

## MARY A. MARSMAN, ET AL., PLAINTIFFS-APPELLEES, VS. LEOPOLDO M. SYQUIA, ET AL., DEFENDANTS-APPELLANTS.

*G.R. No. L-28027. March 29, 1972*

Ponente: CASTRO, J.

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### CASTRO, J.:

The present appeal is from the decision of the Court of First Instance of Manila, in its civil case 45835 entitled "Mary A. Marsman, et al., plaintiffs vs. Leopoldo M. Syquia, et al., defendants, "the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

"(a) declaring the sale to plaintiff Mary A. Marsman of the 2,500,000 shares of plaintiff Marsman & Co., Inc. covered by stock certificates Nos. V-405 and V-421 of plaintiff Marsman & Co.; Inc. lawful and valid;

"(b) making the preliminary injunction issued by this Court pursuant to its order of December 31, 1960 permanent, except as to the matter covered by the third cause of action;

"(c) ordering the return to the plaintiff Marsman Investments, Ltd. of its books of accounts, records and other papers now in the custody of this Court; and

"(d) ordering plaintiff Mary A. Marsman to pay to plaintiff Marsman Investments, Ltd. the sum of P281,250.00 shares as provided in the deed of confirmation of sale dated December 14, 1960 within sixty days from the date this decision becomes final.

"The bond filed by the plaintiffs for the issuance of the preliminary injunction in their favor is hereby ordered cancelled."[1]

On November 24, 1967, after the defendants-appellants had filed their printed record on appeal, the plaintiffs-appellees moved to dismiss the appeal. In accordance with section 1 of Rule 50 of the Rules of Court, upon the ground that the record on appeal does not show on its face that the appeal was perfected within the period provided by the Rules.

Under date of November 28, 1967, the defendants-appellants filed an opposition to the motion to dismiss, setting forth therein the pertinent dates showing the timely perfection of their appeal.

We denied the motion to dismiss the appeal in a minute resolution dated December 11, 1967.

Thereafter, the parties filed their respective briefs.

On March 14, 1968, the plaintiffs-appellees filed a new motion to dismiss, upon the same ground asserted in their previous motion. The motion, this time, contains extended arguments and cites appropriate authorities. To this second motion, the defendants-appellants did not file any opposition or comment.

On March 25, 1968, we issued a resolution deferring action on the new motion to dismiss "until the case is taken

up on the merits."

We are thus called once again to apply Rule 50, section 1 (a), in relation to Rule 41, section 6, of the Rules of Court.[2] The said provisions read as follows:

"RULE 50, SEC. 1. Grounds for dismissal of appeal. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

"(a) Failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules; \* \* \*"

"RULE 41, SEC. 6. Record on appeal; form and contents thereof. — The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. \* \* \*"

The record on appeal submitted by the defendants-appellants shows they were served a copy of the decision appealed from on March 1, 1967.[3] Immediately following the decision reproduced in the record on appeal are the following statements:

"That defendants, within the extended period allowed by the trial court, filed their Notice of Appeal to elevate this case to the Supreme Court, and filed a cash appeal bond as evidenced by Official Receipt No. 371545 in the amount of P120.00.

"AND NOW, within the time allowed by the trial court, defendants respectfully submit this Record on Appeal for the approval of this Honorable Court and pray that this Honorable Court order the Clerk of Court to certify and elevate this Record on Appeal, together with all the evidence, oral and documentary, presented in this case to the Supreme Court.

"Manila, May 5, 1967."[4]

Next comes the order of the trial court dated May 30, 1967 approving the record on appeal and directing the clerk of court to forward the same, with all the evidence, to this Court.[5] The record on appeal ends with the certification of the clerk of the lower court, bearing the date August 23, 1967, certifying that the copies of the pleadings, orders and decision therein included are "true and correct copies of the originals on file with the record of the case." [6]

Upon the foregoing facts, we hold that the appeal should be dismissed, in consonance with the ruling developed in the line of decisions marked by *Government vs. Antonio*. [7] These decisions, [8] notable for their number and unanimity, affirm that the requirement of section 6 of Rule 41 that the record on appeal must contain "such data as will show that the appeal was perfected on time," is mandatory and jurisdictional, non-compliance with which justifies dismissal of the appeal. The principles underlying the rule have been extensively discussed in the decisions adverted to, so that it would be supererogation to restate them here.

In the case at bar, the record on appeal is fatally flawed with several deficiencies. For one, it does not state the dates when the notice of appeal and appeal bond were filed by the defendants-appellants. The omission of such important data renders it impossible to determine, from the face of the record on appeal, whether the said notice of appeal and appeal bond were filed on time. For another, the record on appeal bears the date May 5, 1967; it would thus appear, on the basis of the contents of the record on appeal alone, that 64 days had elapsed from the time the defendants-appellants were notified of the decision, i.e., on March 1, 1967, before the said record on appeal was filed.

The statement in the record on appeal that the defendants-appellants filed their notice of appeal and appeal bond "within the extended period allowed by the trial court," and their record on appeal "within the time allowed by the trial court," cannot pass for compliance with the mandatory requirement of Rule 41, section 6. Such statements, we have previously held, are mere conclusions, and do not constitute the factual data required to be stated in the record on appeal. Thus in *Government vs. Antonio*, we considered defective the statement in the record on appeal that the notice of appeal was tendered "within the regle-mentary period," which "is not a fact but a mere conclusion." [9] Similarly, in the joint decision in *Reyes vs. Carrasco*, we dismissed the appeal interposed by the Government in one of the cases, it appearing that the record on appeal tendered by it did not indicate when it filed its motion for extension of time within which to submit the record on appeal, nor the period of extension that was allowed by the lower court. We said:

"As regards L-31054, the Government maintains that the statement made by His Honor, the Trial Judge, in his order approving the record on appeal, to the effect that the joint record on appeal, the notice of appeal and the appeal bond had been filed 'within the period' prescribed therefor, suffices to comply with the requirements of Sec. 6 of Rule 41. This pretense is untenable, said statement being a mere conclusion, not a fact indicative of the seasonable perfection of the appeal. It is true that the notice of appeal filed by the Government stated the dates on which it received notice of the decision of the trial court, filed its motion for reconsideration of said decision and received notice of the order denying the same. Such statement constitutes a substantial compliance with the requirements of Sec. 6 of Rule 41, as regards the events to which said dates refer, but the record on appeal is still deficient, insofar as it does not mention the extension of time given for the filing of the joint record on appeal and the duration of said extension.

"Indeed, said joint record on appeal shows that on October 2, 1968, the Government received copy of the decision of the court of first instance, dated September 23, 1968; that 26 days later, or on October 28, 1968, the Government filed its motion for reconsideration of said decision; that notice of the order denying said motion for reconsideration was received by the Government on January 13, 1969; that the Government filed its notice of appeal on January 14, 1969; that the Government had been given an extension of time — the length of which is not stated — within which to file a record on appeal; and that the joint record on appeal bears the date, March 4, 1969, or about 49 days after notice of the denial of the motion for reconsideration. In short, without a statement of the date of the filing of the original record on appeal, of the length of the extension of time granted for the filing of the joint record on appeal, and of the date of the filing thereof, it is not possible to establish whether or not the appeal had been perfected on time." [10]

The belated attempt of the defendants-appellants in the case at bar to show to this Court, by means of their opposition to the motion to dismiss dated November 28, 1967, the specific dates when they filed their several motions for extension, and the periods of extension granted to them by the trial court, cannot cure the omissions already alluded to. Were we to allow proof of the seasonable perfection of the appeal from facts found dehors the record, we would have reduced the requirement of the rule to a meaningless delusion. As we have held in *Araneta vs. Madrigal & Co.*:

"In this connection, it should be noted that, prior to the promulgation of the Rules of Court now in force, the first sentence of Section 6 of Rule 41, was as follows:

'The full names of all the parties to the proceeding shall be stated in the caption of the record on appeal, and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment.'

"This Court noticed, however, that issues were often raised in appellate court on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto were not set forth in the record on appeal. Inasmuch as the records of trial courts, in cases appealed by record on appeal, are not forwarded to appellate

courts, the latter had no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contributed to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this Court deemed it best, not only to rephrase the first sentence of said Section 6, so as to read:

'The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved,'

but, also, to add, at the end thereof, the clause:

'together with such data as will show that the appeal was perfected on time.'

"Obviously, this amendment would become useless and its purpose completely defeated, if we gave thereto the interpretation advocated by the main respondent herein. In other words, we would have the same issues and the same waste of time that were sought to be eliminated by the amendment. Hence, our ruling in *Government vs. Antonio* (supra), which, it should be noted, was made, not in a decision, but, in a resolution, so that the public may know immediately — instead of waiting for the decision on the merits, which might require more time — the effect of said amendment, and the injurious consequences of a failure to grasp its full import could thus be minimized."<sup>[11]</sup>

We are not unaware that the stakes are high for the parties in this case. But so must they have been for the parties whose appeals we have consistently dismissed for failure of their respective records on appeal to comply with the requirements of the Rules. Verily, we abdicate our duty if we do not apply the law with an even hand.

The observation of Mr. Justice J.B.L. Reyes in *De Guia vs. Court of Appeals*, supra<sup>[12]</sup> is worth reiterating and emphasizing at this point:

"This Court notes with regret that although these requirements on the contents of a record on appeal have been in effect since 1964, there are still lawyers and litigants who do not comply with the same; either they have not perused the Revised Rules, or choose not to comply therewith. Liberality in this regard is by now unwarranted, and would be unjust to numerous litigants or counsel who exercise diligence in observing the Rules of Court."

Upon the foregoing disquisition, we find the motion to dismiss filed by the plaintiffs-appellees to be meritorious.

ACCORDINGLY, the appeal is hereby dismissed. No costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

Teehankee, J., reserved his vote.

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[1] Record on Appeal, pp. 359-60; (note: quotation is exact copy).

[2] These sections are applicable to proceedings in the Supreme Court, pursuant to Rule 56, sec. 1.

[3] Record on Appeal, p. 299.

[4] Id., pp. 360-61.

[5] Id., p. 363.

[6] *Id.*, pp. 363-64

[7] L-23736, October 19, 1965, 15 SCRA 119 (per Reyes, J.B.L., J.)

[8] *Development Bank of the Philippines vs. Santos*, L-26387, September 27, 1966, 18 SCRA 113 (per Dizon, J.); *Araneta vs. Madrigal & Co.*, L-26227-28, October 25, 1966, 18 SCRA 446 (per Concepcion, C.J.); *Atlas Consolidated Mining & Development Corp. vs. Progressive Labor Ass'n.*, L-27125, September 15, 1967, 21 SCRA 110 (per Angeles, J.); *Jocson vs. Robles*, L-23433, February 10, 1968, 22 SCRA 521 (per Reyes, J.B.L., J.); *Anota vs. Bermudo*, L-29417, September 21, 1968, 25 SCRA 53 (per Dizon, J.); *Cadiz vs. Secretary of National Defense*, L-25150, September 30, 1968, 25 SCRA 419 (per Concepcion, C.J.); *Luzon Stevedoring Corp. vs. Court of Appeals*, L-27746, July 31, 1970, 34 SCRA 73 (per Fernando, J.); *Industrial Co., Inc. vs. Court of Appeals*, L-30083, October 22, 1970, 35 SCRA 423 (per Reyes, J.B.L., Acting C.J.); *Valera vs. Court of Appeals*, L-29416, January 28, 1971, 37 SCRA 80 (per Concepcion, C.J.); *Reyes vs. Carrasco*, L-28783 (jointly with 10 other cases), March 31, 1971, 38 SCRA 296 (per Concepcion, C.J.); *Workmen's Insurance Co. vs. Augusto*, L-31060, July 29, 1971, 40 SCRA 123 (per Teehankee, J.); *De Guia vs. Court of Appeals*, L-33101, July 30, 1971, 40 SCRA 332 (per Reyes, J.B.L., J.); *Ozaeta vs. Court of Appeals*, L-26938, October 29, 1971, 42 SCRA 79 (per Barredo, J.); *Imperial Insurance, Inc. vs. Court of Appeals*, L-28722, October 29, 1971, 42 SCRA 97 (per Castro, J.).

[9] See 15 SCRA at 121.

[10] See 38 SCRA at 317.

[11] See 18 SCRA at 449-50.

[12] Sec 40 SCRA at 334-335.

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