 SCRA 660; *Archez vs. Bellosillio*, 20 SCRA 31). Certainly to dismiss the petition for review due to its late filing for a few hours or even a day or two without regard to the circumstances for the delay is giving too much importance to legal technicalities which may unfortunately amount to a denial of substantial justice to petitioners. Normally, a petition for review of the decision of the lower court could be thrown out for being filed out of time except when there is a special circumstances that may warrant a liberal attitude of the court. For this Court has already considered Section 1, Rule 50 of the Revised Rules of Court as discretionary and not mandatory. Thus, in *Maqui vs. Court of Appeals* (G.R. No. L-41609, February 24, 1976) this Court had reiterated the caveat we have enunciated in *Philippine National Bank vs. Philippine Milling Co. Inc.*, (26 SCRA 712) to the effect that "Rule 50, Section 1 of the Revised Rules of Court which provides specific grounds for dismissal of appeal manifestly confers a power and does not impose a duty. What is more it is directory, not mandatory." (Underscoring supplied).

There is likewise, no showing that the intended appeal of the petitioners was frivolous and for the purpose of delay. In fact, the Court of Appeals in its resolution of July 23, 1976, giving due course to the petition, stated that the petition for review filed in the above entitled case is *prima facie* meritorious and not manifestly for delay, for which it was given due course.

In the case of *De Las Alas vs. Court of Appeals*,⁴ this Court said:

"Litigations should, as much as possible, be decided on their merits and not on technicality, and under the circumstances obtaining in this case We are reminded of what WE said in the case of *Gregorio vs. Court of Appeals* (L-43511, July 28, 1976, 72 SCRA 120), thus.

'Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.' (Underscoring supplied)

The foregoing notwithstanding, considering that the case was submitted on August 8, 1977 and therefore more than 18 months have lapsed since then, and conformably to the provision of the Constitution[5] under which the appealed decision should be deemed affirmed, I vote to concur in the result.

[1] 76 SCRA 98.

[2] No. L-43043, March 31, 1977, 76 SCRA 232.

[3] No. L-46723, October 28, 1977, 80 SCRA 257.

[5] Sec. 11 (2), Art. X, 1973 Phil. Constitution.

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