

## **RUFILA Q. ARANAS, PLAINTIFF-APPELLEE, VS. FEDERICO ENDONA AND FAUSTO HIJARA, DEFENDANTS-APPELLANTS.**

*G.R. No. L-32719. October 23, 1982*

Ponente: GUTIERREZ, JR., J.

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### **GUTIERREZ, JR., J.:**

In a decision rendered by the municipal court of Malabuyoc, Cebu in an ejectment case, defendants Federico Endona and Fausto Hijara were ordered to vacate the disputed land and return it to the plaintiff or her representative, to pay P30.00 monthly rentals from the date of illegal entry up to the time the disputed land is actually returned, and to pay the plaintiff P2,000.00 moral damages, P300.00 attorney's fees, and costs. The decision was promulgated on August 20, 1965.

On September 15, 1965 and within the reglementary period to perfect an appeal from the above decision, the defendants filed their notice of appeal with the municipal court. They also filed an appeal bond of P60.00 which was P10.00 more than the P50.00 required by the Rules of Court.\* The second paragraph of the notice of appeal, which is relevant to the case now before us, reads:

xxx xxx xxx

"ENCLOSED HEREWITH is the sum of SIXTY PESOS (P60.00) as Cash Appeal Bond."

Three months later, on December 16, 1965, the plaintiff Rufila Q. Aranas filed a "Motion for Issuance of the Execution of Judgment" with the Malabuyoc Municipal Court. Copy of the motion was received by the defendants on December 23, 1965.

The motion for execution was set for hearing on January 3, 1966. The defendants did not file any opposition to the motion and, inspite of notice, did not appear at the hearing either personally or through counsel.

On February 28, 1966, the municipal court issued the writ of execution of judgment as prayed for in the motion.

On March 3, 1966, the defendants deposited P10.00 with the municipal treasurer's office which, according to them, represented the full payment of the appellate docket fee of P20.00 required by the Rules of Court.

On March 18, 1966, the defendants filed a "motion to set aside the execution and to deliberate the right to appeal."

On April 21, 1966, the municipal court denied the motion to set aside execution and ordered compliance with the writ of execution of judgment. The court ruled that completion of payment of the appellate docket fee six months after payment of the first installment was not substantial compliance with the rules on appeal. It concluded:

"1. Compliance with this period for appeal considered absolutely indispensable for the prevention of needless delays and to orderly and speedy discharge of Judicial business so that if said period is not complied with, the judgment becomes final and executory. (De Jesus vs. PNB et al., L-19299, Nov. 28, 1964, pp. 98-101).

"2. Period to appeal cannot be impliedly extended. Extensions of time must be asked before the expiration of

the original period sought to be extended. (Vivo vs. Arca et al., April 30, 1965, pp. 132-133).

“3. Under the provisions of Section 2 Rule 40 of the Rules of Court, in order to perfect an appeal from the judgment of the Municipal Court, an appellant must, within 15 days from Notice of Judgment (1) file with the Municipal Judge a notice of appeal, (2) deliver a certificate of the Municipal Treasurer or the Clerk of Court of First Instance showing that he has deposited with the appellate Court Docket fee, (sic) and (3) give a bond. (Valdez vs. Acumen, et al., L-13536, Jan. 29, 1960 pp. 42-45).

“4. Well settled is the rule that failure to perfect an appeal from a judgment of the Municipal Court within the period allowed by law, bars an appeal, and that, if a party does not perfect his appeal within the time prescribed by law, the appellate Court cannot acquire jurisdiction, and for that reason the compliance with said requirement is jurisdictional. (Valdez vs. Acumen et al., L-13536, Jan. 29, 1960, pp. 42-45). In fine strict not substantial, compliance therewith is required. (id).”

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The order denying the motion to set aside execution was appealed to the Court of First Instance of Cebu. On June 27, 1966, the court of first instance affirmed the questioned order. A motion for reconsideration was denied on August 1, 1966.

The defendants have two assignments of errors in this appeal:

#### First Assigned Error

THE LEGALITY OF THE ORDER OF THE LOWER COURT DATED AUGUST 1, 1966 IS ASSIGNED AS ERROR, WHICH DENIED THE MOTION FOR RECONSIDERATION FILED BY THE DEFENDANTS-APPELLANTS THRU THEIR FORMER COUNSEL ATTY. CANDIDO N. JUMAPAO ATTACKING AN EARLIER ORDER OF THE SAME COURT OF FIRST INSTANCE OF CEBU, BRANCH VII, DATED JUNE 27, 1966 WHICH ORDER HAS AFFIRMED THE ORDER OF THE MUNICIPAL COURT OF MALABUYOC, CEBU WHICH RULED THAT THE APPEAL FROM THE MUNICIPAL COURT TO THE COURT OF FIRST INSTANCE WAS NOT PERFECTED WITHIN THE REGLEMENTARY PERIOD FOR PERFECTING AN APPEAL AS PROVIDED FOR UNDER SECTION 2, RULE 40 OF THE NEW RULES OF COURT.

#### Second Assigned Error

THE LOWER COURT ERRED IN NOT HOLDING AND DECLARING THAT THE PAYMENT OF TEN PESOS FOR THE APPELLATE DOCKETING FEE WITHIN THE TIME FOR PERFECTING AN APPEAL AND THE OTHER TEN PESOS PAID AFTER THE REGLEMENTARY PERIOD WAS A SUFFICIENT AND SUBSTANTIAL COMPLIANCE AND NOT A FATAL DEFECT UNDER THE LIBERAL INTERPRETATION OF SECTION 2 RULE 1 OF THE RULES OF COURT, IN AS MUCH THAT THE PAYMENT WAS EFFECTED BEFORE THE ORDER OF DENIAL WAS ISSUED BY THE MUNICIPAL COURT.

The issue raised in this appeal is whether or not under the circumstances of this case, the defendants-appellants perfected their appeal from the municipal court to the court of first instance.

Section 2, Rule 40 of the Rules of Court provides:

"Sec. 2. Appeal, how perfected. – An appeal shall be perfected within fifteen (15) days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a postal money order for the amount of the appellate court docket fee, or a certificate of the municipal treasurer showing that the appellant has deposited such appellate court docket fee, or, in chartered cities, a certificate of the clerk of the municipal court showing receipt of the said fee; and (c) by

giving a bond."

As earlier stated, the defendants on September 15, 1965, filed a notice of appeal within the 15 days period to do so. On the same date, they filed a cash bond of P60.00. The defendants did not deliver a postal money order for the docket fee nor give any certificate of the treasurer that a deposit of the appellate court docket fee had been effected. Much, much later when a writ of execution had already been issued, the defendants raised the argument that the correct appeal bond was only P50.00, that the overpayment or balance of P10.00 paid within the 15-day period should be considered as a first installment on the P20.00 docket fee and that a liberal interpretation of the rules should allow the second installment of P10.00 to be paid around six months later.

The assigned errors have no merit.

The records show that there was a total failure on the part of the defendants-appellants to pay the required docket fee. The notice of appeal specifically mentioned only the "intention to appeal from the decision rendered by this Honorable Court to the Honorable Court of First Instance of Cebu, Barili Branch, Barili, Cebu" and the inclosure of Sixty Pesos (P60.00) as cash appeal bond. There was no mention of any payment of docket fees whether in full or by installment. It is more logical and reasonable to explain the P10.00 overpayment as based on the appellants' wrong estimate of the amount required for an appeal bond rather than an installment payment of docket fees.

Moreover, even if we accept the strained interpretation of the defendants-appellants in the spirit of liberality, the precedents on the applicable rule indicate that the appeal cannot be considered as having been perfected on time.

As early as November 16, 1932 this Court rendered a decision in *Lazaro v. Endencia and Andres* (57 Phil. 552) that full payment of docket fees within the required period is an "indispensable step" for the perfection of an appeal. The plaintiffs, in that case, filed a notice of appeal within the five-day period to do so but deposited only Eight Pesos (P8.00) docket fee instead of the required Sixteen Pesos (P16.00). This Court ruled:

"x x x Examining the statutes there can be no question that payment of the full amount of the docket fees is an indispensable step for the perfection of an appeal, which in cases of forcible entry and detainer, must be within a period of five days from notice. The statute looks to early determination of such cases, and if the contention of the respondent should be upheld there would be no definite rule in such cases. There would be as much right to contend for twenty-eight days or forty-two days as there is to contend for fourteen, as is done herein. In the absence of an indispensable step, the appeal was not perfected and the Court of First Instance of Pangasinan was therefore without jurisdiction to hear and determine the appeal. (*Schultz vs. Concepcion*, 32 Phil., 1.)"

Payment of the full amount within the reglementary period was declared jurisdictional.

The jurisdictional nature of this requirement continues to the present. However, under exceptional circumstances its strict interpretation has been mollified or mitigated to better serve the interest of justice.

Thus, where the defendants deposited less than the full amount such as three-fourths of the P16.00 docket fee upon the advise of the justice of the peace that P12.00 was the full amount and the municipal treasurer and the clerk of the appellate court led the appellants to mistakenly believe that they had paid the correct fee, we allowed the appeal to proceed upon payment of the balance. (*Segovia v. Barrios*, 75 Phil. 764; and *Marasigan v. Palacio*, 87 Phil. 839. See also *Gambal et al. v. Hon. Barcelona et al.*, 106 Phil. 328; *Tagulao v. Judge Padlanmundok et al.*, 108 Phil. 499; and *Bernido et al. v. Balana*, 124 Phil. 137.)

The rule is settled that, in case of appeals from inferior courts to courts of first instance, the amount of the appellate docket fee must be deposited in full within fifteen (15) days after notice of the judgment complained of and that the appeal is not deemed perfected if only a part of the amount is deposited within the 15 days period and the remainder is tendered after the expiration of the period. Only when the appellants make a clear showing that

the appeal should be allowed in order to prevent a miscarriage of justice may the rule be relaxed.

Where the failure to pay the full and correct amount was due to the inexcusable negligence of counsel or to his ignorance of the Rules, the requirement may not be relaxed. The fact that the counsel is a new practitioner does not justify his negligence. (Chan v. Oceanic Wireless Network, Inc., 26 SCRA 68)

We cannot find in the records any injustice or unfairness nor any miscarriage of justice that would result from the enforcement of the rule in this case.

WHEREFORE, the appeal is hereby dismissed for lack of merit.

**SO ORDERED.**

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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\* Under Section 3, Rule 40, an appeal bond with at least one sufficient surety shall be in the sum of P60.00 but a cash appeal bond, which was filed in this case, shall be P50.00.

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