

**FRANCISCO D. SARMIENTO AND MARCELINA S. SARMIENTO,
PLAINTIFFS AND APPELLEES, VS. JORGE SALUD AND BENITO
MACROHON IN HIS CAPACITY AS THE SHERIFF OF QUEZON CITY,
DEFENDANTS AND AP...**

G.R. No. L-25221. August 18, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Acting on the motion for reconsideration of 23 June 1972 filed by plaintiffs-appellees in Case G.R. No. L-25221 (Sarmiento vs. Salud) praying for the setting aside of the decision and the dismissal of the present appeal because the printed record on appeal filed in this Court on 17 December 1965 did not contain the necessary data to show timeliness of the appeal, as required' by section 6, Rule 41, of the Revised Rules of Court, and the appellees' reply thereto:

It appearing that the grounds alleged in the motion to reconsider are a reiteration of the motion to dismiss the appeal filed by appellees in this Court on 26 April 1972, more than six (6) years after the case was submitted for decision upon the filing of the brief for the appellees on 4 June 1966;

Considering that, while the failure to comply with the requirements of section 6, Rule 41, of the Rules has been consistently and repeatedly declared by this Court to be a jurisdictional defect warranting dismissal of the appeal, and the rule has been uniformly applied in many cases too numerous to mention, still the filing of the motion to dismiss after a delay of six years after the filing of the brief for appellees and submission of the case for decision, constitutes a unique instance of laches without comparable precedent in the records of this Court;

Considering that the granting of a motion to dismiss the appeal filed after all the briefs of the parties had been submitted has only taken place in four (4) instances, in none of which the delay exceeded two years after filing of the last brief, these cases being -

1. Government vs. Antonio, et al., L-23736 (Reply brief filed 13 July 1965; Appeal dismissed 19 October 1965).
2. Araneta vs. Madrigal & Co., decided 25 October 1966 (Record on appeal approved by the trial court on 14 November 1964; motion to dismiss filed in the Court of Appeals, after filing of the briefs, on 14 April 1966).
3. Marsman, et al. vs. Syquia, L-28027, 29 March 1972 (First motion to dismiss was filed before the filing of the briefs; motion reiterated and granted after all the briefs were filed).
4. Palanca vs. Philippine Commercial & Industrial Bank etc., L-28713, 31 May 1972 (Appellee's brief contained the petition for dismissal of the appeal for failure of the record on appeal to show that the appeal was perfected on time).

Considering further that appellees' laches in allowing six (6) years after the filing of their brief to elapse without

moving for dismissal is a case unprecedented in the annals of the Court; that no justification is offered nor explanation given for such neglect and procrastination that in effect nullify the purposes for which Rule 41, Section 6, was enacted, which is the speedy settlement of appeals; and that, upon the other hand, the case of appellants is meritorious, as shown by the decision;

Considering, therefore, that the circumstances of the case render the conduct of appellee plainly inequitable and unfair in questioning the jurisdiction of this Court and propriety of the appeal six (6) years after the case was submitted for decision, and only reiterating it after rendition of unfavorable decision against them, a case clearly calling for application of the doctrine of this Court in *Tijam vs. Sibonghanoy*, G.R. No. L-21450, 16 April 1968, 23 SCRA 29, 35-36,[1] wherein We ruled -

"The doctrine of laches or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

"It has been held that a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (*Dean vs. Dean*, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is invalid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated - obviously for reasons of public policy."

* * * * *

"Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (*supra*) – to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision, and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse – as well as in *Pindañgan etc. vs. Dans, et al.* G.R. L-14591, September 26, 1962; *Montelibano, et al., vs. Bacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union etc. vs. The Court of Industrial Relations, et al.*, G.R. L-20307, Feb. 26, 1965, and *Mejia vs. Lucas*, 100 Phil. p. 277."

The motion for reconsideration is denied.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Followed in the recent case of *Libudan vs. Palma Gil*, G.R. No. L-21163, 17 May 1972.

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