

PURITA BERSABAL, PETITIONER, VS. HONORABLE JUDGE SERAFIN SALVADOR, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CALOOCAN CITY, BRANCH XIV, TAN THAT AND ONG PIN TEE, RESPONDENTS.

G.R. No. L-35910. July 21, 1978

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/94b8ca818ea6/>

MAKASIAR, J.:

On March 23, 1972, petitioner Purina Bersabal seeks to annul the orders of respondent Judge of August 4, 1971, October 30, 1971 and March 15, 1972 and to compel said respondent Judge to decide petitioner's perfected appeal on the basis of the evidence and records of the case submitted by the City Court of Caloocan City plus the memorandum already submitted by the petitioner and respondents.

Since only questions of law were raised therein, the Court of Appeals, on October 13, 1972, issued a resolution certifying said case to this Court pursuant to Section 17, paragraph (4) of the Judiciary Act of 1948, as amended.

As found by the Court of Appeals, the facts of this case are as follows:

"It appears that private respondents Tan That and Ong Pin Tee filed an ejectment suit, docketed as Civil Case No. 6926 in the City Court of Caloocan City, against the petitioner. A decision was rendered by said Court on November 25, 1970, which decision was appealed by the petitioner to the respondent Court and docketed therein as Civil Case No. C-2036.

"During the pendency of the appeal, the respondent court issued on March 23, 1971 an order which reads:

'Pursuant to the provisions of Rep. Act No. 6031, the Clerk of Court of Caloocan City, is hereby directed to transmit to this Court within fifteen (15) days from receipt hereof the transcripts of stenographic notes taken down during the hearing of this case before the City Court of Caloocan City, and likewise, counsels for both parties are given thirty (30) days from receipt of this order within which to file their respective memoranda, and thereafter, this case shall be deemed submitted for decision by this Court.'

which order was apparently received by petitioner on April 17, 1971.

"The transcript of stenographic notes not having yet been forwarded to the respondent court, petitioner filed on May 5, 1971 a 'MOTION EX-PARTE TO SUBMIT MEMORANDUM WITHIN 30 DAYS FROM RECEIPT OF NOTICE OF SUBMISSION OF THE TRANSCRIPT OF STENOGRAPHIC NOTES TAKEN DURING THE HEARING OF THE CASE BEFORE THE CITY COURT OF CALOOCAN CITY' which was granted by respondent court on May 7, 1971. However, before the petitioner could receive any such notice from the respondent court, the respondent Judge issued an order on August 4, 1971 which says:

'For failure of the defendant-appellant to prosecute her appeal, the same is hereby ordered DISMISSED with costs against her.'

"Petitioner filed a motion for reconsideration of the order on September 28, 1971, citing as a ground the granting of his ex-parte motion to submit memorandum within 30 days from notice of the submission of the stenographic notes taken before the City Court. Private respondents filed their opposition to the motion on September 30, 1971. In the meantime, on October 2, 1971, petitioner filed her memorandum dated October 18, 1971. On October 30, 1971 the respondent Court denied the motion for reconsideration. Then on January 25, 1972, petitioner filed a motion for leave to file second motion for reconsideration which was likewise denied by the respondent court on March 15, 1972. Hence this petition."

The sole inquiry in the case at bar can be stated thus: Whether, in the light of the provisions of the second paragraph of Section 45 of Republic Act No. 296, as amended by R.A. No. 6031, the mere failure of an appellant to submit on time the memorandum mentioned in the same paragraph would empower the Court of First Instance to dismiss the appeal on the ground of failure to prosecute; or, whether it is mandatory upon said Court to proceed to decide the appealed case on the basis of the evidence and records transmitted to it, the failure of the appellant to submit a memorandum on time notwithstanding.

The second paragraph of Section 45 of R.A. No. 296, otherwise known as the Philippine Judiciary Act of 1948, as amended by R.A. No. 6031 provides, in part, as follows:

"Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: Provided, That the parties may submit memoranda and/or brief with oral argument if so requested. x x x." (Emphasis Ours).

The foregoing provision is clear and leaves no room for doubt. It cannot be interpreted otherwise than that the submission of memoranda is optional on the part of the parties. Being optional on the part of the parties, the latter may so choose to waive submission of the memoranda. And as a logical concomitant of the choice given to the parties, the Court cannot dismiss the appeal of the party waiving the submission of said memorandum. If the appellant so chooses not to submit the memorandum, the Court of First Instance is left with no alternative but to decide the case on the basis of the evidence and records transmitted from the city or municipal courts. In other words, the Court is not empowered by law to dismiss the appeal on the mere failure of an appellant to submit his memorandum, but rather it is the Court's mandatory duty to decide the case on the basis of the available evidence and records transmitted to it.

As a general rule, the word "may" when used in a statute is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced (*Dizon vs. Encarnacion*, L-18615, Dec. 24, 1963, 9 SCRA 714, 716-717). The implication is that the Court is left with no choice but to decide the appealed case either on the basis of the evidence and records transmitted to it, or on the basis of the latter plus memoranda and/or brief with oral argument duly submitted and/or made on request.

Moreover, memoranda, briefs and oral arguments are not essential requirements. They may be submitted and/or made only if so requested.

Finally, a contrary interpretation would be unjust and dangerous as it may defeat the litigant's right to appeal granted to him by law. In the case of *Republic vs. Rodriguez* (L-26056, May 29, 1969, 28 SCRA 378) this Court underscored "the need of proceeding with caution so that a party may not be deprived of its right to appeal except for weighty reasons." Courts should heed the rule in *Municipality of Tiwi, Albay vs. Cirujales* (L-37520, Dec. 26, 1973, 54 SCRA 390, 395), thus:

"The appellate court's summary dismissal of the appeal even before receipt of the records of the appealed case as ordered by it in a prior mandamus case must be set aside as having been issued precipitously and without an opportunity to consider and appreciate unavoidable circumstances of record not attributable to petitioners that caused the delay in the elevation of the records of the case on appeal."

In the instant case, no notice was received by petitioner about the submission of the transcript of the stenographic notes, so that his 30-day period to submit his memorandum would commence to run. Only after the expiration of such period can the respondent Judge act on the case by deciding it on the merits, not by dismissing the appeal of petitioner.

WHEREFORE, THE CHALLENGED ORDERS OF RESPONDENT JUDGE DATED AUGUST 4, 1971, OCTOBER 30, 1971 AND MARCH 15, 1971 ARE HEREBY SET ASIDE AS NULL AND VOID AND THE RESPONDENT COURT IS HEREBY DIRECTED TO DECIDE CIVIL CASE NO. C-2036 ON THE MERITS.

NO COSTS.

Muñoz Palma, Fernandez, and Guerrero, JJ., concur.

Teehankee, (Chairman), J., concurs in a separate opinion.

SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur with the setting aside of the questioned dismissal of petitioner's appeal on the ground that the record shows quite clearly that there was no failure on the part of petitioner-appellant to prosecute her appeal in respondent judge's court. Petitioner had been granted in respondent judge's Order of May 7, 1971, 30 days from notice of submission of the transcripts within which to file her memorandum on appeal yet her appeal was dismissed per his Order of August 4, 1971 for alleged failure to prosecute (by failure to file the memorandum) even before she had received any such notice. Upon receipt of the dismissal order, petitioner had promptly moved for reconsideration and filed her memorandum on appeal.

I am not prepared at this stage to concur with the ratio decidendi of the decision penned by Mr. Justice Makasiar

that "the Court is not empowered by law to dismiss the appeal on the mere failure of an appellant to submit his memorandum, but rather it is the Court's mandatory duty to decide the case on the basis of the available evidence and records transmitted to it." I entertain serious doubts about such pronouncement, since the court of first instance "request" the party-appellant to submit a memorandum or brief on appeal under the provisions of Republic Act No. 6031 amending section 45 of Republic Act No. 296, such "request" is tantamount to a requirement for the proper prosecution of the appeal; thus, when the appellant wilfully fails to file such memorandum or brief, the judge should be empowered to dismiss the appeal, applying suppletorily the analogous provisions of Rule 50, section 1 for dismissal of appeal by the higher appellate courts and taking into account that Rule 40, section 9 of the Rules of Court now expressly authorizes the court of first instance to dismiss an appeal before it "for failure to prosecute."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.