

JOSEFA PERNEA, COMPLAINANT, VS. JUDGE JUAN MONTECILLO, CFI, BRANCH III, GUMACA, QUEZON, RESPONDENT.

Adm. Matter No. 631-CFI. November 26, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

For failure to resolve the motion of the complainant and dismissal of her appeal, respondent Judge Juan Monte-cillo of the Court of First Instance of Quezon, Branch III at Gumaca, was charged of grave abuse of authority and ignorance of the law.

Upon the records, it appears that respondent judge rendered a decision dated June 28, 1973, in Civil Case No. 715-G entitled "Josefa Pernea, et al., vs. Filemon Pernea, et al." [1] The judgment adjudicated the subject property in favor of the defendants, Filemon Pernea, et al.

Herein complainant Josefa Pernea, as plaintiff in said Civil Case, filed on July 20, 1973 her notice of appeal from the aforesaid decision of respondent judge, [2] having admittedly received the decision on July 2, 1973. [3] On the same date, complainant also filed a motion to appeal as pauper and for an extension of sixty (60) days from August 1, 1973 within which to file the record on appeal. Because of the objection of the defendants alleging that complainant is a real property owner, respondent judge issued an order, [4] holding in abeyance the resolution of the complainant's motion, and directed the Fiscal's Office of Gumaca, Quezon, to investigate whether or not a criminal charge may be filed against the erring public official concerned in view of the two (2) conflicting certifications issued by the Municipal Treasurer of Catanauan, Quezon. One certification [5] attested that complainant Josefa Pernea has not declared nor registered real property in the Municipality of Catanauan, Quezon, while the other certification, [6] declared that spouses Gregorio Puertollano and Josefa Pernea are the registered owners of real property in the said municipality.

On October 8, 1973, respondent judge denied a motion filed by herein complainant to secure the services of another lawyer for a period of thirty (30) days, in view of the withdrawal of her former lawyer. [7] In the order of denial, respondent judge further stated that "the notice of appeal the plaintiffs were intending to submit is hereby considered filed out of time until the claim of plaintiff Josefa Pernea that she is a property owner is duly verified by this Court."

Meanwhile, the investigation report [8] of the Fiscal's Office recommended that no action could be taken against herein complainant and the Asst. Municipal Treasurer of Catanauan, Quezon because the registered real property in the names of spouses Gregorio Puertollano and Josefa Pernea is a capital property of complainant's husband, the same having been acquired when he was still single.

On October 31, 1973, respondent judge issued an order [9] that no criminal liability was incurred in the issuance of a certification for pauper litigant and directed that a writ of execution be issued to enforce the decision of June 28, 1973 "inasmuch as the plain-tiffs' notice to appeal is considered filed out of time."

There is nothing in the records showing the court's action upon the motion to appeal as pauper and for extension of time to file record on appeal, whether it was granted or denied.

It is indeed difficult to comprehend how respondent judge under the circumstances of record, could have lost sight of his obligation to resolve the complainant's motion and declare the notice of appeal filed out of time. There is no doubt, as the records disclose that the notice of appeal and the motion to litigate as pauper and for extension of time to file record on appeal were timely filed on July 20, 1973, considering that complainant received on July 2, 1973, a copy of the decision of June 28, 1973. So that, specifically, the reglementary period of thirty (30) days within which to perfect appeal expired on August 1, 1973. Corollarily, since the motion was timely filed within the thirty (30) day reglementary period for perfecting the appeal, "the respondent court was in duty bound to decide and resolve x x x and it is unfair for it to declare the judgment rendered in the case final and executory without first complying with its duty to resolve and decide the petitions for extension of time to perfect the appeal x x x." [10]

In *Reyes vs. Sta. Maria*, [11] the Supreme Court said:

"A motion to be allowed to appeal as pauper and to extend the period for filing the record on appeal must be filed within the 30-day reglementary period for perfecting the appeal. It should be heard and resolved promptly, or before the lapse of said period, so as to apprise the appellant whether or not his obligation to file the record on appeal or the appeal bond within the said period is dispensed with (*Semira vs. Enriquez*, 88 Phil. 228, 231; Sec. 1, Rule 135, Rules of Court). The parties or their attorneys should be immediately notified of the orders issued on the matter so that they may avail themselves of the proper remedy if it is denied."

While it may be argued that litigants are not justified, much less have the right to take for granted that their motions would be favorably acted upon, nevertheless, litigants deserve and are entitled to be notified of the court's action on any motion they submit for the resolution of the court. Their interest in submitting motion, precisely lies upon its adjudication, irrespective of the Court's action, whether it be a denial or a grant thereof. On the other hand, "the courts are bound to act - in proper cases - on all motions with sufficient dispatch necessary to allow the parties to avail themselves of proper remedies. This is implied in the mandate that 'justice shall be impartially administered without unnecessary delay.'" [12]

In the instant case, respondent judge, not only was oblivious of his obligation and bounden duty to act or pass upon any motion with reasonable celerity and promptness, but he failed and did not act upon the complainant's motion. Worse, the respondent judge declared that the notice of appeal was filed out of time, contrary to what appears on the records. Thus, he is found guilty of gross negligence and incompetence in not resolving the pending motion herein and in declaring that the notice of appeal was filed out of time. Nonetheless, it may be stated in passing that the appeal should be dismissed and can no longer be reinstated.

Since no action was taken on complainant's motion, and the 30-day period for perfecting the appeal had expired, without a record on appeal having been filed, the decision in Civil Case No. 715-G had become final and executory, notwithstanding the fact that complainant had fixed and requested the period of sixty (60) days in her motion for extension to begin from August 1, 1973, which, by correct computation expired on September 30, 1973, but she failed to file her record on appeal within the period so requested. As of October 31, 1973, when respondent judge issued the writ of execution, the judgment had long become final and executory and the prevailing party, as a matter of right, is entitled to the writ of execution, its issuance being the court's ministerial duty.

WHEREFORE, IN VIEW OF THE FOREGOING, respondent Judge Juan Montecillo is found guilty of gross negligence and incompetence, and hereby fined an amount equivalent to three (3) months salary with a stern

warning that a repetition of similar offense will be dealt with more severely.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

[1] Rollo, p. 18.

[2] Ibid., p. 23-a.

[3] Complaint, rollo, p. 5.

[4] Rollo, p. 28.

[5] Ibid., p. 23.

[6] Ibid., p. 27.

[7] Ibid., p. 32.

[8] Ibid., pp. 33-35.

[9] Ibid., p. 38.

[10] Semira vs. Enriquez, 88 Phil. 228, 230, quoting from resolution of March 23, 1950 in 47 O.G., 4638, 4640.

[11] 48 SCRA 1.

[12] Semira vs. Enriquez, supra; citing Sec. 1, Rule 124 of the Old Rules of Court, now Sec. 1, Rule 135, Revised Rules of Court.

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