

**DOMINGA ROQUE AND JOSE G. ZAPLAN, COMPLAINANTS, VS.
MAGTANGGOL C. GUNIGUNDO, RESPONDENT.***A.C. No. 1664. March 30, 1979*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-1664/>**AQUINO, J.:**

Respondent Magtanggol C. Gunigundo (admitted to the bar in 1960 and now forty-three years old) was the counsel of the plaintiffs in Civil Case No. 3826-M of the Court of First Instance of Bulacan, entitled "Dionisio Roque, et al. vs. Julita V. Adriano, et al." That case was an action to recover Lot No. 4762 of the Malolos, Bulacan cadastre with an area of around five hectares and for an accounting of the fruits thereof.

On July 23, 1974 respondent Gunigundo received a copy of the order in the said case dismissing it on the grounds of laches and prior judgment. On August 22 or the last day of the reglementary period within which to appeal or file a motion for new trial, he filed, through an associate, a motion for an extension of fifteen days or up to September 6 within which to file a motion for reconsideration. The motion was granted but Gunigundo was not able to file the motion for reconsideration.

Instead, on the last day, September 6, he sent by registered mail a motion for a second extension of ten days. On September 16, the last day of the second extension sought by him, he filed a motion for a third extension of forty-eight hours. The motion for reconsideration was mailed on September 18, 1974, the last day of the third extension.

The trial court denied the second and third motions for extension on the ground that the order of dismissal was already final. It also denied Gunigundo's motion for reconsideration of the orders denying his motions for extension.

Gunigundo then filed in the Court of Appeals a petition for certiorari and mandamus wherein he assailed the orders denying his motions for extension. He prayed that the lower court be directed to resolve his motion for reconsideration. The Court of Appeals dismissed his petition (Roque vs. Court of First Instance, CA-G. R. No. SP-04431, November 27, 1975). It applied the ruling that the filing of a motion for extension of the period to file the record on appeal does not suspend the period for appeal (Philippine Virginia Tobacco Administration vs. De los Angeles, L-29736, October 31, 1974, 60 SCRA 432).

This Court did not give due course to the appeal of respondent's clients from that decision of the Court of Appeals (Resolution of March 29, 1976 in L-42879, Roque vs. Court of Appeals).

On September 6, 1976, the spouses Dominga Roque and Jose G. Zaplan, two of the eight plaintiffs in Civil Case No. 3826-M, filed in this Court a joint affidavit charging Atty. Gunigundo with gross negligence in not seasonably filing the motion for reconsideration and in not perfecting an appeal from the trial court's order of dismissal.

After the submission of respondent's answer, the case was referred to the Solicitor General for investigation,

report and recommendation.

In June, 1978 or during the pendency of the case in the Solicitor General's office, the complaining spouses made a volte-face. They executed an affidavit of desistance before Atty. Rosario R. Rapanut, a senior attorney in the Citizens Legal Assistance Office. They alleged that their complaint for disbarment was due to a misunderstanding. They affirmed that respondent Gunigundo was not negligent in handling their case ("walang pagkukulang at pagpapabaya sa kanyang tungkulin").

Explaining why he filed a motion for reconsideration instead of appealing forthwith from the order of dismissal, the respondent testified that there was vacillation among the eight plaintiffs as to whether they would appeal; that there were no available funds to defray the expenses of an appeal since not all of the plaintiffs were inclined to appeal; that some of the plaintiffs wanted to hire another lawyer; that when the period was about to expire, the plaintiffs changed their mind and decided to continue with the respondent's services and that the eldest plaintiff died and plaintiffs' desire to appeal was communicated to the respondent only after the funeral.

The foregoing explanation is not entirely satisfactory. It is not sufficient to exculpate the respondent from the charge of negligence. His filing of motions for extension on the last day and sending them by registered mail (thus giving the court insufficient time to act before the extension sought had expired) and his omission to verify whether his second motion for extension was granted are indicative of lack of competence, diligence and fidelity in the dispatch of his clients' business.

If his clients were wavering on whether to appeal the order of dismissal, he could have in the meantime, but within the thirty-day period, filed his motion for reconsideration.

The truth is that a motion to extend the reglementary period for filing the motion for reconsideration is not authorized or is not in order. So, it has been held that "a motion for extension to file a petition for new trial does not stop the running of the reglementary period for perfecting the appeal" which is also the period for filing the motion for new trial or reconsideration (*Gibbs vs. Court of First Instance of Manila*, 80 Phil. 160, 164).

The period for filing pleadings and submitting the record on appeal (not notice of appeal and appeal bond) may be extended but the thirty-day period for appealing may not be extended for the purpose of filing the motion for new trial or reconsideration. The reason for not allowing such an extension is that it is assumed that the preparation of a motion for new trial or reconsideration would not consume much time since the case had already been tried and the movant is supposed to be familiar with the case.

On the other hand, the thirty-day period may be extended for the purpose of filing the record on appeal because, where the record is voluminous or the appellant has other pressing matters to attend to, it may not be practicable to submit the record on appeal within the reglementary period.

In this case, had the respondent been more conscientious or experienced, he could have easily avoided the loss of his clients' right to appeal by filing the motion for reconsideration within the thirty-day period. He could have even withdrawn from the case with his clients' consent and required them to get another lawyer to perfect their appeal.

However, the fact that the complainants and their six co-plaintiffs lost the right to appeal would not necessarily mean that they were damaged. The lower court's order of dismissal has in its favor the presumption of validity or correctness. Indeed, an examination of that order discloses that the trial court painstakingly studied the motion to dismiss and carefully rationalized its order. It found that the action was filed more than forty years after the disputed land was registered in the name of defendants' predecessor-in-interest.

Where a judgment became final through the fault of the lawyer who did not appeal therefrom, that fact alone is not a sufficient ground for the losing party to recover damages from his lawyer since the action for damages rests "on the unsubstantiated and arbitrary supposition of the injustice of the decision which became final through the fault and negligence" of the lawyer (*Heredia vs. Salinas*, 10 Phil. 157, 162. See *Ventanilla vs. Centeno*, 110 Phil. 811, where the lawyer who failed to perfect appeal was ordered to pay his client two hundred pesos as nominal damages).

In view of the foregoing and considering complainants' affidavit of desistance in this case, drastic disciplinary action against the respondent is not warranted. But he is admonished to exercise care and circumspection in attending to the affairs of his clients. A repetition of the same irregularity will be treated with more severity. A copy of this decision should be attached to respondent's personal record.

SO ORDERED.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., did not take part, because a lawyer son of Justice is the opponent of Atty. Gunigundo in one case in Bulacan.

Abad Santos, J., on abroad.

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.