

**LUZON SURETY COMPANY, INC., PLAINTIFF-APPELLEE, VS.
CORETTE S. MAGBANUA AND DANIEL Z. ROMUALDEZ, DEFENDANTS,
ANTONIO V. RAQUIZA, DEFENDANT-APPELLANT.**

G.R. No. L-43851. July 30, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This case[1] involves the application of Section 4, Rule 18 of the Rules of Court[2] concerning the power of a City Court to try a case with a common cause of action against all defendants based on the answers filed before it and to render judgment on the evidence presented, where some of the defendants answered and the others failed to do so.

On November 18, 1964 plaintiff Luzon Surety Com-pany, Inc. filed a complaint[3] before the City Court of Manila against the defendants, Corette S. Magbanua, Daniel Z. Romualdez and Antonio V. Raquiza, seeking the en-forcement of an indemnity agreement allegedly entered into by them with the plaintiff. The complaint alleged in substance that on or about April 14, 1961, the plaintiff, at the request of the defendants, executed a personal bail bond in the sum of Eight Thousand Pesos (P8,000.00) in behalf of Corette S. Magbanua, who was then the accused in Criminal Cases Nos. 37037 and 37038; that the said defendants bind themselves in an Indemity Agreement, as a consideration for the suretyship, to pay jointly and severally, the sum of P240.00 as premium for every twelve (12) months or fraction thereof, to indemnify the plaintiff and hold and save it harmless from and against any and all damages, loses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature when the plaintiff shall or may at any time sustain or incur in consequence of having become the surety upon the said bond; that for failure of Corette S. Magbanua to appear when required in the criminal cases abovementioned, the Court of First Instance of Manila issued an order for the confiscation of the bond of plaintiff and thereafter, judgment was rendered against the full amount of the said bond whereupon the plaintiff paid to the Sheriff of Manila the sum of P8,057,00 in full satisfaction thereof but the defendants refused to pay the said sum when so demanded by the plaintiff.

On February 12, 1965 defendant Daniel Z. Romualdez for his part filed his answer[4] to the complaint denying having executed an indemnity agreement for Corette S. Magbanua as said accused, according to him, had on several occasions attempted to forge his signature and in fact was caught by the disbursing officer of the House of Represent-atives attempting to cash a forged check allegedly signed by him; that when the check was shown to him, he as Speaker of the House of Representatives, immediately ordered the disbursing officer to bring the matter to the attention of the National Bureau of Investigation for what-ever action it may take on the matter. He also assailed the genuineness and due execution of the Indemnity Agreement and claimed that said agreement was executed through fraud and therefore null and void.

Defendants Corette S. Magbanua and Antonio V. Raquiza failed to file their answers within the regle-mentary period. Accordingly, they were declared in default. On June 17, 1965, the City Court of Manila, acting upon the

motion filed by the plaintiff, rendered judgment against the defendants[5] ordering defendants Corette S. Magbanua and Antonio V. Raquiza to pay the plaintiff the sum of P8,057.00 with 12% interest thereon per annum, computed and compounded quarterly from April 17, 1964 until fully paid, and the further sum equivalent to 10% of the total obligation as attorney's fees, plus costs, but dismissing the ease against defendant Daniel Z. Romualdez because of his death.

Subsequently, defendant Antonio V. Raquiza filed a motion for reconsideration of the decision dated June 17, 1965. His motion was granted and he was allowed to file his answer, but he failed to do so within the period allowed. Again, he was declared in default. After the plaintiff has re-introduced the documentary evidence already on the records, the City Court of Manila rendered its decision on August 31, 1965[6] reiterating the disposition in its judgment of June 17, 1965. From said judgment, defendant Raquiza appealed to the Court of First Instance of Manila where he filed his answer. The latter, however, disallowed his answer and affirmed the decision of the City Court.[7] On February 13, 1968, the defendant Antonio V. Raquiza moved for a reconsideration of the decision of the Court of First Instance of Manila disallowing his answer and affirming the decision of the City Court on the ground that his appeal from the judgment of the City Court vacated the judgment and that the cases should be tried de novo. He also contended that the answer filed by defendant Daniel Z. Romualdez worked to his advantage and should be treated as his answer.[8] On April 2, 1968, the Court of First Instance of Manila denied the motion for reconsideration.[9]

Hence, this appeal to the Court of Appeals with defendant-appellant Antonio V. Raquiza, pressing upon the following errors allegedly committed by the lower court:

1. THE LOWER COURT ERRED IN DIS-ALLOWING THE ANSWER FILED BY THE APPELLANT AND IN NOT TRYING THE CASE ON THE BASIS THEREOF.
2. THE TRIAL COURT ASSUMING ARGUENDO BUT WITHOUT ADMITTING THAT IT HAD ALL THE RIGHT TO DISALLOW THE ANSWER OF THE APPELLANT, ERRED IN NOT TREATING THE ANSWER OF THE DEFENDANT, DANIEL Z. ROMUALDEZ, AS THE ANSWER OF THE APPELLANT AND IN NOT HEARING THE CASE ON THE MERITS AS A CONSEQUENCE.

Defendant-appellant Antonio V. Raquiza blames the lower court for disallowing his answer and in not trying the case on the basis thereof. He claims that his appeal to the Court of First Instance from the judgment of the City Court declaring him in default operated to vacate the judgment of the inferior court and that therefore the case had to be tried anew, invoking Section 9, Rule 40 of the Rules of Court which provides:

"A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action shall stand for trial de novo upon its merits in accordance with the regular procedure in that Court, as though the same had never been tried before and had been originally there commenced. * * *."

Counsel for defendant-appellant argues in his brief that "the parties in an appealed judgment to the Court of First Instance need not file new pleadings but, if they so desire, they may file new or amended pleadings but they may not allege new causes of action or defenses over which the inferior court had no jurisdiction nor can they allege in their new pleadings, causes of action or defenses not pleaded in the inferior court, nor change the nature of the causes of action or defenses pleaded in the inferior court." [10] It is easily discernible that the foregoing doctrine cannot apply to the case at bar because the defendant-appellant herein has not filed any answer at all. The above ruling refers to a case where the defendant has filed his answer in the inferior court and then appealed the judgment against him to the Court of First Instance. In the present case, the defendant-appellant was declared in default not only once but twice. He was first declared in default on June 17, 1965. From said default judgment he filed a motion for reconsideration. The City Court granted the motion and allowed him to answer within a certain period, but defendant-appellant failed to answer for the second time. So on August 31, 1965, the City Court

declared him in default again. It is well established in this jurisdiction that "a defendant who has been declared in default loses his standing in court, and without having regained the same, shall not be entitled to notice of subsequent proceedings, nor to take part in the trial. He shall not be entitled to service of papers and other sub-stantially amended or supplemental pleadings and final orders or judgments unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. He cannot appeal from the judgment rendered by the court on the merits unless he files a motion to set aside the order of default.* * *.[11] To regain his standing in court, the defendant may ask the court within one (1) day after the notice of the order of default to set aside such order by appearing and showing to the satisfaction of the court that his failure to appear was due to fraud, accident, mistake or excusable negligence under Section 13, Rule 5 of the Rules of Court or if he fails to avail himself of said remedy and the judgment has become final and executory, he may file a petition for relief in the Court of First Instance under Section 1, Rule 38 of the Rules of Court. He may also file a motion to lift the default judgment and ask for new trial before the judgment becomes final and executory under Section 16 of Rule 5.[12] Defendant-appellant Raquiza failed to avail him-self of any of the foregoing remedies. He did not file a motion to set aside the order of default dated August 31, 1965 nor did he file with the Court of First Instance a petition for relief from the default judgment of the City Court. Consequently, he has lost the right to appeal from said judgment. The answer he filed with the lower court cannot cure his mistake.

But defendant-appellant pointed out that the answer of his co-defendant Romualdez should have been considered by the lower court as his answer and it should have tried the case against him on the basis thereof. There is no merit in this contention. It is true that in an appeal from the City Court to the Court of First Instance, pleadings filed thereon are considered reproduced in the Court of First Instance.[13] Since in the case before Us, defendant-appellant Raquiza has filed no answer before the City Court, there is no answer to be reproduced in the Court of First Instance as far as he is concerned. Even the answer of defendant Romualdez could not be deemed reproduced because the latter died even before the case was tried and the case against him was dismissed because of his death. What answer can defendant-appellant Raquiza depend on? Besides, even granting that the answer of defendant Romualdez were reproduced in the Court of First Instance, defendant-appellant Raquiza could not make use of his defense that his (Romualdez's) signature was forged because that was a defense personal to him. Defendant-appellant Raquiza must have to allege for himself that his signature in the In-demnity Agreement was forged before the City Court could take cognizance of it. He failed in this.

ACCORDINGLY , the decision appealed from is hereby affirmed with costs against defendant-appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Aquino, JJ., concur.

[1] Certified to this Court by the Court of Appeals for review on question of law as per its Resolution dated May 7, 1976.

[2] Section 4. Judgment when some defendants answer and others make default. When a complaint states a common cause of action against several defendants, some of whom answer, and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented. The same procedure applies when a common cause of action is pleaded in a counter-claim, cross-claim and third-party claim.

[3] pp. 2-5, Record on Appeal

[4] pp. 5-7, Ibid.

[5] pp. 8-9, Ibid.

[6] p. 10, Ibid.

[7] pp. 13-16, Ibid.

[8] pp. 16-19, Ibid.

[9] pp. 26-28, Ibid.

[10] Citing *Yu Lay vs. Galmes*, 40 Phil. 651.

[11] *Luzon Rubber & Mfg. Co. vs. Estaris*, 52 SCRA 391; see also *Strachan & McMurray, Ltd. vs. Court of Appeals*, 62 SCRA 113.

[12] *Luzon Rubber & Mfg. Co. vs. Estaris*, *supra*; see also *Strachan & McMurray, Ltd. vs. Court of Appeals*, *supra*.

[13] Section 7, Rule 40, Rules of Court. Reproduction of pleadings on appeal.— Except in summary proceedings under Section 17 of Rule 5, upon the docketing of the case under appeal, it shall be the duty of the clerk of the court to notify the parties of that fact by registered mail. Thereupon, the pleadings filed in the justice of the peace or municipal court shall be considered reproduced in the Court of First Instance.

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