

PHILIPPINE NATIONAL BANK AND DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONERS, VS. PHILIPPINE MILLING CO., INC., HECTOR TORRES, FRANCISCO GOMEZ AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-27005. January 31, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

In their petition herein, the Philippine National Bank and the Development Bank of the Philippines - hereinafter referred to, respectively, as the PNB and DBP - pray that writs of certiorari, prohibition and mandamus be issued annulling certain resolutions of the Court of Appeals, in CA-G.R. Nos. 35253-R and 35254-R thereof, and prohibiting said Court from assuming jurisdiction over these cases, as well as directing the Court to dismiss the appeal therein taken. Said petitioners prayed, also, that a writ of preliminary injunction be issued during the pendency of the present case, but such auxiliary relief has not been granted, although the petition herein was given due course.

The aforementioned appeals had been taken by the Philippine Milling Co., Inc., Francisco Gomez, Hector Torres and Federico Santiago, from a decision of the Court of First Instance of Manila, in Civil Cases Nos. 42133 and 42322 thereof, entitled, respectively, "Philippine Milling Co. v. Development Bank of the Philippines, Philippine National Bank and Register of Deeds of the Province of Mindoro Occidental", and "Development Bank of the Philippines v. Philippine Milling Co., et al.," dismissing the first case and ordering the defendants, in the second case, "particularly the Secretary of the Philippine Milling Co. x x to transfer in the stock book of the corporation in the name of the DBP the 15,000 shares of stocks covered by Certificate of Stock No. 32, now in the name of the respondents Hector A. Torres and Francisco M. Gomez, and to issue a new certificate of stock in lieu thereof in favor of the DBP," with costs against said defendants in the Court of First Instance and appellants in the Court of Appeals, but respondents in the present original action.

Upon the filing with the Court of Appeals of their printed record on appeal, respondents herein were required to submit therein their brief as appellants, within the reglementary period. After securing two (2) extensions thereof, the last of which was to expire on November 11, 1966, respondents moved for a third extension of 15 days, which was granted on November 14, but for 10 days only, to expire on November 21, 1966. On November 24, 1966, respondents asked a fourth extension of thirty (30) days "counted from November 26, 1966". On the date last mentioned, the DBP - as one of the appellees in the two cases - objected to said extension and moved to dismiss the appeal, upon the ground that the extension had been sought late, the previous extension having expired on November 21, 1966. Without touching upon this opposition and motion to dismiss, on November 28, 1966, the Court of Appeals granted the 30-day extension applied for, counted from November 26, 1966.

On December 1, 1966, the PNB - another appellee in CA-G.R. No. 35253-R - moved to dismiss the appeal, upon the ground relied upon by the DBP. Both motions to dismiss were denied by the Court of Appeals on December 2,

1966. Seemingly unaware of the resolution to this effect, on December 5, 1966, the DBP filed another motion urging that its motion to dismiss be acted upon. The PNB, in turn, filed, on December 7, 1966, a motion for reconsideration of the resolution of the Court of Appeals of November 28, 1966. This motion for reconsideration was, on December 9, 1966, denied by the Court of Appeals. Soon thereafter, or on December 23, 1966, the PNB and DBP commenced the present action to annul said resolutions of the Court of Appeals dated December 2 and 9, 1966, to restrain or prohibit the Court of Appeals from hearing the afore-mentioned cases CA-G.R. Nos. 35253-R and 35254-R, and to compel said Court to dismiss the appeals therein.

The petition herein is based upon the premise that, owing to respondents' failure to file a motion for extension, on or before November 21, 1966, when the third extension granted to them expired, "the Court of Appeals already lost jurisdiction to try the case and proceed further, but has not only the power but also the duty to dismiss the appeal." This pretense is clearly untenable, for, pursuant to Section 1 of Rule 50 of the Rules of Court, "(a)n appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee" upon the ground, among others, of "(f)ailure of the appellant x x x to serve and file the required number of copies of his brief," within the reglementary period. Manifestly, this provision confers a power and does not impose a duty. What is more, it is directory, not mandatory.

Contrary to petitioners' assertion that, on November 22, 1966, "it became its (Court of Appeals') ministerial duty to dismiss the appeal and remand the case for execution to the Court of origin," the Court of Appeals had, under said provision of the Rules of Court, discretion to dismiss or not to dismiss respondents' appeal. Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case, the presumption is that it has been so exercised. It was incumbent upon herein petitioners, as actors in the case at bar, to offset this presumption. Yet, the record before us does not satisfactorily show that the Court of Appeals has abused its discretion, much less gravely. Petitioners' assertion of abuse of discretion is predicated solely upon the alleged "ministerial" duty of said Court to dismiss the appeal therein, which is devoid of legal foundation. It is inconsistent with our views in *Viuda de Ordoveza v. Raymundo*[1] and *Alquiza v. Alquiza*. [2]

WHEREFORE, the petition herein should be, as it is hereby dismissed and the writs prayed for denied, with costs against the petitioners.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, Teehankee, and Barredo, JJ., concur. Fernando, J., did not take part.

[1] 63 Phil. 276.

[2] L-23342, February 10, 1968.

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