

**MARGARITO DE LA CRUZ, PETITIONER, VS. HON. ANTONIO CAÑIZARES, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, ROMUALDO VARGAS AND PIOQUINTA ARAMBULO, RESPONDENTS.**

*G.R. No. L-6129. February 28, 1953*

Ponente: BENGZON, J.

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**BENGZON, J.:**

In this petition for mandamus to compel the respondent judge to give due course to the appeal in Civil Case No. 5141 of the Court of First Instance of Quezon Province, the pertinent data are these:

- On May 14, 1951 said court issued an order dismissing the aforesaid litigation due to the failure of herein petitioner (plaintiff in the case) and of his counsel to appear at the trial which had properly been set on that same day.
- Copies of the order of dismissal were transmitted by registered mail to the parties' counsel. The copy for plaintiff's attorney was received at the Manila post-office on the 17th of May and on the 18th the postmaster notified him thereof. He got the registered matter on the 24th of May, 1951.
- Thereafter he prepared and signed a motion for reconsideration dated June 22, 1951. He mailed the original by special delivery on June 22, 1951 and it was received in Lucena, Quezon Province by the Clerk of Court on June 26, 1951.
- As a precaution, a signed copy of the same motion for reconsideration was dispatched by registered mail on June 23, 1951 with a letter to the Clerk informing that the original had been forwarded the day before.
- On September 7, 1951, the plaintiff presented a motion "ad cautelam" asking that he be given an additional period of fifteen days within which to submit his notice of appeal, appeal bond and record on appeal, should his motion for reconsideration be overruled.
- On November 29, 1951 the court denied the motions for reconsideration and for additional time. Of such denial the plaintiff received notice on December 7, 1951.
- On December 11, 1951 the notice of appeal, appeal bond and record on appeal were presented to the court. But the appeal was disallowed in August 1952. Hence this petition in September 1952.

The resulting question for decision is whether the appeal had been seasonably perfected.

There is much to respondents' contention that the motion for reconsideration dated June 22, 1951 was belatedly presented, because the plaintiff having legally received notice of the order of dismissal on May 23, 1951 pursuant to Rule 27 sec. 8, the thirty-day period expired on June 23, 1951, and the motion for reconsideration was actually before the court only on June 26, 1951 when it was received in the office of the Clerk. (*J. M. Tuason & Co. v. Francisco*, G. R. No. L-4672, Aug. 17, 1951).

Supposing, however, that the motion for reconsideration may be considered filed on June 23, 1951, when a copy was sent by registered mail<sup>[1]</sup>, still the notice and record of appeal were tardy, because although plaintiff received notice of the denial of such motion for reconsideration only on December 7, 1951, i. e., two days late, at least. It is true that on December 8, 1951 he moved for extension of the period, but his motion was turned down, and it had no effect of suspending the statutory period<sup>[2]</sup>.

Wherefore the respondent judge was justified in disallowing the appeal, and mandamus is not available to the would-be-appellant.

It may be stated here that the matter of equitable relief has been explored, but the members of the court are not favorably impressed.

The petition is denied, with costs against petitioner.

Paras, C. J., Padilla, Tuason, Montemayor, Reyes, Bautista Angelo, and Labrador, JJ., concur.  
Feria, Pablo, and Jugo, JJ., took no part.

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[1]It might be argued that the copy was not the motion, for the court probably could not act on it without waiting for the original.

[2] See Escolin vs. Garduño 57 Phil. 924; Gibbs vs. Court of First Instance, 45 Off. Gaz., p. 3345.

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