

**FELIX GUEVARRA AND EMERENCIANA GUEVARRA, PETITIONERS,
VS. THE COURT OF APPEALS AND GAUDENCIO GADDI, LOURDES
BUSTOS GADDI, VICTORIA, MYRNA, SHEILA AND MARIA LOURDES,
ALL SURNAMED...**

G.R. No. L-43714. January 15, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioners herein were adjudged by the then Court of First Instance of Rizal,[1] to pay the private respondents, plaintiffs therein, P36,000.00 by way of unrealized income (actual damages), P40,000.00 as moral damages, P5,000.00 as attorney's fees, and the costs of the suit. From this adverse decision, the defendants in the trial court, now petitioners, sought to appeal to the respondent Court of Appeals.[2] They complied with the requisite filing of the Notice of Appeal and the Record on Appeal (then required). They failed however to pay the docketing fee of P48.00 plus the amount of P5.00 required under Republic Act (R.A.) No. 3870 (legal research fee), or a total of P53.00,* within the 15-day period from receipt of notice granted to them by the Court of Appeals as provided by the Rules of Court. The said period of fifteen (15) days expired on December 10, 1975. They paid the P53.00 only on January 20, 1976, or forty- one (41) days late. By counsel, they manifested "inadvertence, oversight, and pressure of work"[3] as their excuse for such delay of forty-one (41) days.

The respondent Court of Appeals, on February 19, 1976, denied the prayer of the defendants-appellants, now the petitioners, "that said payment (of the docket and legal research fees) be admitted and the above manifestation be taken into account, in the interest of justice." In dismissing the appeal, the Court of Appeals ruled:

RESOLVED: Since payment of docket fee was late by 41 days, this is too much; no prima facie showing has been made why it should be admitted.

In view whereof, DENIED and APPEAL is DISMISSED.[4]

On March 3, 1976, the respondent court provoked by the subsequent comment and opposition of the plaintiffs-appellees, now private respondents, as well as the appellants' reply, reiterated its previous resolution (of February 19, 1976), curtly saying: "Noted, but resolution reaffirmed." [5]

Undaunted, the appellants moved for reconsideration invoking the contradictory grounds of "substantial compliance" and "excusable negligence," as well as liberal construction of the rules, and "that substance should not be sacrificed for technicality." [6] This was promptly denied on April 6, 1976 in a resolution [7] as compendious, as the first two, stating:

DENIED for lack of sufficient merit and reasons given do not convince.

The defendants-appellants now come to us by this petition for review on certiorari. Finding the petition inappropriate, in a resolution dated July 28, 1976, "[T]he Court Resolved (a) to TREAT the petition for review as

a special civil action; (b) to REQUIRE the petitioner(s) to deposit ₱80.40 for costs and clerk's commission within five (5) days from notice hereof; and (c) to declare this case SUBMITTED for decision.”[8]

The crucial issue in this case is whether or not the delay in paying the docket and legal research fees tolled the petitioners’ right to appeal. We hold that it did.

It is “the duty of the appellant” in the Court of Appeals,” 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.”⁹ The appellants did not comply seasonably with this duty. Concededly, they paid forty-one (41) days late. For such tardiness, they must suffer the sanction imposed by the Rules of Court — dismissal of their appeal — which 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;[10]

xxx xxx xxx

And that is what precisely the respondent Court of Appeals did — dismissed their appeal. It is thus clear that, in doing so, the respondent court did not err and did not commit any grave abuse of discretion. Be that as it may, the counsel of the petitioners tries to exculpate himself from the adverse effect of his admitted delay of forty-one (41) days in paying the required docket and legal research fees by claiming that the notice to pay docket and legal research fees within fifteen (15) days “was misplaced in my office due to accident, mistake, inadvertence, and excusable negligence.” He added that he had “been very busy attending to various cases in different courts in Metro Manila and in the provinces, and because I have only one secretary in the office, when the said notice was found missing, it took me several days to locate the same among the files.”[11]

The explanation is very flimsy. It does not impress us at all. It is an “old hat,” a hackneyed pretext, resorted to by negligent or lazy lawyers, which has never been given the badge of “excusability” by the Court.

In a very early case, *Lazaro v. Endencia*[12] we held:

xxx Examining the statute (Act No. 190, old Code of Civil Procedure) there can be no question that payment of the full amount of the docket fee 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 v. Concepcion*, 32 Phil. 1)

In *Palteng v. C.A.*,[13] we pronounced that there was no abuse of discretion in the Court of Appeals’ ruling that there had been proper and adequate notice to defendants (petitioners) to pay the docket fees, a requirement that they failed to observe, and as failure to pay the docket fee is ground for dismissal of an appeal, the Court of Appeals acted correctly in issuing the resolutions in question. Earlier, in *Lee v. Republic of the Philippines*[14] we decided that even though half of the appellate court docket fee was deposited, no appeal is deemed perfected, where the other half was tendered after the period within which payment should have been made. In *Aranas v. Endona*,[15] we reiterated that if the appellate docket fee of P20.00 is not paid in full within the reglementary period, the decision of the municipal court becomes final and no longer appealable.

In a later decision,[16] we decreed:

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. Dela 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. (*Rabies vs. San Jose*, 99 Phil. 658)

xxx xxx xxx

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*, 110 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 would ultimately become inutile.

We also note that Atty. Porfirio B. Yabut, the counsel of record of the defendants-appellants in the Court of Appeals, has his law office at "Suites 513-515 May Building, Rizal Avenue, Manila (the same location as the address of the present lawyer, Atty. Clemente M. Soriano). What appears inexplicable to our mind is why petitioners' counsel had to keep on looking for forty (40) days for the misplaced notice, until he found it on January 20, 1976, after forty-one (41) days of search, when all he should have done was to visit the office of the respondent Court of Appeals to inquire about it. This is considering the fact that the counsel's law office is just here also in Manila, not more than seven (7) kilometers from where the respondent Court of Appeals sits.

Finally, while the trial court may in its discretion extend the time for appeal beyond the period fixed by law, it must be satisfactorily shown that there is justifiable reason for such action, like fraud, accident, mistake, excusable negligence, or similar supervening casualty without fault on the part of the appellant.[17] The herein petitioners failed in presenting to us a fact constituting excusable negligence to support this petition. Hence, their failure to pay the appeal docket and legal research fees on time, unjustified as it was, became fatal to their appeal.

WHEREFORE, the petition is DISMISSED. The Orders dated February 19, 1976, March 3, 1976, and March 27, 1976, of the respondent Court of Appeals are hereby AFFIRMED. Costs against petitioners.

SO ORDERED

Yap (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Branch XXVIII, Pasay City, in Civil Case No. Q-18369, entitled "Gaudencio Gaddi, et.al., Petitioners, vs. Felix Guevarra, et al. Defendants," Hon. Enrique A. Agana. Presiding Judge.

[2] First Division. Hon. Magno S. Gatmaitan, Chairman. Hon. Roseller T. Lim and Hon. Sixto A. Domondon, Members, in CA-G.R. No. 58673-R, Gaudencio Gaddi, et al, vs. Felix Guevarra, et al.

* I. Old Rates of Docket Fees.

By authority of Rule 141 of the Rules of Court a docket fee of P48.00 is collected for cases filed in the Court of Appeals and the Supreme Court. The clerks of both Courts are authorized to collect the docket fees. The fees collected go to the National Treasury. No portion is particularly earmarked for the Supreme Court and Court of Appeals.

II. New Rates of Docket Fees.

A. By authority of Presidential Decree (P.D.) No. 1949 a Judiciary Development Fund has been established. The Fund is derived, among others, from the increase in the legal fees prescribed in the amendments to Rule 141 of the Rules of Court, the current rate being P96.00.

B. The current rate of P96.00 is divided between the National Treasury and the Judiciary Development Fund equally, or P48.00 each.

C. 80% of the Fund must be used for the Cost of Living Allowance (COLA) of the members and personnel of the Judiciary and not more than 20% thereof "to finance the acquisition, maintenance, and repair of office equipment and facilities."

D. The Chief Justice of the Supreme Court administers, allocates, approves, and authorizes disbursement and expenditures of the Fund.

III. Legal Research Fees

A. By virtue of R.A. No. 3870, otherwise known as an "Act Defining The Functions Of The UP Law Center, Providing For Its Financing And For Other Purposes." as amended by P.D. Nos. 200 and 1856, "(I)n order to provide for the support of the U.P. Law Center and the University of the Philippines Law Complex, the additional amount of one percent (1%) of the filing fee imposed, but in no case lower than Twenty Pesos, in the case of the appellate courts and the additional amount of 1% of the filing fee imposed, but in no case lower than Ten Pesos, in the case of all other courts, including all administrative or special courts, as well as agencies or tribunals exercising quasi-judicial functions, and those enumerated in Letter of Instructions No. 1182, issued on December 16, 1981, shall be collected by their clerks of court, or equivalent functionaries xxx."

B. "The additional amounts shall be receipted for separately as part of a special fund to be known as the 'Legal Research Fund,' and shall be turned over by the clerks of court or equivalent functionaries to the Chief Accountant of the Department of Justice, who in turn shall remit the same at the end of each quarter to the U.P. Law Center in accordance with this Act."

C. The fees shall be used for U.P. Law Center publications given free to the courts and administrative agencies, for technical studies and researches; and granting of research awards, prizes, scholarships, and fellowships.

[3] Rollo, 41.

[4] Id. 22.

[5] Id. 24.

[6] Id. 25-26

[7] Id. 30

[8] Id. 71.

[9] Id. Rule 46. Sec. 5.

[10] Id. Rule 50. Section 1 (d).

[11] Petition. 8: Rollo. 15.

[12] 57 Phil. 552. November 16. 1932.

[13] No..L-25739. January 31, 1969: 26 SCRA 736.

[14] No. L-15027. January 31, 1964. 10 SCRA 65.

[15] No. L-32719, October 23. 1982. 117 SCRA 753.

[16] Don Lino Gutierrez A Sons, Inc. vs. Court of Appeals, No. L-39124, November 19. 1974,61 SCRA 91-92.

[17] Ong Tiao Seng v. CA, et al. No. L-41,192-93. January 31. 1978. 81 SCRA417.

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