

**FERNANDO TANDOC AND DOMINGO TANDOC, PETITIONERS, VS.
COURT OF APPEALS, HON. SIXTO A. DOMONDON, FORMER JUDGE
COURT OF FIRST INSTANCE OF PANGASINAN, RUPERTO TANDOC
AND ISIDORO TAN...***G.R. No. L-39028. November 20, 1974*

Ponente: TEEHANKEE, J.

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The Court sets aside the appellate court's decision sustaining the lower court's declaration of finality of its adverse decision. The Court holds that the lower court acted with grave abuse of discretion in not granting the short extension for the filing of the appeal bond requested by petitioners (which they had asked to be exempted from upon their filing within the original reglementary period of a motion to appeal as paupers together with their notice of appeal and record on appeal) and in denying such extension even after the appeal bond had actually been filed within five days of receipt of its order denying petitioners' motion to appeal as paupers and to be thus exempted from the filing of the appeal bond.

The pertinent facts which basically deal with petitioners' right to appeal from an adverse decision of the Pangasinan court of first instance (which denied petitioners' timely motion to appeal as paupers and denied their motion for extension to file a P240.- appeal bond after they had actually filed such bond within the requested extended period) are related in the appellate court's appealed decision, as follows:

xxx xxx xxx

"It appears from the pleadings that Emeteria Tandoc filed in the Court of First Instance of Pangasinan, Branch VIII, an original application for registration, Land Registration Case No. D-883. This was opposed by the private respondents, Ruperto and Isidoro, both surnamed Tandoc. The said private respondents Ruperto and Isidoro Tandoc filed a civil case for reivindicacion involving the same parcels of land against Emeteria Tandoc, also before the Court of First Instance of Pangasinan, Civil Case No. D-1987. During the pendency of the proceedings, Emeteria Tandoc died, and she was substituted by the petitioners, as applicants and defendants. The two cases were tried jointly. Decision was rendered on February 26, 1973, copy of which was received by counsel for the petitioners on August 15, 1973. On September 13, 1973, the petitioners filed a petition praying that they be permitted to litigate as paupers. Petitioners also filed their record on appeal on September 13, 1973, but not the appeal bond in view of their motion to litigate as paupers. The private respondents opposed the motion on October 17, 1973 and an order was issued by the respondent Judge on October 17, 1973, denying the motion of the petitioners to litigate as paupers (Annex A). Copy of this order was received by the petitioners on October 24, 1973. On October 25, 1973, petitioners filed an urgent motion for extension of time within which to file the appeal bond, as they are very poor (Annex B). On October 29, 1973, the petitioners filed their appeal bond. The motion for extension of time within which to file the appeal bond was denied on October 30, 1973. On December 3, 1973, the respondent Judge granted the motion for the issuance of a writ of possession, declaring that the decision had become final for failure to perfect their appeal."[1]

The appellate court, while finding that "the motion to litigate as paupers was filed within the period for perfecting the appeal, but was denied only after the expiration of the said period." nevertheless sustained the lower court's declaration of finality of its adverse decision based on its (the lower court's) "considered opinion that the filing of an appeal bond can not be extended and is unextendible in accordance with the Rules of Court." [2]

The appellate court ruled that "while a motion for extension of time to file an appeal, including the filing of the appeal bond, does not suspend the running of the period within which the appeal should have been perfected, the motion may, nevertheless, be acted upon favorably even after the expiration of the 30-day period for perfecting the appeal. Unfortunately, for the petitioners, the motion to litigate as paupers was denied; x x x In any case, the granting or denial of a motion to litigate as a pauper lies within the sound discretion of the trial judge. He is in a better position than this Court to determine whether the movants are indigents or not;" that "petitioners are likewise guilty of inexcusable negligence in filing their motion to litigate as paupers on the day before the expiration of the period for perfecting the appeal . x x x Further, since the petitioners filed the motion on the day before the last day for perfecting the appeal, it was their bounden duty to see to it that their motion was acted upon before the expiration of the reglementary period;" and that since the motion to litigate as paupers did not suspend the running of the period for perfecting the appeal, the appeal bond filed on October 29, 1973 within the requested extension (which was denied afterwards by the lower court) was filed "out of time" and "the court had lost jurisdiction to act upon it, as at the time it was filed, the decision had become final."

Hence, the present petition to set aside the appellate court's decision and to allow petitioners' appeal from the lower court's adverse decision with the elevation of their record on appeal and appeal bond.

The petition has merit and should be granted.

It is undisputed that petitioners' notice of appeal and record on appeal were timely filed on September 13, 1973 within the original 30-day reglementary period; and that the only item lacking to perfect their appeal was the filing of an appeal bond which they asked the lower court to dispense with through their timely filing on the same day, September 13, 1973, of their verified motion to litigate as paupers [3] as they were "poor, have no employment nor property and without means." [4] When the lower court denied their motion as per its order received by petitioners on October 24, 1973, they immediately filed on the very next day an urgent motion for extension of time within which to file the appeal bond, invoking again their poverty and lack of means – which they were able to file in the amount of P240.00 on October 29, 1973 within the requested extension and before the lower court acted on their extension which it denied subsequently per its order of October 30, 1973.

While the lower court (according to the appellate court) mentioned as grounds for denying petitioners' motion to appeal as paupers the fact that they appeared to own real property and petitioner Fernando Tandoc was a farmer by occupation, there is nothing in the record to dispute the principal reason cited by them, viz that they were poor and consequently could not readily file the appeal bond, was in any way without basis or untrue or filed with intention to delay or prejudice the adverse parties. Petitioners in fact insisted on the contrary that the sole ground for the lower court's denial of their motion to litigate as paupers was petitioner Fernando Tandoc's statement of his occupation as a farmer but that this did not warrant denying the factual basis of his motion that "he is without means to prosecute an appeal." Thus, petitioners invoke the social justice provisions of the Constitution and its mandate that access to the courts be not denied by reason of poverty.

Under these circumstances, while the lower court may have correctly denied petitioners' motion to litigate as paupers, from a strict and technical point of view, although the trend of legislation has been to consider as indigents "anyone who has no visible means of income or whose income is insufficient for his family." [5] the Court finds that it acted with grave abuse of discretion in not granting the short extension for the filing of the

appeal bond requested by petitioners and in denying such extension even after the appeal bond had actually been filed within five days of receipt of its order refusing them permission to appeal as paupers and to be thus exempted from the filing of the appeal bond.

Had the lower court exercised its discretion in favor of petitioners by granting their motion to appeal as paupers, there would be no question about the appeal since they had timely filed the notice of appeal and record on appeal and they would have been exempted from filing the P240.- appeal bond. Its denial of petitioners' motion did not mean however that petitioners' right of appeal was thereby forfeited. On the contrary, it constituted grave abuse of discretion to deny them a reasonable opportunity and period (which would not cause any prejudice) to file the required appeal bond which became necessary only because of the denial of their motion for exemption.

The lower court manifestly erred in ruling that the period for filing an appeal bond is inextendible even for justifiable reasons and in rejecting the bond which was promptly filed within the requested extension even before it arbitrarily denied the extension. Thus, in *Fernandez vs. Zurbano*[6] the Court upheld the implied granting of an extension to file the appeal bond within the extended period for filing the record on appeal and ordered that the appeal therein be given due course (reversing the lower and appellate court's dismissal of the appeal for late filing of the appeal bond), holding in the spirit of Rule 1, section 2 for a liberal construction of the Rules that "under the facts obtaining in the case, petitioner's right to appeal must not be defeated by a mere procedural technicality as long as the appealing party or his counsel has not displayed gross negligence in the prosecution of his case." The Court therein stressed that the general rule that failure to file the appeal bond within the reglementary period is fatal[7] is not to be applied where there is a showing of justifiable reasons for the delay in the submission of the requirements of Rule 41, section 3 for perfection of the appeal.

The fact that petitioners filed their motion to appeal as paupers only on the next of the last day of the original period for perfecting their appeal was unjustly termed inexcusable negligence by the appellate court. It is apparent from the facts of record that petitioners were hard put to filing the appeal bond and therefore asked for exemption therefrom upon the filing of their notice and record on appeal. The circumstance that their counsel did not think earlier of filing such a motion for exemption – when there seemed to be good ground therefor and the filing thereof in good faith has not been questioned – does not justify the arbitrary forfeiture of petitioners' appeal.

As the Court has stressed time and again, while it is true that the allowance or denial of motions for postponement or for extensions of time rests principally upon the sound discretion of the court to which they are addressed, a receptive attitude and circumspect consideration by the court of the merits of the motion for extension (or postponement) and of a subsequent motion for reconsideration and for giving due course to the appeal with due regard for the higher interest of justice and a sense of fairness and due process are called for rather than an attitude of arbitrary and inflexible denial.

Thus, in *Cucio vs. Court of Appeals*,[8] the Court reiterated the now Chief Justice's admonition in *Limon vs. Candido*[9] that " 'such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby' and that 'it is sound judicial discretion' to allow a reasonable transfer of hearing or request for extension timely filed 'when no substantial rights are affected and the intention to delay is not manifest.' " The Court further stressed therein the established rule that the discretion of trial courts (and all courts for that matter) "must be exercised wisely and prudently, never capriciously, with a view to substantial justice."

ACCORDINGLY, the appellate court's decision is hereby set aside and in lieu thereof, judgment is hereby rendered annulling the lower court's questioned orders and ordering it instead to approve petitioners' record on appeal and appeal bond and to forward petitioners' appeal to the appellate court for proper proceedings and

determination. With costs against private respondents.

Makalintal, C.J., Castro, Esguerra, and Munoz Palma, JJ., concur.

Makasiar, J., took no part.

[1] Italics supplied.

[2] Rollo, p. 39.

[3] Under Rule 3, section 22, the authority to litigate as pauper includes an exemption for payment of legal fees and from filing of appeal bond, printed record and printed brief.

[4] Rollo, p. 38.

[5] Under Rep. Act 6034 providing transportation and other allowances for indigent litigants, sec. 1. See also definition to same effect in Rep. Act 6033 requiring courts to give preference to criminal cases involving indigents and in Rep. Act 6035 requiring the giving of free transcripts to "indigent and low income litigants."

[6] 21 SCRA 1058, 1062 (1967)

[7] *Salva vs. Palacio*, 90 Phil. 731 and *Conlu vs. Court of Appeals*, 106 Phil. 940.

[8] 57 SCRA 64, 68 (May 24, 1974) and cases cited; emphasis copied.

[9] 27 SCRA 1166, 1169 (1969). See also *PVTA vs. Angeles*, L-29736, Oct. 31, 1974.

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