

**FRANCISCO JAMAGO, I.D. CHAN, FERNANDO MAMOWAG AND
PERFECTO TAGAILO, PETITIONERS, VS. HON. ABUNDIO Z. ARRIETA,
CFI OF BUKIDNON, NICASIO VALLEJOS AND CANDIDO LUMANOG,
RESPONDENTS.**

G.R. No. L-20876. July 30, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

On August 8, 1960, private parties-respondents filed with the JP Court of Malaybalay, Bukidnon, Civil Case No. 260, seeking the recovery of P153.50, allegedly won in a cockfight. They claimed that the decision of the cockpit referee in favor of the petitioners herein, was wrong and illegal. On August 22, 1960, the JP Court rendered judgment, the pertinent portions of which read:

"After a due hearing of the above entitled case and after considering the evidence for the plaintiffs and defendants, the Court found the preponderance of the evidence in favor of the plaintiffs and against the defendants and accordingly declares the judgment rendered by the "cueme" or referee FERNANDO MAMOWAG in the "Sultada" or match of the roosters of FRANCISCO JAMAGO and CANDIDO LUMANOG in the Crossing-Linabo Cockpit, Malay-balay, Bukidnon, on July 24, 1960, null and void and that the rooster of Candido Lumanog is hereby declared the winner in the aforementioned match or "Sultada", and that the Treasurer of the said cockpit, I. D. CHAN, is hereby ordered to deliver and turn over to the plaintiffs the amount of P153.50 as the winning of the bet or wager of the plaintiffs in the amount of P153.50 if the winnings of the plaintiffs in the amount of P153.50 is not in the possession of the treasurer of the cockpit association the three defendants FRANCISCO JAMAGO, FERNANDO MAMOWAG and PERFECTO TAGAILO are ordered to pay to the plaintiffs jointly and severally the said amount. * * * the amount of P3.00 the value of the carcass or meat of the defeated rooster, and to pay the costs."

Under date of August 26, 1960, defendants, thru counsel, presented with the JP Court, a Notice of Appeal to the CFI and on August 29, 1960, deposited the amount of P25.00 as appeal bond. There was also a communication from the Justice of the Peace, to the effect that the amount of P20.00 was received by him to pay the docket fee, for the appeal. On September 5, 1960, a "Notice of Appealed Case" was sent out by the Special Deputy Clerk of Court, of the Bukidnon, CFI, categorically stating that the said office had received the appeal, together with all the original papers and processes and the appeal bond given in the cause, and had docketed the same as Civil Case No. 191.

On September 2, 1960, the plaintiffs presented an Amended Complaint with the CFI, increasing the claim to P307.00, instead of the amount of P153.50, and adding a new defendant Domingo Vitonio. It is not shown just when defendants therein (now petitioners) were served with a copy of the amended complaint. Thereafter, a number of pleadings were presented by the parties. In the Answer to the Amended Complaint, petitioners invoked Affirmative Defenses, after the usual admissions and denials. On March 6, 1962, plaintiffs presented a "Motion to Dismiss the Appeal," contending that defendants, now petitioners, failed to pay the full amount of the docket fee,

which was P24.00, and, therefore, the CFI acquired no appellate jurisdiction. An opposition to the above motion to dismiss was interposed by petitioners on March 22, 1962, asserting that the required docketing fee was paid, thru the Justice of the Peace of Malaybalay; that even the Clerk of the CFI attested to the above fact, when he sent out the Notice of Appealed Case on September 5, 1960, with clear indication that it had been docketed. On April 18, 1962, counsel for petitioners wrote to the Clerk, CFI of Bukidnon, enclosing therewith a Postal Money Order for P4.00, to cover the alleged deficiency. This notwithstanding, the CFI, on September 18, 1962 entered an Order Dismissing the Appeal, ruling that "the failure of the defendants to deposit within the reglementary period the full amount of docketing fee for their appeal from the decision of the justice of the peace court of Malaybalay was due to the fault of said defendants or their lawyer who did not know the exact amount, and not due to any inducement given them by the Justice of the Peace Jesus Murillo or his clerk, * * * *."

On October 11, 1962, petitioners moved for a reconsideration of the above Order. They contended that they had substantially complied with the rules, and had also paid the deficit of P4.00, after having been duly informed therefor; that it was their belief (petitioners only, because they were the ones who directly paid the amount of P20.00, thru the JP), that the said amount was sufficient, no contrary statement to the effect having been given them by the JP and the Clerk of CFI; and that the delayed payment of the docket fee did not prejudice or cause impairment to the rights of the plaintiffs; and that if there was any negligence and/or mistake, the same was excusable. The motion was denied on January 3, 1963.

Petitioners claiming that the respondent Judge, in Dismissing their Appeal on the ground of failure to pay the docket fee, and in denying their motion for reconsideration, acted without or in excess of jurisdiction and/or with grave abuse of discretion, instituted the instant proceedings of Certiorari and Prohibition, praying: (1) that the respondent Judge be prohibited from remanding the case for the execution of the appealed judgment, during the pendency of the petition; (2) for a declaration of nullity of the Orders dated September 18, 1962 and January 3, 1963; and (3) for an order requiring respondent Judge to give due course to their appeal.

The petition was given due course and in their answer, private-parties respondents contended that the actuations of the respondent Judge were correct; and that the instant proceedings is not the proper remedy.

It is Our view that petitioners have substantially complied with the rules, in prosecuting their appeal, and the respondent Court, having full cognizance of the facts, acted with grave abuse of discretion in dismissing the appeal and denying the motion for reconsideration. The case was docketed way back on September 5, 1960, as per records of the Clerk of the CFI. From said date, all along, the parties and the trial Court were of the belief that there was nothing amiss regarding the perfection of the appeal. It was only after the lapse of eighteen (18) months, that the shortage in the payment of the docket fee, was noted, which fact was promptly cured by the subsequent payment of the difference of P4.00, on April 18, 1962, about five (5) months before the Order dismissing the appeal, was issued.

The respondent Judge, taking into account the facts obtaining in the case, had been unreasonably indulging in unnecessary technicality. Courts should brush aside technicalities in procedure, when they run counter to the principle of giving liberal interpretation to the rules. While the rules provide for the payment of docket fees on time, a delay, which has been explained, should not deter the courts in overlooking a rigid application of said rule, or from excepting a particular case therefrom, when justice so requires.

Wherefore, the Orders complained of are hereby set aside, and another is entered ordering the respondent Judge to give due course to petitioners' appeal, to hear the case and to render judgment accordingly. No pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar,

JJ., concur.

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