

**LUIS CAMACHO, CAYETANO CURA AND ISMAELA TUAZON,
PETITIONERS, VS. THE COURT OF APPEALS, FILOMENA M. TINIO
AND JOSE C. ALFONSO, RESPONDENTS.**

G.R. No. L-21850. April 29, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Petition, later amended, for certiorari to review the decision of the Court of Appeals in CA-G. R. No. L-30233, Filomena Tinio vs. Cayetano Cura, et al., which modified the judgment of the Court of First Instance of Nueva Ecija in Civil Case No. 3231, Filomena Tinio vs. Cayetano Cura, et al.

A careful review of the records reveal the following:

The original petition herein was filed on September 17, 1963. In its resolution of September 26, 1963, the Court dismissed said petition, for being factual and for lack of merit.

Copy of this resolution was received by petitioner Luis Camacho on October 16, 1963, but it does not appear when the other petitioners were served with it. On October 21, 1963, Camacho, personally and assisted by Atty. Abraham R. Castañeda, filed a motion for extension of fifteen (15) days from the expiration of the reglementary period within which to present a motion for reconsideration, which period was to expire October 31, 1963. By resolution of October 25, 1963, the motion for extension was granted. Hence, the extended period for petitioner Camacho to move for reconsideration was to expire November 15, 1963. Meanwhile, on November 8, 1963, Atty. Castañeda filed his formal appearance "as additional counsel for petitioner Luis Camacho."

On the same date November 8, 1963, petitioners (no longer Camacho alone), albeit thru Atty. Llorente (who was counsel of Camacho as intervenor in the court below) and Atty. Castañeda, filed a motion for leave to file an amended petition for certiorari, claiming that they have realized that an amended petition instead of a motion for reconsideration would be preferable in order that the real and new issues may be presented. By resolution of November 14, 1963, this motion for leave was denied. Nevertheless, on November 15, 1963, petitioner filed his announced amended petition for certiorari.

On November 25, 1963, the amended petition was dismissed for lack of merit. The resolution of dismissal was served on Attys. Llorente and Castañeda on November 29, 1963.

On December 14, 1963, petitioners, thru Attys. Llorente & Associates and Abraham R. Castañeda, moved for reconsideration of the dismissal. By resolution of December 18, 1963, the motion was denied. Of this denial, Attys. Llorente & Associates and Castañeda were notified on December 20, 1963.

Without leave of court, on December 23, 1963, Attys. Llorente & Associates and Castañeda filed a second motion for reconsideration on behalf of petitioners. It appears that by resolution of January 8, 1964, the Court reconsidered its resolutions of November 25 and December 18, 1963 and gave due course to the amended petition for certiorari.

After mature deliberation, We have come to ineludible conclusion that the Court has no more authority or jurisdiction over this case, except to formally set aside the resolution of January 8, 1964. There can be no question that on said date, the resolution of this Court dismissing the original as well as the amended petitions herein had already become final and unalterable.

As can be seen above, the last day for the filing of a motion for reconsideration of the resolution of the Court dismissing the original petition was November 15, 1963, taking into account the motion for extension filed by petitioner Camacho on October 21, 1963. (The other petitioners Catalino Cura and Ismaela Tuazon did not ask for extension.) Instead of filing a motion for re-consideration, petitioners, which would include Cura and Tuazon, filed, thru Attys. Llorente & Associates & Castañeda, an amended petition for certiorari on November 15, 1963, notwithstanding their motion for leave for such substitution was denied on November 14, 1963.

Now, the fact that petitioners filed an amended petition instead of a motion for reconsideration did not affect the running of the period for the finality of the resolution of dismissal of September 26, 1963. In fact, an amended petition raising new issues not alleged in the original petition and filed beyond the period for appeal to the Supreme Court from the Court of Appeals is not allowed, hence the denial resolution aforementioned of December 14, 1963. But even if We considered the amended petition as a motion for reconsideration and disregarding the fact that it raises belatedly issues and questions not raised in the original petition, its dismissal on November 25, 1963, had the effect of making the dismissal of petitioners' appeal to this Court final after December 1, 1963, under the most liberal interpretation of the rules existing at the time. (Rules of 1940.) Note that counsel for petitioners were notified of the resolution of November 25, 1963 on November 29, 1963, and since they were entitled to move the day after notice, and this was November 30, 1963, a public holiday, hence their last day became December 1, 1963.

Therefore, when petitioners filed on December 14, 1963 their motion for reconsideration of the dismissal resolution of November 25, 1963, which was served on their counsel on November 29, 1963, they assumed that because they had filed an amended petition instead of a motion for reconsideration, they acquired a new period of fifteen (15) days from denial thereof to move for reconsideration. Of course, that assumption is incorrect.

But even assuming they had a new period, their motion for reconsideration (amended petition) was denied on December 18, 1963 and copy of the denial resolution was served on their counsel on December 20, 1963. Since their motion for reconsideration filed on December 14, 1963 was filed on the last day, therefore, the denial resolution of December 18, 1963 received by them on December 20, 1963, became final at the latest December 22, 1963. Pursuant to Section 1 of Rule 56 of the Rules of 1940, then in force, the latest a second motion for reconsideration could be filed was "within two days from notice of the order denying the first motion." In this case this notice of denial was served on December 20, 1963. And it being indisputable that petitioners' second motion for reconsideration was filed only on December 23, 1963, it was late. And, furthermore, it was filed without leave of court.

Parenthetically, after a re-study of the original as well as the amended petition in the light of the decision of the Court of Appeals sought to be reviewed, We are convinced that the main issues raised by petitioners necessarily involve findings of fact of that Court which are not shown to be unsupported by substantial evidence.

WHEREFORE, the Court resolved to set aside the resolution of January 8, 1963 and to declare its orders of dismissal of November 25, 1963 (including the resolution of September 26, 1963) final and executory.

Fernando, (Chairman), Antonio, and Martin,* JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., J., did not take part.

* Mr. Justice Ruperto G. Martin was designated to sit in the Second Division.

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