

JUAN TIONGKO, ROSARIO UMBAO DE TIONGKO AND FILOMENA RUEDA DE UMBAO, PETITIONERS, VS. HON. FRANCISCO ARCA, JUDGE OF THE COURT OF FIRST INSTANCE OF AGUSAN, THE PROVINCIAL SHERIFF ...

G. R. No. L-8612. November 29, 1957

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

The record discloses that respondents Ana Umbao de Carpio and Dioscoro Carpio were plaintiffs in Civil Case No. 75 referred to, for damages and partition of the estate of the late Petronilo Umbao, and herein petitioners Juan Tiongko, Rosario Umbao de Tiongko and Filomena Buedas de Umbao, were defendants. After trial on the merits, the case was decided in favor of the plaintiffs, now respondents, ordering: the portion of the estate as well as the payment by defendants, now petitioners, of the sum of P18,370.03 by way of damages, with legal interest covering a period of six years, and to pay the costs. The decision was served upon defendants on March 27, 1954. Ten days thereafter, or on April 6, 1954, they filed a motion for new trial, thereby suspending the running of time to appeal. During this interregnum, plaintiffs filed on April 28th a motion to correct error in the transcript of stenographic notes and for the modification of the judgment. This motion as well as that of new trial was 'denied on August 7th in two separate orders' and counsel for petitioners, were served with the copies thereof on August 10th. The remaining period of 20 days commenced to run anew on August 11th and should expire on August 30th. On August 13th, petitioners filed their notice of appeal, but only on September 1st did they file their record on appeal and appeal bond. On the same day, respondents filed a motion to dismiss appeal on the ground that the same was perfected out of time, as well as for the execution of the judgment, which motion, despite opposition on the part of petitioners, was granted on October 20th. Thereafter, petitioners filed a motion for reconsideration of the order of October 20th, but the same was denied by the respondent judge.

It could be readily gathered from the foregoing that the record on appeal and the appeal bond were filed by petitioners two days beyond the 30-day period allowed by law within which to perfect appeal, and therefore the order of the lower court dated October 20, 1954, is correct. Petitioners, however, claim that their appeal should be given due course, alleging that such delay was due to respondents' uncalled-for tactics as well as to the rather voluminous nature of the record on appeal. The imputed dilatory tactics consisted in respondents' filing a motion for execution on August 13th, and another motion to fix appeal bond filed on August 25th. These, however, were denied by the court on August 23rd and 30th, respectively, or within the remaining 20 days left to perfect appeal, and could not have affected the preparation of the record on appeal and the filing of the appeal bond; as a matter of fact, these motions as well as the orders denying them are embodied in the record on appeal which has been attached to the present petition.

It was the bounden duty of petitioners to perfect their appeal within the reglementary period.

"The rules governing appeals from a judgment of a Court of First Instance to an Appellate Court are simple

and clear. Under section 3, Rule 41, an appeal may be taken by serving: upon the adverse party and filing¹ with the trial court within thirty days from notice of judgment, a notice of appeal, the appeal bond, and a record on appeal. Under section 5, of the same rule, the appeal bond shall be approved by the court. And under section 9, of the same rule, upon the filing" of the notice of appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case.

"The above provisions require that the notice of appeal, appeal bond, and the record on appeal should be filed in court and served upon the adverse party within thirty days from notice of judgment. These provisions are compulsory in nature. These three requirements must be complied with within the 30-days period. The failure to comply with any of the requirements with said period would give rise to the dismissal of the appeal (*Salva vs. Judge Palacio, et al.*, G. R. No. L-4247, January 30, 1952; *Arcega vs. Dizon*, 42 Off. Gaz., p. 2138, 76 Phil. 174), and so it is expressly provided that where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed/ (Section 13, Rule 41," *Espartero vs. Judge Ladaw, et al.*, 92 Phil., 704.)

Later, in the case of *De Remonn, et al., vs. Valles*, 92 Phil., 989, 49 Off. Gaz., [5] 1846, we reiterated the strict compliance with section 13 of Rule 41, as follows:

"Los plazos de apelaci6n son fatales, la falta de perfeccionamiento de la apclacion dentro del plazo fijado hace firme la deeisi6n. (*Roman Catholic Bishop of Tuguegarao vs. Director of Lands*, 34 Phil., 623; *Estate of Cordoba and Zarate vs. Alabado*, 34 Phil., 920; *Bermudez vs. Director of Lands*, 36 Phil., 774; y *Salaveria contra Albindo*, 39 Jur. Fil., 945).

"Vencido el plazo, ipso facto queda firme la decision y automa-ticamente el tribunal picrde su jurisdiftcion sobre el asunto, (* * * el quo mas tarde se certifique la pieza de excepciones no puede reestablecer una competencia que se ha perdido.' (*Layda contra Legazpi*, 39 Jur. Fil., 89)."

If the filing by respondents of the incidental motions has created, according to petitioners, a confusion in their computation of time, they could have forestalled it by filing a timely motion for extension to file the appeal bond and record on appeal so as to protect their right to appeal. This they failed to do; consequently we find no legal justification for disturbing the order of the lower court of October 20, 1954, dismissing the appeal and ordering the execution of the judgment. Accordingly, the petition under consideration is hereby dismissed, with costs against the petitioners.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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