

**EMPERATRIZ VESTAL LOPEZ, FLORENCIO, MARVAL, FERMIN,  
ADOLFA, VICENTA, JOSE AND SEVERA, ALL SURNAMED LOPEZ,  
PETITIONERS, VS. HONORABLE COURT OF APPEALS, CRISOSTOMO  
ROSALES AND FOR...**

*G.R. No. L-43767. February 28, 1977*

Ponente: MAKASIAR, J.

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**MAKASIAR, J.:**

In its resolution dated January 22, 1976, respondent Court of Appeals, *motu proprio* dismissed the appeal of herein petitioners in CA-G.R. No. UDK 2045-R, for their failure to pay on time the corresponding docket fee in the total sum of P53.00.

Petitioners, who are represented by the Citizens Legal Assistance Office (CLAO) of the Department of Justice, now seek a review on certiorari the following resolutions of the respondent Court of Appeals:

1. Resolution dated January 22, 1976, dismissing petitioners' appeal from the Court of First Instance of Davao in Civil Case No. 417, entitled "Crisostomo Rosales, et al., plaintiffs, versus Emperatriz Vestal Lopez, et al., defendants," for the reason that:

"Since January 8, 1976 was expiry date to pay docket fees but motion was filed January 13, 1976 --DENIED, APPEAL DISMISSED."

2. Resolution dated February 2, 1976, denying -- for lack of merit petitioners' motion dated January 26, 1976 for reconsideration and to admit the docket fee;

3. Resolution dated February 24, 1976, denying petitioners' motion for reconsideration dated February 17, 1976 on the ground that:

"The return card attached to p. 17 clearly shows that notice to pay docket fee was received from Post Office on December 24, 1975; therefore last day to pay was January 8, 1976; and motion for extension to pay was filed on January 13, 1976, when there was no more period to extend;"

4. Resolution dated March 25, 1976, denying petitioners' motion for reconsideration dated March 16, 1976, thus --

"As a preliminary point, movants have not shown that dismissal of appeal is not yet final and can still be reconsidered. For this reason at least, reconsideration should be denied, as it is hereby DENIED"; and

5. Resolution of April 27, 1976, denying petitioners' motion for leave to file second motion for reconsideration to reinstate appeal, dated April 14, 1976.

Petitioners' main complaint is embodied in paragraph 7 of their undated petition for review on certiorari, reproducing, among other things, their motion for reconsideration, dated March 16, 1976 (Annex H-Petition), as

follows:

"3. That she filed a Motion for Extension of Time to Pay Docket (Fee) on January 13, 1976;

"4. That she based the computation of time within which to pay the docket on the date stamped on the Motion to Pay Docket Fee which clearly show that the office received it on December 29, 1975, which was already submitted to this Court for Appreciation;

"5. That from December 30, 1975 to January 13, 1976, it will give us a total number of 15 days;

"6. That the Motion for Reconsideration of the herein appellant was denied for the reason that the Registry Return Received from the Post Office showed that the office received it on December 24, 1975. However the Motion to Pay Docket Fee clearly show that the office received the Notice to Pay Docket Fee on December 29, 1975. This Motion which was stamped received on December 29, 1975, was the very notice and communication indorsed to the undersigned for action. There is no other date appearing on the aforesaid letter indicating that it was received prior to the aforesaid date;

"7. That in view of the fore-going circumstance, undersigned most respectfully inform this Honorable Court that she could not be expected to use the date appearing in the registry return receipt as basis in the computation of the period considering that such date, December 24, 1975 does not appear on the face of the Notice to Pay Docket Fee and considering further that it is the Record Division of this Office which received communication; and that she could not be expected to know things which does not appear in the record;

"8. That the said date December 24, 1975 might have been erroneously written by the messenger considering that it is of judicial notice that December 24, 1975 is a busy day being a Christmas Eve. It is likewise of judicial notice that the succeeding days after Christmas were declared as a Special Holidays by the President of the Philippines and it was only on December 29, 1975 when offices resume works; x x x." (Pp. 4-5, Petition; pp. 14-15, rec.).

Copy of the undated petition was received by counsel for private respondents on July 26, 1976, who eventually filed his COMMENT thereon on November 20, 1976 (received by this Court on December 2, 1976), only after he received the Court's resolution of October 2, 1976 on November 10, 1976, requiring him to SHOW CAUSE why he should not be disciplinarily dealt with for his failure to file his comment within the period which expired August 16, 1976. In their comment, private respondents, while adopting the stand of the Court of Appeals in dismissing petitioners' appeal, added that:

"The Court of Appeals have (sic) more knowledge on the facts surrounding the dismissal of the appeal. The herein respondents have no other recourse but to adopt the stand of the Court of Appeals and its finding on the facts surrounding the dismissal of the appeal. For the herein respondents have no way of verifying the facts alleged by the herein petitioners by reason of the distance between this Honorable Court, where the records of the case are, and the office of the undersigned counsel which is at Tagum, Davao."

After considering the circumstances obtaining in the case and the prevailing atmosphere of liberality which has swept this Court in similar matters since the case of *Berkenkotter vs. Court of Appeals* (L-36629, Sept. 28, 1973, 53 SCRA 228), followed by *Pimentel, et al. vs. Court of Appeals* (L-39423 & L-39684, June 27, 1975, 64 SCRA 476) and lately by *Maqui and Maqui vs. Court of Appeals, et al.* (L-41609, Feb. 24, 1976), WE vote to grant the petition.

Section 1, Rule 50 of the Revised Rules of Court, on dismissal of appeal, provides:

"SECTION 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

"xx xx xx xx

"(d) Failure of the appellant to pay the docketing fee as provided in section 5 of Rule 46; x x."

It was grave abuse of judicial discretion on the part of respondent Court of Appeals to dismiss petitioners' appeal for the latter's alleged failure to file a motion for extension of time to pay the appeal docket fee on or before January 8, 1976, the expiry date to pay the docket fee, if the notice to pay such fee was actually delivered on December 24, 1975 by the postal employee to the Records Division of the CLAO, as claimed by respondent Court of Appeals. But there is evidence to show that CLAO actually received the same notice on December 29, 1975. Since the counsel assigned by the CLAO to handle the appeal of petitioners had every reason to rely on "December 29, 1975" as the date of receipt of the notice to pay, We find merit in her contention that under the circumstances she could not be expected to know "January 8, 1976" as the expiry date, because fifteen days from December 29, 1975 would be January 13, 1976.

Hence, to dismiss appellants' appeal, as the Court of Appeals did, and to deny the various subsequent motions for reconsideration filed thereafter would be unjust and unwarranted.

Not only this. There is the undeniable fact that December 24 is traditionally a very busy day for everyone. In the Supreme Court itself, the employees are dismissed after noon of December 24th to enable them to go home and avoid the Christmas rush and traffic. Added to this is the fact that the three days after Christmas day in 1975 were all non-work days, Friday, December 26, having been declared a special public holiday by the President of the Philippines. And it was only on December 29 that work in the government, including the CLAO, counsel for petitioners, was resumed. Thereafter, four more non-work days followed until January 5, 1976, when work in public and private offices returned to normal. To these incontrovertible facts, We cannot close Our eyes.

Again, there is no dispute that the appeal docket fee was eventually paid (Annex B-Petition, p. 27, rec.). The payment of the appeal docket fee is not a requirement for the protection of the prevailing party, and non-compliance therewith within the time prescribed causes no substantial prejudice to anyone. It is patent that the delay in the payment was not due to laches or to a desire to delay or defeat the ends of justice. To apply to petitioners the legal requirements strictly, would not only tend to block the right of review to which a party is entitled under the law, but also would amount to a complete departure from what We said in the cases of *Philippine National Bank vs. Philippine Milling Co., Inc., et al.* (26 SCRA 712, 715) and reiterated in *Maqui & Maqui vs. Court of Appeals, et al.* (L-41609, Feb. 24, 1976) that the provision of Section 1, Rule 50 of the Revised Rules of Court, which provides specific grounds for dismissal of appeal "manifestly confers a power and does not impose a duty. What is more, it is directory, not mandatory." Hence, it should be exercised with a great deal of circumspection, considering all the attendant circumstances.

WHEREFORE, THE RESPONDENT COURT OF APPEALS' RESOLUTIONS HEREINABOVE ENUMERATED ARE ALL SET ASIDE, AND THE APPEAL FILED BY PETITIONERS IN CA-G.R. NO. UDK 2045-R IS ORDERED REINSTATED. NO COSTS.

Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.  
Teehankee, J., (Chairman), files a separate opinion.

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## CONCURRING OPINION

**TEEHANKEE, J.:**

I concur. The judgment once more applies the basic rule that failure to pay the appeal docketing fee within the 15-day reglementary period[1] confers a directory, not mandatory, power to dismiss the proposed appeal and that such power will be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." [2]

It cannot be over-emphasized, however, that the members of the bar should exert every effort to observe strictly such reglementary periods fixed in the Rules of Court. Such reglementary periods are essential for the effective and orderly administration and disposition of the cases and incidents before the courts. Failure to comply with such reglementary periods is fatal in the matter of taking an appeal, for the judgment sought to be appealed becomes final if the appeal is not perfected within the reglementary period. Failure to keep other non-jurisdictional deadlines or periods needlessly multiplies the paper work in the courts and consumes the time and attention of the appellate courts (which they should normally and properly devote to the principal task of adjudicating appeals on their merits) in determining in each case whether such lapses could be justifiably excused on the basis of compelling reasons and considerations.

The Court reiterates the basic ground rule as affirmed in *Maqui vs. Court of Appeals*[3] that "(A) rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction."

But it must be borne in mind by would-be appellants that their failure to observe the reglementary periods and other requirements throws the burden on them to show not only that it would be in consonance with the exercise of sound discretion and the tenets of justice and fair play to excuse their lapses. More than this, where the appeal is manifestly frivolous or obviously for dilatory purposes - such as one presenting no justiciable question or one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect it can ever succeed[4] - it would be against sound discretion to excuse such lapses and dismissal of the appeal will be sustained in the interest of justice.

The cardinal rule remains that the discretionary power to dismiss appeals or not must always be exercised "wisely and prudently, never capriciously, with a view to substantial justice." [5]

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[1] From notice of the Clerk in the Court of Appeals under Rule 46, section 5; and at the same time as filing of the petition for review or corresponding motion for extension to file such petition within such 15-day period in the Supreme Court under Rule 45, section 1 and Rep. Act 5440, section 3.

[2] *Philippine National Bank vs. Phil. Milling Co.*, 26 SCRA 712, 715 (1969), per Concepcion, C.J., involving a petition to dismiss the appeal for failure to timely file a motion for extension of time to file appellant's brief. See also *Gregorio vs. Court of Appeals*, 72 SCRA 120 (1976).

**[3] 69 SCRA 368, 374 (1976).**

[4] De la Cruz vs. Blanco, 73 Phil. 596.

[5] See Gregorio vs. Court of Appeals, fn. 2, and cases cited.

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