

**CONCHITA MARTINEZ, EL AL., PLAINTIFFS AND APPELLEES, VS.
SATURNINA MARTINEZ, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-4075. January 23, 1952*

Ponente: PARAS, C.J.

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In an action for forcible entry filed in the justice of the peace court of Butuan, Agusan, by Macario Martinez against Saturnina Martinez and Vicente Paragua, judgment was rendered for the plaintiff. The defendants appealed to the Court of First Instance of Agusan which, on October 28, 1947, rendered a decision by default against the defendants in view of their failure to file an answer and to appear at the trial. Upon petition of the defendants, however, said decision was vacated on the ground that the necessary notice was sent to the defendants, and not to their attorney of record, Apolonio D. Curato. On March 12, 1948, the defendants filed their answer, signed by Atty. Apolonio D. Curato. The trial of the case in the Court of First Instance of Agusan was set for October 13, 1949, at eight o'clock in the morning, notice of which was sent by registered mail to Atty. Curato at his address appearing in the record (Butuan, Agusan). As the defendants and their attorney failed to appear at the trial held on October 13, 1949, the court proceeded to receive the evidence for the plaintiffs Conchita Martinez, Paulino Martinez and Carmelita Martinez (who had been in the meantime substituted for Macario Martinez, deceased). On October 15, 1949, the Court of First Instance of Agusan rendered judgment the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered ordering the defendants to vacate lots 2-A and 3 on the sketch Exhibit B-1 in favor of the plaintiffs and to pay the said plaintiffs the sum of P2,800.00 with interest at the legal rate from the date of this decision. Should the defendants withhold possession from the plaintiffs beyond the end of the harvest season in March, 1950, said defendants shall also pay to the plaintiffs an additional amount of P700.00 at the end of each harvest season, with interest at the legal rate computed from the end of the harvest to which the additional amount corresponds. With costs against the defendants, including the commissioner's compensation which is hereby fixed at P150.00, considering the amount and the technical nature of the work performed by said commissioner."

The defendants filed a motion dated October 28, 1949, amended by a second motion dated March 13, 1950, praying that the decision of October 15, 1949, be set aside and a new trial granted, on the ground that Atty. Curato did not receive the notice of trial sent to him by registered mail, because he was then absent from the province of Agusan. This motion was denied by the Court of First Instance of Agusan in its order of March 28, 1950, from which the present appeal was taken by the defendants.

There is no question that the usual three notices sent by the post office of Butuan regarding the registered notice of trial addressed to Atty. Apolonio D. Curato, were delivered to his residence and office in Butuan, Agusan. There is no question also that the failure of said attorney to get his registered mail (which was returned "unclaimed"), was due to the fact that he was absent from the province of Agusan, engaged in political campaigns in Surigao and Davao; and the point that arises is whether this excuse is valid.

Under section 8 of Rule 27 of the Rules of Court, "service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time." Under section 2 of said Rule 27, if any of the parties "has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court." In view of these reglementary provisions, the trial court committed no error in turning down appellants' petition for the vacation of the decision of October 15, 1949, and for the holding of a new trial. In the case of *Enriquez vs. Bautista*,[*] 45 O. G. 1248, we ruled against counsel who similarly failed to get a registered notice because he was absent from his address of record. In that decision, we emphasized that "the excuse that the attorney did not stay in one place permanently, cannot be accepted, inasmuch as an attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from the address of record." Appellants, however, contend that the notice of trial should have been sent to them, and not to their attorney alone, in view of section 3 of Rule 31 which provides that "upon entry of a case in the corresponding trial calendar the clerk shall fix a date for trial and shall cause a notice thereof to be served upon the parties." This rule is obviously not inconsistent with section 2 of Rule 27, because the term "parties" used in section 3 of Rule 31 is in a general sense and does not exclude the application of section 2 of Rule 27 to a situation where the party is represented by an attorney.

Counsel for appellants also argues that the failure to appear at the trial was at most due to a mistake or negligence which ordinary prudence could not have guarded against. In answer, it is sufficient to repeat the following pronouncement of this Court in the case of *Tielago vs. Generosa*, 73 Phil. 654: "We cannot also accept the contention that appellants' failure to claim the registered notice merely amounted to an excusable neglect which will warrant the reopening of this case. It is such kind of neglect or inaction that gave life to the provision that service by registered mail is complete and effective, if the addressee fails to claim his mail from the post office within five days from the date of first notice of the postmaster, at the expiration of such time."

Wherefore, the appealed order is affirmed without pronouncement as to costs in this instance. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

* 79 Phil., 220.

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