

BENJAMIN DUJON, PLAINTIFF AND APPELLEE, VS. HIEROTEO VILLAROSA, DEFENDANT AND APPELLANT.*G.R. No. L-5183. December 29, 1952*

Ponente: PARAS, C.J.

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The plaintiff-appellee (Benjamin Dujon) instituted a complaint in the municipal court of Bacolod City against the defendant-appellant (Hieroteo Villarosa) for the recovery of a sum of money. Under date of December 20, 1948, an answer was filed, signed by "H. R. Villarosa & Jose Y. Hilado" as attorneys for the appellant. After hearing, the municipal court rendered a decision against the appellant, from which the latter appealed. On March 9, 1949, the clerk of the Court of First Instance of Negros Occidental sent a notice by registered mail to the appellant himself, informing that the case was docketed in said court on March 4, 1949, on appeal from the municipal court of Bacolod City, in accordance with section 7, Rule 40, of the Rules of Court. On June 16, 1949, the appellee filed a motion praying that the appellant be declared in default for his failure to file an answer. On June 17, 1949, the Court of First Instance of Negros Occidental issued an order of default. After the reception of appellee's evidence, said court rendered a decision, sentencing the appellant to pay to the plaintiff the sum of P1,240.96, with interest at 12 per cent per annum from November 16, 1948, plus 25 per cent of said amount for attorney's fees, and the costs. His two motions for reconsideration having been denied, the present appeal was interposed by the appellant.

There is no dispute as to the fact that notice of the docketing of the case in the Court of First Instance of Negros Occidental, on appeal from the municipal court of Bacolod City, was sent by registered mail to the appellant who, however, failed to get the notice from the post office notwithstanding the usual three notices served on him, and that no notice whatsoever was sent to Atty. Jose Y. Hilado. It is insisted for the appellant that, inasmuch as he was represented by counsel in the municipal court, the notice of the clerk of the court of first instance regarding the docketing of the appealed case in his court, should have been served on his counsel, the notice to the appellant himself not being a notice in law, under section 2 of Rule 27 of the Rules of Court and the cases of *Palad vs. Cui*, 28 Phil., 44, and *Esquivas vs. Sison*, 61 Phil. 211.

Even assuming that section 2 of Rule 27 is applicable, and without deciding whether, under section 7 of Rule 40 of the Rules of Court, requiring the clerk of the court of first instance "to notify the parties" of the docketing of the appealed case, the notice may be sent to the parties themselves, though represented by counsel, it is clear that the trial court did not err in issuing the order of default and in rendering the subsequent judgment against the appellant, because in the municipal court the appellant filed and signed his answer jointly with Atty. Jose Y. Hilado as counsel for and in his own behalf. The notice sent to him by the clerk of the court of first instance was therefor patently in conformity with section 2 of Rule 27, requiring that if a party has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. The frivolity of the present appeal should be very apparent to the appellant, a lawyer.

Wherefore, the appealed decision is affirmed, and it is so ordered with double costs against the appellant.

Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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