

**HONORABLE ARMANDO B. CLEDERA, IN HIS CAPACITY AS
PROVINCIAL GOVERNOR OF CAMARINES SUR, MARIANO S.
TRINIDAD, IN HIS CAPACITY AS PROVINCIAL VICE GOVERNOR OF
CAMARINES SUR, EMILIO ...**

G.R. Nos. L-32450-51. June 10, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari with writ of preliminary injunction seeks to nullify:

- (1) the order dated November 26, 1969 (Annex F, p. 37, rec.) and the order dated December 4, 1969 (Annex G, pp. 38-40, rec.) issued by the respondent Judge giving due course to and granting the motion for reconsideration (Annex D, pp. 32-35, rec.) allegedly defective for want of notice of hearing filed by private respondents herein as petitioners in Civil Cases Nos. 6591 and 6763, which orders allowed the respondents to submit additional evidence after the said cases were submitted for decision;
- (2) the order dated July 17, 1970 (Annex Q, pp. 90-110, rec.) granting herein private respondents' motion for execution dated June 16, 1970 (Annex I, pp. 57-58, rec);
- (3) the order dated July 29, 1970 (Annex V, pp. 133-136, rec.) denying the urgent motion for reconsideration filed by herein petitioners on July 17, 1970 (Annex R, pp. 111-118, rec); and
- (4) the writ of execution issued by the respondent Judge; with the additional prayer for the issuance of a writ of preliminary injunction without bond claiming that the petitioner province of Camarines Sur being a political subdivision of, is exempt from such bond like the Republic of the Philippines, to restrain the respondent Judge and the provincial sheriff of Camarines Sur from enforcing and carrying out the order of July 17, 1970 (Annex Q, pp. 90-110, rec.) and the writ of execution dated July 22, 1970 (Annex S, pp. 119-121, rec).

In a resolution dated August 31, 1970, We required respondents to file an answer within 10 days from receipt of notice and issued a writ of preliminary injunction upon filing by petitioners of a bond in the amount of P1,000 (pp. 138-140, rec).

The private respondents herein were employees of the provincial government of Camarines Sur and paid under the plaintiff of personnel of the road and bridge fund budget.

The provincial board of the province of Camarines Sur passed Resolution No. 176, series of 1968, which approved the road and bridge fund budget of the province for the fiscal year 1968-1969 and abolished the positions of herein private respondents, who as a consequence filed Civil Cases Nos. 6591 and 6763 before the respondent Judge sitting at Naga City for prohibition and/or mandamus with damages seeking their reinstatement and payment of back salaries as well as the restoration of their respective positions previously occupied by them in the plantilla of personnel of the road and bridge fund budget.

After the pre-trial on July 10, 1969, the parties agreed that Civil Cases Nos. 6591 and 6763 be decided jointly "on the strength of the stipulation of facts entered into by the parties and the evidence already presented in Civil Case No. 6591"; and the parties were given five (5) days from July 14, 1969 or until July 19, 1969 to submit their respective memoranda, after which the two cases would be deemed submitted for decision (Annex C, p. 29, rec).

On July 18, 1969, private respondents filed a motion to re-open the cases and to allow them to present additional evidence consisting of the budget and plantilla of personnel of the road and bridge fund for the fiscal year 1969-70 (Annex A, pp. 23-24, rec), to which on July 25, 1969 herein petitioners filed an opposition dated July 24, 1969 (Annex B, pp. 25-28, rec).

On September 10, 1969, respondent Judge denied the said motion of herein private respondents seeking to re-open the two cases (Annex C, pp. 29-31, rec).

On November 3, 1969, herein private respondents filed a motion for reconsideration of the aforesaid order dated September 10, 1969, which motion does not contain any notice at all setting the time, date and place of hearing.

On November 20, 1969, herein private respondents filed a request addressed to the clerk of court to set for hearing on November 24, 1969 their aforesaid motion for reconsideration dated November 3, 1969, expressly stating that a copy of the same was delivered to the Provincial Fiscal that same day, November 20, 1969 (Annex E, p. 36, rec).

On November 26, 1969, respondent Judge issued an order requiring herein petitioners to submit within five (5) days from receipt their opposition to herein private respondents' motion for reconsideration of the order dated September 10, 1969 (Annex F, p. 37, rec); but Assistant Provincial Fiscal Enrique Amador did not file any opposition to the aforesaid motion for reconsideration (Annex G, p. 38, rec).

In an order dated December 4, 1969, herein respondent Judge set aside its order of September 10, 1969 (Annex C), re-opened the two cases and allowed respondents to present additional evidence (Annex G, pp. 38-40, rec), consisting of the budget and plantilla of personnel for the fiscal year 1969-70 of the road and bridge fund to further substantiate the claim of herein private respondents that their items were abolished in bad faith.

On April 27, 1970, respondent Judge rendered a decision in both Civil Cases Nos. 6591 and 6763 in favor of herein private respondents declaring as null and void Resolution No. 176, series of 1968 of the herein petitioners provincial governor, vice governor and members of the provincial board abolishing the positions of herein private respondents, as well as directing their immediate reinstatement and the payment of back salaries from July 1968 until actual reinstatement together with such amounts as may be necessary to pay the contribution of the province of Camarines Sur to the G.S.I.S. in connection with the private respondents' insurance and/or retirement, and the costs.

On May 12, 1970, the Provincial Fiscal as counsel for herein petitioners received a copy of the aforesaid decision of April 27, 1970.

On June 8, 1970, the herein petitioners, through Assistant Provincial Fiscal Enrique A. Amador, filed a 15-page motion dated June 6, 1970 for reconsideration of the aforesaid decision (pp. 41-55, rec), together with a notice of hearing (p. 56, rec.) addressed to the clerk of court as follows:

"The Clerk of Court ,
Court of First Instance
Naga City

Greetings:

Please submit the foregoing Motion for Reconsideration for resolution of the Honorable Court upon receipt hereof.

Naga City, June 6, 1970

(Sgd.) ENRIQUE A. AMADOR

4th Asst. Provincial Fiscal

Copy Received:

Atty. Vicente T. Bonot
Counsel for Petitioners
Naga City"

Both the aforesaid motion for reconsideration and said notice of hearing were personally delivered to and received on the same

day June 8, 1970 by the counsel of herein respondents whose office is in Naga City itself. (See bottom of pp. 55-56, rec; Annex H, pp. 41-56, rec).

On June 16, 1970, herein private respondents filed a motion for execution on the ground that the decision had already become final since no appeal therefrom had been interposed and perfected by herein petitioners within thirty (30) days from their receipt on May 12, 1970 of the aforesaid decision.

In paragraph 3 of said motion for execution, herein private respondents expressly admitted that herein petitioners filed their motion for reconsideration dated June 6, 1970 of the aforesaid decision of April 27, 1970, claiming however that the same motion was "fatally defective, pro forma, and should not be considered x x x because it failed to comply with the mandatory and elementary provisions of Sec. 2 of Rule 37 in relation to Sees. 4, 5, and 6 of Rule 15 of the Rules of Court; consequently the filing of such motion for reconsideration x x x did not and should not toll the running of the period for appeal." (Annex I, pp. 57-58, rec).

Herein petitioners filed their opposition dated June 17, 1970 to the aforesaid motion for execution on the ground that they had complied with Sec. 2 of Rule 37 in connection with Sees. 4, 5, and 6 of Rule 15 of the Revised Rules of Court; and that their motion for reconsideration is considered as a motion for new trial citing the case of *Blouse vs. Moreno*,^[1] and the filing thereof in accordance with Rules 37 and 15 of the Revised Rules of Court suspends the period for perfecting the appeal, citing *Ylanan vs. Mercado*^[2] (Annex "J", pp. 56-60, rec).

Pursuant to the order of respondent Judge dated June 19, 1970 (Annex K, p. 61, rec), herein private respondents and petitioners filed their memoranda respectively on June 24 and June 25, 1970 in support of their respective positions in connection with the motion for execution and opposition thereto (Annexes L & M, pp. 62-76, rec); and herein private respondents filed their reply dated June 29, 1970 to herein petitioners' memorandum (Annex "N", pp. 79-82, rec), and supplemental memorandum dated June 29, 1970 (Annex "O", pp. 80-82, rec). Herein petitioners filed their reply (properly rejoinder) dated June 25, 1970 to herein private respondents' memorandum and reply memorandum respectively dated June 24 and June 26, 1970 (Annex "P", pp. 83-89, rec).

In a well-reasoned order dated July 17, 1970, respondent Judge granted herein private respondents' motion for execution relying on the cases of *Manila Surety and Fidelity Co., Inc. vs. Bath Construction*,^[3] *Fulton Insurance Co. vs. Manila Railroad Co.*,^[4] *Magno vs. Ortiz*,⁵ *In Re Disciplinary Action vs. Atty. Vicente Raul Almacen* in L-27654, *Calero vs. Yaptinchay*,^[6] and *Sebastian vs. Cabal, et al.*,^[7] where this High Tribunal repeatedly

enunciated that the requirements of Sees. 4,5, and 6 of Rule 15 of the Rules of Court are mandatory in relation to Sec. 2 of Rule 37 of the Revised Rules of Court (Annex "Q", pp. 90-110).

Reiterating their invocation of the case of *Sun Un Giok vs. Matusa*,^[8] herein petitioners filed an urgent motion for reconsideration of the aforesaid order dated July 17, 1970 granting the motion for execution insisting that "what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard" also citing *Borja vs. Tan*^[9] and *Embate vs. Penolio*^[10] (Annex R, pp. 111-118, rec).

The Branch clerk of court issued a writ of execution dated July 22, 1970 pursuant to the order dated July 17, 1970 (Annex S, pp. 119-121, rec).

Herein petitioners filed a supplement dated July 24, 1970 to their urgent motion dated July 22, 1970 for the reconsideration of the order dated July 17, 1970 (Annex T, pp. 122-123, rec), which urgent motion for reconsideration and the supplement thereto they set for hearing on July 27, 1970, notice of which was received respectively on July 23 and July 24, 1970 by counsel for herein private respondents (see pp. 118 & 123, rec).

At the hearing on July 27, 1970 of the aforesaid motion for reconsideration and the supplement thereto, both counsels for herein petitioners and respondents appeared. The counsel for herein petitioners intimated to the court that he did not intend, by his defective notice of hearing, to submit his motion for reconsideration of the decision to the respondent Judge for immediate resolution; that in a conference between 1 and 4 P.M. on June 8, 1970 with the herein petitioners vice governor and provincial board members, he informed said herein petitioners that he filed his motion for reconsideration with the clerk of court with the request that the same be given to the respondent Judge so that it can be acted upon, and that Atty. Orino, a provincial board member, told him to request the clerk of court to set the motion for hearing because the members of the provincial board desire to argue by themselves; and that on that same day, June 8, 1970, he informed the respondent Judge of the said desire of the board members, adding that he did not place the exact date of hearing, for he "had no inkling that his motion will be questioned later" (Annex U, pp. 124-127, t.s.n. of hearing of July 27, 1970 before respondent Judge).

At the said hearing on July 27, 1970, the respondent Judge admitted that the counsel for herein petitioners so informed him on June 8, 1970 of the desire of the respondents members of the provincial board to be heard by themselves on the motion for reconsideration (p. 127, rec), to which he replied "By all means," believing then "that the motion was in order" (p. 127, rec).

In an order dated July 29, 1970, respondent Judge denied herein petitioners' motion for reconsideration of the order dated July 17, 1970 (Annex V, pp. 133-136, rec).

Hence, this petition.

I

With respect to the orders dated November 26, 1969 and December 4, 1969 giving due course to and granting the motion of herein private respondents dated November 3, 1969 for the reconsideration of the order dated September 10, 1969 as well as allowing them to submit additional evidence in Civil Cases Nos. 6591 and 6763, Assistant Provincial Fiscal Amador, as counsel for herein petitioners, is already estopped from questioning its validity for non-compliance with Sections 4, 5 and 6 of Rule 15, by reason of his failure to submit his opposition to the said motion for reconsideration, despite the fact that he was granted by the respondent Judge in an order dated November 26, 1969 five (5) days from receipt thereof within which to submit his opposition. Such failure to contest the aforesaid motion dated November 3, 1969 for the reconsideration of the order dated September 10, 1969 denying the motion of herein private respondents for the re-opening of the two cases constitutes

abandonment or waiver of the right on the part of herein petitioners to challenge the validity of the said motion for reconsideration and the consequent order dated December 4, 1969 granting the same, and such want of notice cannot be raised for the first time on appeal^[11] nor on certiorari.^[12] This abandonment or waiver was emphasized by Assistant Provincial Fiscal Amador in his motion dated June 6, 1970 and filed on June 8, 1970 for the reconsideration of the decision dated April 27, 1970 and in his urgent motion dated July 22, 1970 for the reconsideration of the order of execution dated July 17, 1970, wherein he stated that he did not any more question the legality of the said order because of the desire of petitioners to afford herein private respondents the "maximum opportunity to prove their cases" (Annexes G & R, pp. 48 & 117, rec). As a matter of fact, at the hearing on July 27, 1970 on the urgent motion dated July 22, 1970 of the Assistant Provincial Fiscal for the reconsideration of the order of execution dated July 17, 1970, the respondent Judge intimated that had Assistant Provincial Fiscal Amador filed an opposition to the motion of herein respondents for the reconsideration of the order dated September 10, 1969 or a motion for reconsideration of the order dated December 4, 1969 granting the aforesaid motion for reconsideration of herein private respondents and allowing them to present additional evidence in the two civil cases on the ground of absence of the notice of hearing required by the rules, he (herein respondent Judge) would have corrected his mistake (Annex U, pp. 124, 130. rec.).

And as herein respondent Judge himself stated, the order dated September 10, 1969 was purely interlocutory as it is not a decision on the merits of the two civil cases, which he *motu proprio* could have rectified at anytime before the actual presentation of additional evidence by herein private respondents.

II

We now come to the question whether the order of execution dated July 17, 1970, the order dated July 29, 1970 denying herein petitioners' motion for reconsideration of the said order of execution and the writ of execution dated July 22, 1970 were validly issued. This issue in turn hinges on whether the notice accompanying the motion dated June 6, 1970 and filed on June 8, 1970 for the reconsideration of the decision dated April 27, 1970, complies with the requirements of Section 2 of Rule 37 in relation to Sections 4, 5, and 6 of Rule 15 of the Revised Rules of Court.

We have to sustain the learned respondent Judge, Honorable Ulpiano Sarmiento, who correctly rejected the contention of herein petitioners that the said notice of hearing substantially complies with the aforementioned provisions of the Rules of Court, invoking the cases of *Bath*, *Fulton*, *Magno*, *Almacen*, and *Sebastian*, *supra*. All these five cases decided in 1965, 1967, 1969 and 1970 and after the effectivity on January 1, 1964 of the Revised Rules of Court, reiterated the rule that the requirements of Sections 4, 5, and 6 of Rule 15 in relation to Section 2 of Rule 37 of the Revised Rules of Court are mandatory and non-compliance therewith renders any motion as a useless scrap of paper, which does not merit the attention of the court. Said sections reads thus —

"Sec. 2, Rule 37: - Contents of motion for new trial and notice thereof.- The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. x x x" (*italics supplied*).

"Sec. 4, Rule 15: Notice.-Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

"Sec. 5, Rule 15: Contents of notice - The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

"Sec. 6, Rule 15: Proof of service, to be filed with motion.- No motion shall be acted upon by the court,

without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

The pertinent facts in the case of *Manila Surety and Fidelity Co., Inc. vs. Bath Construction and Company*[13] where this Court dealt squarely with the effect of lack of notice of hearing of a motion for reconsideration, are as follows: On April 27, 1959, the trial court rendered its decision in favor of plaintiff. Copy of the decision was received by the defendants on May 2, 1959. On May 12, 1959, the defendants filed a motion for reconsideration without the requisite notice of time and place of hearing. On May 21, 1959, the trial court issued an order stating that since the said motion contained no notice of the time and place of hearing, "the same cannot even be considered as a motion; it presents no question which the court could decide and the latter acquires no jurisdiction to consider it." On May 30, 1959 (the 29th day from receipt of a copy of the decision), the defendants filed a supplement to their motion for reconsideration with the requisite notice of place and time of hearing. The defect of the defendants' motion for reconsideration dated May 12, 1959 having been cured by their subsequent "supplement to their motion for reconsideration" dated May 30, 1959, the trial court acted on the merits of the motion and supplement and denied both in an order dated June 6, 1959. Copy of the order of denial of the motion was received on June 13, 1959 by the defendants who filed their notice of appeal and appeal bond on June 18, 1959 and their record on appeal on June 25, 1959. Plaintiff then moved to dismiss the appeal on the ground that it had been filed out of time, alleging that the motion for reconsideration of May 12, 1959 was pro forma and, therefore, did not interrupt the running of the period for appeal. On July 15, 1959, the trial court sustained the plaintiff's motion stating that such period had expired on June 15, 1959. The defendants appealed the order of dismissal.

This Court, thru Mr. Justice Querube Makalintal (with Justice Bautista Angelo not taking part and Justice Barrera then on leave), sustained the trial court's order, and pointed out that:

"The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all parties concerned at least three days in advance. And according to Section 6 of the same rule no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case the motion is nothing but a useless piece of paper (*PNB vs. Donasco*, L-18638, Feb. 28, 1963, citing *Manakil vs. Revilla*, 42 Phil. 81; *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866; *Director of Lands vs. Sanz*, 45 Phil. 117). The reason is obvious, unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules do not fix any period within which he may file his reply or opposition.

We are not impressed by the argument that the 'supplement' filed by the appellants on May 30 should be deemed retroactive as of the date the motion for reconsideration was filed and, therefore, cured the defect therein. To so consider it would be to put a premium on negligence and subject the finality of judgments to the forgetfulness or whims of parties-litigants and their lawyers. This of course would be intolerable in a well-ordered judicial system.

"Furthermore, in this particular case appellants were or should have been alerted to the fact that their motion for reconsideration of May 12 did not interrupt the period for appeal when they received the court's order of May 21, 1959, wherein it was stated that what appellants had filed was not even a motion and 'presented no question which the court could decide.' " (pp. 437-438; italics supplied).

Confronted with the same question on lack of notice of hearing, this Court, in the case of *Fulton Insurance Co. vs. Manila Railroad Co.*,[14] declared that the notice required by Section 2 of Rule 37 in relation to Sections 4, 5, and 6 of Rule 15 is mandatory, and the failure to give the same is fatal. The pertinent facts therein are as follows: On

September 30, 1964, the trial court rendered its decision, notice of which was received by the plaintiff on October 7, 1964. On October 12, 1964, plaintiff filed a motion for reconsideration of the decision without setting the same for hearing, which was supplemented however, by a "motion to set," dated November 11, 1964, setting the aforesaid motion for reconsideration for hearing on November 14, 1964. In an order dated November 18, 1964, the trial court denied the motion, declaring itself without jurisdiction to pass upon the same after the 30-day period for appeal. Upon a motion for reconsideration of this last order, the trial court, on December 1, 1964, amended its decision of September 30, 1964. Defendants appealed.

Mr. Justice Eugenio Angeles, speaking for a unanimous COURT, declared the order of December 1, 1964 null and void, and stressed that:

"The present provision of Section 2, Rule 37 construed in relation to Sections 4, 5, and 6 of Rule 15 of the Rules of Court provides that a written notice of a motion for new trial shall be served by the movant on the adverse party stating the time and place of hearing thereof, and the court shall not act upon the motion without proof of such notice. Said provision repealed the provision of Section 146 of the old Code of Civil Procedure and the rulings founded therein, (Soriano vs. Ramirez, 44 Phil. 519; Ignacio vs. Sison and Navarro, 56 Phil. 451), to the effect that the notice must be served by the court on the adverse party (Moran, Rules of Court, Vol. n [1963 Ed] p. 212). The notice therein required is now mandatory, and the failure of herein appellee to give notice of the time and place of hearing of the motion it filed in the court below, was indeed fatal to its cause.

xxx xxx xxx We also cannot subscribe to the contention of herein appellee that the failure to give notice of the time and place of hearing of its motion for reconsideration was cured when it subsequently filed a motion to set it for hearing. The motion for reconsideration that failed to give the requisite notice of hearing, did not toll the running of the period for appeal, and the said reglementary period naturally elapsed. The decision of September 30, 1964 therein sought to be reconsidered, had then become final when the subsequent motion to set the same for hearing was filed on November 11, 1964. x x x." (pp. 981-983).

In the case of Magno vs. Ortiz, et. al., [15] this COURT, in resolving the issue as to "whether or not petitioner's motion for reconsideration filed in the court a quo without a notice of hearing but concerning which a notice was subsequently caused by the court itself to be served upon all parties concerned, suspended the period for appeal," pointed out "that the duty to give such notice devolves upon the movant, not upon the court" and that, as already pointed out in *Fulton Insurance Co. vs. Manila Railroad Co., et al.*, supra, Section 2 of Rule 37 repealed the provision of Section 146 of the old Code of Civil Procedure and the rulings founded thereon, to the effect that the notice must be served by the court on the adverse party.

The pertinent facts of the Magno case are as follows: On October 31, 1963, judgment was rendered in favor of plaintiff, copy of which was received by intervenor Gualberto V. Magno on December 12, 1963. On January 11, 1964, the thirtieth day from receipt of the copy of the judgment, the intervenor Magno filed by registered mail with the court a quo a motion for reconsideration. The said motion did not contain a notice of hearing. On January 27, 1964, respondent Judge motu proprio caused to be served upon all parties concerned a notice setting the motion for hearing on February 8, 1964. On the same day, January 27, respondent Suazo moved for the issuance of a writ of execution of the decision on the ground that it had already become final and executory since neither the defendants nor the intervenor perfected an appeal within the reglementary period. On March 9, 1964, respondent Judge issued an order denying the motion for reconsideration and allowing the issuance of a writ of execution. On March 17, 1964, petitioner moved to reconsider that portion of the order dated March 9, which allowed the issuance of a writ of execution. The motion was denied.

Petitioner, filed a petition for certiorari contending that respondent Judge gravely abused his discretion in considering the subject motion for reconsideration a mere scrap of paper, and that "what the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard," citing *Borja*

vs. Tan, Duran Embate vs. Penolio and Sun Un Giok vs. Matusa.

This COURT, in a unanimous decision again penned by Mr. Justice Querube Makalintal, ruled that the cases relied upon by petitioner are not in point thus:

"As correctly stated by the trial Court, the subject motion for reconsideration was in fact a motion for new trial. The reasons relied upon are equivalent to an assertion that the decision was contrary to law, which is a ground for new trial (Rule 37, Sec. 1 [c]). The applicable rule on the matter, therefore, is Sec. 2 of Rule 37, construed in relation to Sees. 4, 5, and 6 of Rule 15, which provide that a written notice of a motion for new trial shall be served by the movant on the adverse party, stating the time and place of the hearing thereof, and that without proof of service of the notice the motion shall not be acted upon by the court. These provisions have been applied in the case of Manila Surety & Fidelity Co., Inc. vs. Bath Construction Co., et. al., G.R. No. L-16636, June 24, 1965 and reiterated in Fulton Insurance Co. vs. Manila Railroad Co., et. al., GR. No. L-24263, November 18, 1967.

"As regards the notice of hearing caused to be issued by respondent Judge, it is contended that it cured the defect of lack of notice. Under the facts of this case, the contention is incorrect. In the first place, the duty to give such notice devolves upon the movant, not upon the court. In Fulton Insurance Co. vs. Manila Railroad Co., et. al., supra, it was pointed out categorically that Sec. 2 of Rule 37 repealed the provision of Sec. 146 of the old Code of Civil Procedure and the rulings founded thereon, to the effect that the notice must be served by the court on the adverse party. Secondly, even granting that the court a quo had authority to issue *motu proprio* the notice of hearing, such notice nevertheless did not cure the defect of the motion for reconsideration. For while the motion was filed on the thirtieth day from notice of the decision the notice of hearing was only issued sixteen (16) days thereafter. Considering that a defective motion for reconsideration does not toll the running of the period for appeal, the decision in Civil Case No. 410 had already become final when the notice of hearing was issued by respondent judge." (pp. 696-697)

In "In the Matter of Proceedings for Disciplinary Action against Atty. Vicente Raul Almacen in G.R. No. L-27654, Antonio H. Calero vs. Virginia Y. Yaptinchay,"[16] this COURT, thru Mr. Justice Fred Ruiz Castro (with Justice Enrique M. Fernando not taking part), reaffirmed the Bath case, supra, and pronounced that "the Court of Appeals had fully and correctly considered the dismissal of his appeal in the light of the law and applicable decisions of this Court. Far from straying away from the accepted and usual course of judicial proceedings,' it traced the procedural lines etched by this Court in a number of decisions." x x x "As a law practitioner who was admitted to the Bar as far back as 1941, Atty. Almacen knew — or ought to have known — that for a motion for reconsideration to stay the running of the period of appeal, the movant must not only serve a copy of the motion upon the adverse party (which he did), but also notify the adverse party of the time and place of hearing (which admittedly he did not)." (p. 575)

Dealing with a motion for reconsideration without the requisite notice of time and place of hearing, this COURT once more thru Mr. Justice Querube Makalintal (with Justice Antonio Barredo not taking part), in Sebastian vs. Cabal,[17] reiterated the rule in the Bath and Fulton cases and held that:

"The Rules of Court are quite clear. For motions in general, Rule 15, Sees. 4 and 5, provides that notice of a motion shall state the time and place of hearing and shall be served upon all parties concerned at least three days in advance. And according to Sec. 6 of the same Rule, no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious; unless the movant sets the time and place of hearing the court would have no way to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition." (pp. 454-455).

The fact that the abovementioned cases dealt with motions which initially did not contain nor were accompanied by any notice of hearing, while the motion in the case at bar contains a notice of hearing but deficient, does not preclude the application of the rule enunciated in said cases; because the notice of hearing in the present case is fatally defective, for it failed to indicate the place and time of hearing of the motion as required by Section 2 of Rule 37 in relation to Sections 4, 5, and 6 of Rule 15, and therefore the same is, as stated by the respondent Judge, "worse than no notice at all."

The provisions of the aforequoted rules are clear and are couched in simple language, understandable to any college student, even if he is not a student of law. Sections 4 and 5 of Rule 15 require that the notice shall be directed to the parties concerned and shall state the time and place for the hearing of the motion, which notice shall also be served to all parties concerned at least three (3) days before the hearing thereof, together with a copy of the motion and other supporting documents. Section 4 of Rule 15 does not state that such notice shall be directed to the clerk of court, much less to the judge himself. Neither does it allow that the notice shall be served any time before or on the day of the hearing, for the rule requires that the adverse parties should be served with such notice at least three days before the hearing, to give them an opportunity to contest the motion and be heard thereon. There is no ambiguity nor vagueness in the rules. Failure to give at least three days notice prior to the hearing vitiates the notice.[18]

But as pointed out by the respondent Judge, the notice of hearing was addressed to the clerk of court, not to the adverse parties. It did not set the time and place of hearing. On the contrary, from its tenor it was to be submitted for the immediate resolution of the court, without giving the adverse party at least three (3) days to oppose the motion for reconsideration of the decision.

Assistant Provincial Fiscal Amador was still following the old form pursuant to Section 146 of the Old Code of Civil Procedure, which directed the Judge to serve the notice of hearing upon the adverse party. This provision has been expressly repealed by Section 2 of Rule 37 of the Revised Rules of Court, as categorically held in the cases of *Fulton* and *Magno*, *supra*.

Assistant Provincial Fiscal Amador had still three (3) days within which to cure the very defective notice of hearing from June 8, 1970, when he filed his motion of the reconsideration of the decision until June 11, 1970, when the 30-day period of appeal expired and the decision became final. But he miserably neglected to do so, in spite of the fact that in the afternoon of June 8, 1970, respondent Atty. Nicanor E. Oriflo, a member of the provincial board and one of the herein petitioners, asked him to request the clerk of court to set the motion for hearing because the respondent members of the provincial board desired to argue their motion for reconsideration by themselves, about which desire he himself informed the respondent Judge that same afternoon of June 8, 1970. At the hearing on July 27, 1970 on his urgent motion dated July 22, 1970 for the reconsideration of the order of execution dated July 17, 1970 (Annex U, pp. 124-127, rec), Assistant Provincial Fiscal Amador admitted his negligence in not submitting an appropriate notice of hearing regarding his motion for reconsideration of the decision as required by Section 4, 5, and 6 of Rule 15 in relation to Section 2 of Rule 37 of the Revised Rules of Court. When he recalled at said hearing on July 27, 1970 that he informed the respondent Judge about the desire of the provincial board members to argue their motion for reconsideration of the decision, respondent Judge replied that his answer to the aforesaid information was "by all means," believing then "that the motion was in order" and that he had no inkling that the motion was defective (Annex U, p. 127, rec).

Sections 4, 5, and 6 of Rule 15 were devised against such omission, negligence, forgetfulness or whim of party litigants and their lawyers, which are intolerable in a well-ordered judicial system if the finality of a judgment is abated thereby.[19]

Herein petitioners lean heavily on the cases of *Un Giok vs. Matusa*[20] and *Inesin, et. al. vs. Canonoy, et al.*,[21] decided respectively in 1957 and 1960 — long before the effectivity of the Revised Rules of Court on January 1, 1964 — which do not govern, because the facts therein are at variance with those of. the case at bar.

In the 1957 *Matusa* case, the notice of hearing addressed to the clerk of court reads thus: "Please submit the foregoing Motion to Dismiss Complaint and Amended Complaint for the proper consideration of the Honorable Court and as soon as thereafter as a counsel can be heard," followed by a certification by the counsel that he had sent a copy of the foregoing motion to plaintiffs counsel on September 9, 1955 "by registered mail as evidenced by registry receipt No. 703 hereto attached, at Sibalom, Antique." The said motion to dismiss was received by the clerk of court, who set it for hearing on September 24, 1955. although the plaintiff averred that he was not notified of said hearing. Counsel for plaintiff did not appear on said date, but, because defendant was not able to present proof of service on the adverse party, the trial court deferred action on the motion to dismiss and issued an order dated September 24, 1955 postponing consideration on the same until proof can be shown that counsel for plaintiff had received a copy of said motion to dismiss. Plaintiff *Matusa* received a copy of said order of postponement, but before counsel for defendant could present the required proof for service, counsel for plaintiff filed a motion to declare the defendant in default which was granted in an order dated October 15, 1955, and, consequently, the trial court received plaintiffs evidence and judgment was rendered thereon.[22]

In reversing the order of default and the decision granted by the trial court on the ground that defendant *Matusa* was deprived of this day in court, We held:

"From the aforequoted sections (referring to Secs. 4 and 5 of Rule 26 of the Rules of Court, now Secs. 4 and 5 of Rule 15 of the Revised Rules of Court), it is required that notice of a motion directed to the parties concerned, must be served by the movant stating therein the time and place for the hearing of the said motion. Counsel for defendant in addressing the notice to the Clerk of Court requesting that said motion be submitted for the consideration of the Honorable Court and as soon as thereafter as counsel can be heard.' and at the same time certifying that he had sent a copy of the motion to the counsel for therein plaintiff, such notice seems to substantially comply with the requirement of Section 5 of Rule 26, for in virtue of said notice, the hearing was actually set by Clerk of Court for September 24, 1955, of which, We can presume, counsel for respondent *Hermogenes Matusa* was notified. Respondents banked on the ruling laid down in the case of *Manakil vs. Revilla*. 42 Phil. 81, but the pronouncement therein is based on the provision of Section 6 of the same Rule 26 (Section 6 of Rule 15 of the Revised Rules of Court), which reads as follows:

"Sec. 6. Proof of service, to be filed with motion.— No motion shall be acted upon by the Court, without proof of service of the notice thereof.

"It was in virtue of this requisite of proof of service that the trial court, in its order of September 24, 1955, deferred action on the motion to dismiss postponing the same indefinitely until counsel for defendant could produce the necessary evidence that adverse party was furnished with copy of said motion, despite the fact the defendant's attorney certified that a copy of said pleading was sent by registry receipt thereof. The case of *Makanil vs. Revvilla*, supra enuciated that notice of motion is necessary, and, without proof of service thereof, a motion is nothing but a useless piece of paper which the clerk should not receive for filing, but the facts of the case at bar are quite different.

"But let us grant, for the sake of argument, that the notice in question, as quoted above is defective, for failure to specify the exact date when that motion should be heard. Even so, We believe that the Court in taking cognizance of the motion on the date set for hearing thereof, cured whatever iota of defect such pleading may have had, specially if it taken into account that upon receipt of the motion to dismiss, plaintiff was properly notified of the existence of said pleading. x x x."

As was stated, the deficiency of the notice of hearing in the Matusa case was cured when the clerk of court set the motion for hearing and the court took cognizance of the motion on the date set for hearing thereof by the clerk of court.

In the 1960 Canonoy case, counsel for the defendants received a copy of the order of dismissal on October 7, 1955, and on October 31, they moved to reconsideration did not contain a notice of hearing, but on December 6, 1956, a motion was presented asking the clerk of court to set the motion for reconsideration for hearing on December 22. The motion was opposed on the ground that it contained no notice of hearing and therefore should be considered as a mere scrap of paper, which did not toll the running of the period for the judgment to become final. Nevertheless, the court reconsidered and set aside its order of dismissal. This Court, in affirming the order of the lower court, stated:

"It is to be noted that the court of first instance holds its sessions in Pagadian, Zamboanga del Sur, only once a year on the dates to be fixed by the district judge (Sec. 151, Rev. Adm. Code, superseded by Sec. 54 Rep Act No. 296). As the session in Pagadian are not continuous throughout the year, and since it is not shown that, at the time the respondents herein presented the motion to reconsider the order of dismissal, the Judge of the Court of First Instance had already set the date for the next term, the attorney for the movant, respondent herein, could not set the motion for hearing, not knowing on what date or in what month the next yearly session in Pagadian was to take place. It is true that the attorney for the respondent could have set the motion for hearing, on the first day of the term, asking the clerk of court to set it for hearing on that date, but the failure to adopt such a step could not have meant negligence or neglect on the part of the attorney for the movants for said attorney had the alternative to set the motion for hearing as soon as the judge has fixed the following term of the court in the municipality. Under the rules, which we have enjoined to be interpreted liberally, and under the circumstances, we are not prepared to declare that the said motion, which was accepted by the clerk of court was a mere scrap of paper. x x x."

It is patent in the Canonoy case that the failure on the part of counsel to set the date of hearing of his motion was not due to neglect or negligence on his part, but because he could not do so as he did not know the date or the month when the next yearly session of the court in Pagadian would take place as there was no showing that at the time he filed his motion the court had already fixed the date for the next term.

It is evident therefore that the circumstances which compelled the court to regard the notice of hearing in the Matusa case as having been remedied or which justified the failure or inability of the counsel in the Canonoy case to fix a date for the hearing of his motion, do not obtain in the instant case. Here, the clerk of court did not set the motion of herein petitioners for reconsideration of the decision for hearing on a definite date, much less did the respondent Judge take cognizance of the said motion for reconsideration. And the respondent Judge holds hearing every business day throughout the year in Naga City, unlike the Judge in the Canonoy case.

Neither did herein private respondents file an opposition to the aforementioned motion of herein petitioners for the reconsideration of the decision, so as to bring the case at bar within the purview of the doctrine in the case of Macasero vs. Saguin[23] much less were the merits of the said motion for reconsideration of the decision argued. The hearing and argument were limited to the motion for execution and the motion for the reconsideration of the order granting the motion for execution.

Withal, the facts in the instant case do not justify a liberal application of the rules.

To emphasize once more, the directives in Section 2 of Rule 37 and Sections 4, 5, and 6 of Rule 15 of the Revised Rules of Court are as mandatory as they are clear and simple; and non-compliance therewith is fatal to the cause of the movant, because the mere filing of the motion for reconsideration, without the requisite notice of hearing, does not toll the running of the period for appeal. Unless the movant sets the time and place of hearing in the

notice and serves the adverse party with the same, the court would have no way to determine whether the party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which to file his reply or opposition. The rules commanding the movant to serve on the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing "shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion" (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. To deviate from the peremptory principle thus uniformly reaffirmed in the latest cases aforecited in, and to exempt from the rigor of the operation of said principle, the case at bar would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon — all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be ignored. WE had to draw a line somewhere and WE did when we promulgated on January 1, 1964 the Revised Rules of Court, wherein WE delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding.

WE have been so unyielding on this matter that even in the aforementioned case of Manila Surety,[24] WE ruled that the filing of the requisite notice of hearing one day before the expiration of the period to appeal, does not retroact to the date of the filing of the motion for reconsideration, which was filed much earlier or just ten days after receipt of the decision. In the Fulton case,[25] wherein the movant therein filed the requisite notice of hearing five days after the 30-day period for appeal had expired, although the motion for reconsideration itself was filed five (5) days after receipt of the decision. WE maintained the same rule. In the case of Magno,[26] again WE reiterated the same principle, even when the trial Judge himself caused to be served upon all the parties a notice of hearing. The movant in the Magno case filed his motion for reconsideration on the thirtieth day from his receipt of the decision without the requisite notice of hearing, which he filed sixteen (16) days after the expiration of the 30-day period for appeal.

WHEREFORE, the orders dated November 26, 1969, December 4, 1969, July 17, 1970, and July 29, 1970 as well as the writ of execution issued on July 22, 1970 are hereby affirmed as valid; the writ of preliminary injunction heretofore issued is hereby lifted; and the petition is hereby dismissed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Barredo and Villamor, JJ., concur.

Teehankee, J., in the result.

Ruiz Castro, J., is on official leave.

[1] 60 Phil. 465.

[2] 50 O.G. 1952.

[3] L-16636, June 24, 1965, 14 SCRA 435, 437-438.

[4] L-24263, Nov. 18, 1967, 21 SCRA 975, 981.

[5] L-22670, Jan. 31, 1969, 26 SCRA 692, 697.

[6] Feb. 18, 1970, 31 SCRA 562, 567.

[7] L-25699, April 30, 1970, 32 SCRA 453.

- [8] 101 Phil. 727.
- [9] 93 Phil. 167.
- [10] 93 Phil. 782.
- [11] *Alafriz vs. Mina*, 28 Phil. 141.
- [12] See *Duldulao, et. al. vs. Ramos*, L-4615, May 12, 1952, 91 Phil. 261, 263.
- [13] June 24, 1965, 14 SCRA 437.
- [14] Nov. 18, 1967, 21 SCRA 975.
- [15] Jan. 31, 1969, 26 SCRA 692.
- [16] Feb. 18, 1970, 31 SCRA 562.
- [17] Apr. 30, 1970, 32 SCRA 453.
- [18] *J.M. Tuason vs. Magdangal*, L-15539, Jan. 30, 1962, 4 SCRA 84.
- [19] *Manila Surety vs. Bath*, *supra*.
- [20] 101 Phil. 77.
- [21] 107 Phil. 217.
- [22] Vol. 101 Phil. 730.
- [23] L-6240, April 29, 1954.
- [24] June 24, 1965, *supra*.
- [25] Nov. 18, 1967, *supra*.
- [26] Jan. 31, 1969, *supra*.

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