

**LUCILA B. VDA. DE AZARIAS, PETITIONER, VS. THE HONORABLE
MANOLO L. MADDELA, IN HIS CAPACITY AS JUDGE OF THE COURT
OF FIRST INSTANCE OF QUEZON AND MAMERTO AZARIAS, JR.,
RESPONDE...**

G.R. No. L-25932. March 19, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

Petition for certiorari to review the resolution of the Court of Appeals of March 14, 1966 in its case GR-37231-R.

The basic facts are undisputed.

On February 4, 1963 Mamerto Azarias, Jr. (hereinafter referred to as the private respondent) filed a petition with the Court of First Instance of Quezon, docketed therein as special pro-ceeding 4004 and assigned to the branch presided by Judge Manolo L. Maddela (hereinafter referred to as the respondent Judge), in which he prayed for appointment as administrator of the estate, and for recognition as an acknowledged natural child, of the de-ceased Mamerto Azarias. Lucila B. vda. de Azarias (hereinafter referred to as the petitioner) filed on March 25, 1963 her opposition thereto.

After due hearing, the respondent Judge, on January 22, 1965, rendered a decision appointing the petitioner administratrix of the intestate estate of her deceased husband, Mamerto Azarias, and declaring the private respondent as the natural child and an heir of the deceased and entitled to all the rights and privileges as such. Copy of this decision was received by the petitioner's counsel on February 16, 1965.

On February 22, 1965 the petitioner filed a motion for re-consideration and/or correction of the said decision, which she "respectfully submitted" for the consideration of the respondent Judge. She did not however include therein a notice fixing the time and place for its hearing, although she sent copies of the motion by registered mail to the respondent Judge and to the counsel of the private respondent on February 22, 1965, who received them on February 25 and February 23, 1965, respectively.

On April 20, 1965 the private respondent moved for execu-tion of the decision; the petitioner filed her opposition.

On July 28, 1965 the respondent Judge issued three orders simultaneously, (a) denying the motion for reconsideration and/or correction on the ground that it lacked the formalities required by the revised Rules of Court with respect to notice; (b) granting the private respondent's motion for execution of the decision; and (c) denying the petitioner's opposition to the motion for execution.

On December 17, 1965 the petitioner filed with the respon-dent Judge a cash appeal bond, a notice of appeal and a record on appeal, which were disapproved per order of the respondent Judge dated February 14, 1966, on the ground that the decision in the said special proceeding had become final and executory on March 18, 1965.

On March 9, 1966 the petitioner lodged with the Court of Appeals an original petition for mandamus to compel

the respondent Judge to immediately approve the petitioner's notice of appeal, appeal bond and record on appeal in special proceeding 4004 of the Court of First Instance of Quezon. This petition was dismissed by the Court of Appeals per resolution dated March 14, 1966. The petitioner's motion for reconsideration of the said resolution was denied by the Court of Appeals on March 31, 1966.

Hence this appeal by way of certiorari, which poses three assignments of error, all three reducible to one single issue: Did the lower court act legally and correctly in dismissing the petitioner's motion for reconsideration because it lacked a formal notice of hearing although all parties were properly served with copies thereof?

This issue, which is neither new nor novel, has been resolved by this Court in cases impressive as to number and unanimity. We have uniformly held that a motion which does not meet the requirements of sections 4 and 5 of Rule 15 of the revised Rules of Court is a worthless piece of paper which the clerk has no right to receive and the respondent court a quo no authority to act upon.[1]

In *Manila Surety and Fidelity Co., Inc. vs. Batu Construction and Co.*,[2] this Court declared:

"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 the 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 (*Philippine National Bank v. Donasco*, L-18638, February 28, 1963, citing *Manakil v. Revilla*, 42 Phil. 81; *Roman Catholic Bishop of Lipa v. Municipality of Unisan*, 44 Phil. 866; and *Director of Lands v. 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 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. " (at pp. 437-438)

We recently reaffirmed the said doctrine in *In Re Almacen*,[3] thus:

"Recalling Atty. Almacen's petition for review, we found upon a thoroughgoing examination of the pleadings and records, 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. There was, therefore, no need for this Court to exercise its supervisory power.

"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). xxx" (at pp. 575-576)

In *Bautista Angelo v. Alfaro*,[4] where the appellant filed a motion for reconsideration without serving a copy thereof on the opposing parties and without giving a notice of hearing until after one-and-a-half months later, this Court held that what the appellant filed was not a motion at all but a mere scrap of paper which the Court had no right to consider nor the clerk of Court to receive (citing *Manakil v. Revilla*, supra).

The petitioner, however, argues that she precisely omitted notice of hearing in the motion for reconsideration in order not to expose the alleged errors of the respondent Judge to the attention of the public and thus save him from embarrassment. This reasoning strikes us as an afterthought to conceal the forgetfulness if not the negligence of the petitioner's counsel; it is not a sufficient warrant to disobey the clear and unequivocal mandate of the Rules of Court regarding the inclusion of a notice of hearing.

The petitioner argues that a motion for reconsideration even without a notice of hearing is valid, citing *Inesin v.*

Canonoy,[5] But there were in the said case special circumstances which formed the basis of the ruling therein, which are not present in the case at bar. The court of first instance held its sessions in Pagadian, Zamboanga del Sur, only once a year on the dates fixed by the district judge, pursuant to sec. 161, Rev. Adm. Code, as superseded by sec. 54 Of Rep. Act 296. Because the sessions in Pagadian were not continuous throughout the year, and since it was not shown that, at the time the respondent therein presented the motion for reconsideration of the order of dismissal, the judge had already set a date for the next term, the attorney for the mo-vant (respondent therein) could not set the motion for hearing, not knowing on what date or in what month the next yearly session in Pagadian was to be had. The omission of a notice of hearing was therefore justified. Here the factual situation is entirely different. Although the petitioner alleges that the respondent Judge had a roving assignment (no doubt in an effort to bring this case square-ly within the ambit of the Inesin ruling), holding sessions at Paler, Quezon, and at Polillo, Quezon, and in other places of the pro-vince, there is no dispute that at the time material to this case, the respondent court was holding sessions at Polillo, Quezon.

Manansala v. Heras,[6] cited by the petitioner in support of her argument that motions for reconsideration need not actually be heard, involved pleading and practice before the Public Service Commission, and is not therefore authority for this case. Besides, this Court did not rule therein that a notice of hearing may be dis-pensed with in a motion for reconsideration.

The petitioner also contends that since the private respondent was furnished a copy of the motion, there was substantial compliance with the requirements of section 6, Rule 15 of the Rules of Court. Thus, she asserts, even if the questioned motion for reconsideration is defective for want of a notice of hearing, that the defect was cured because the opposing party was served with a copy thereof and was thereby properly notified of the existence of the pleading, citing Sun Un Giok v. Matusa.[7] This latter case is likewise not in point. In Sun Un Giok, there was a notice of hearing incorporated in the motion to dismiss, which notice, although not addressed to the opposing party but to the clerk of court, nevertheless enabled the latter to actually set the motion for hearing and notify the former thereof. In the case at bar, there is no notice of hearing at all in the motion for reconsideration. Parenthetically, in Almacen, this Court did not accord any impor-tance to the undenied fact that a copy of the motion for reconsideration therein was furnished the opposing party.

The assertion of the petitioner that there is no specific provision of the Rules of Court making it a pre-requisite that mo-tions for reconsideration be heard or be set for hearing and the adverse party be notified of the place, date and time for hearing, deserves scant attention. A similar argument was rejected by this Court in Manila Surety, Almacen and Magno v. Ortiz,[8] all of which involved motions for reconsideration without notice of hearing.

Indeed, in Magno, although the motion for reconsideration did not contain a notice of hearing, the trial court motu proprio set the case for hearing, but finally denied the motion for lack of the required notice of hearing. We there held that:

"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 de-volves upon the movant, not upon the court. x x x Considering that a defective motion for reconside-ration does not toll the running of the period for appeal, the decision in Civil Case No. 410 had al-ready become final when the notice of hearing was issued by the respondent Judge." (at pp. 696-697)

Finally, the petitioner advances the proposition that be-cause the petitioner's motion for reconsideration specified the findings in the decision which are allegedly not in accordance with the facts and the evidence in the case, and argued that there was incorrect application of the law to the facts, the petition is not pro forma. Even if we were to consider the petitioner's pleading as a motion for new trial under Rule 37, sec. 1, paragraph (c) of the Revised Rules of Court, because the reasons relied upon are equi-valent to an assertion that the decision is contrary to law

and the evidence, the applicable rule on the matter would be section 2, Rule 37, construed in relation to sections 4, 5 and 6 of Rule 15. The result is the same: a written notice of a motion for new trial must be served by the movant on the adverse party, stating the time and place of the hearing thereof; without proof of service of such notice the motion can not be acted upon by the court.[9]

ACCORDINGLY, the resolution of the Court of Appeals dated March 14, 1966 is affirmed, at petitioner's cost.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] PNB v. Donasco, 7 SCRA 409 (1963); Manakil v. Revile, 42 Phil. 81 (1921).

[2] 14 SCRA 435 (1965) (per Makalintal, J.).

[3] 31 SCRA 562 (1970).

[4] 95 Phil. 622 (1954)

[5] 107 Phil. 217 (1960).

[6] 103 Phil. 575 (1958).

[7] 101 Phil. 727 (1957).

[8] 26 SCRA 692 (1969).

[9] Magno v. Ortiz, supra, citing Manila Surety & Fidelity Co., Inc. v. Batu Construction Co., et al., supra, and Fulton Insurance Co. v. Manila Railroad Co., 21 SCRA 974 (1967).C

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