

**SERAFIN BORRES LOYOLA AND JOSE DIAZ DESLATE, PETITIONERS,
VS. THE HONORABLE COURT OF APPEALS (THIRD DIVISION), NELLY
BORRES LOYOLA, AND GAMBY BORRES LOYOLA, ASSISTED BY HER
GUAR...**

G.R. No. L-27465. August 31, 1971

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a6f12a6dbe5e/>

MAKASIAR, J.:

Petitioners Serafin Borres Loyola and Jose Diaz Deslate pray for the reversal of the resolution promulgated on December 22, 1966 by the Third Division of the Court of Appeals, which dismissed their appeal from the Court of First Instance for having been per-fected out of time.

By way of factual background, herein private respondents Nelly Borres Loyola and Gamby Borres Loyola (minor), assisted by guardian ad-litem Julieta B. Declaro filed on October 25, 1950 in the Court of First Instance of Capiz an action for reivindicacion, recovery of possession of two lots and annulment of contract with damages against herein petitioners which was docketed as Civil Case No. V-603 in the Court of First Instance of Capiz (pp. 2-10, rec. on appeal).

On November 14, 1950, herein petitioners as defendants in the said Civil Case filed their Answer (pp. 15-18, rec. on appeal), to which herein private respondents as plaintiffs filed a reply on November 25, 1950 (pp. 18-22, rec. on appeal). On August 1, 1963, herein petitioners filed a motion to admit their amended Answer attached thereto (pp. 39-44, rec. on appeal), which amended Answer was admitted by the trial court in an order dated August 5, 1963 (pp. 46-48, rec.).

On June 2, 1964, over thirteen (13) years later, the trial court rendered a decision in favor of herein private respondents (pp. 48-90, rec. on appeal).

On June 11, 1964, herein private respondents filed a motion for an amendment of said decision and for execution pending appeal (pp. 90-110, rec. on appeal), to which herein petitioners filed an opposition on June 30, 1964 (pp. 110-113, rec. on appeal).

In an order dated July 14, 1964, the trial court denied the motion of herein private respondents to amend the decision but granted the motion for execution pending appeal upon filing by said respondents a bond in the amount of Ten Thousand Pesos (P10,000.00) on the special grounds "that the decision involves a substantial amount, an accumulated damages now reaching a high figure, without any security to insure the right of the plaintiffs" and "that defendants herein, as can be gleaned from the decision, have demonstrably been actuated by bad faith, and an appeal would obviously tend to prolong the inequity suffered from their hands by the plaintiffs" (pp. 114-115, rec. on appeal).

On July 15, 1964, herein petitioners filed a motion for reconsideration of the decision (pp. 116-134, rec. on appeal). THE MOTION DOES NOT STATE THE DATE OF THEIR RECEIPT OF A COPY OF THE

DECISION.

On August 4, 1964, herein petitioners likewise filed a motion to fix supersedeas bond to stay execution pending appeal (p. 135, rec. on appeal).

On August 7, 1964, herein private respondents filed an opposition to the motions for reconsideration and for the fixing of the supersedeas bond (pp. 136-139, rec. on appeal).

In an order dated August 12, 1964, the trial court denied herein petitioners' motion for reconsideration of its decision but permitted them to file supersedeas bond in the amount of Thirty Thousand Pesos (P30,000.00) to stay execution pending appeal (pp. 139-140, rec. on appeal).

On August 20, 1964, herein petitioners filed their notice on appeal, WITHOUT INDICATING THE DATE THEY RECEIVED A COPY OF THE ORDER DATED AUGUST 12, 1964 DENYING THEIR MOTION FOR RECONSIDERATION OF THE DECISION. On the same day, they filed an urgent ex parte motion for extension of time to file record on appeal because the records of the case are quite voluminous, adding that they had already filed and presented their appeal bond and notice of appeal (pp. 141--142, rec. on appeal), which was granted on August 21, 1964 (p. 142, rec. on appeal), on which day herein petitioners submitted their record on appeal and appeal bond for approval and elevation to the Court of Appeals together with the evidence (p. 143, rec. on appeal).

In an order dated September 16, 1964, the lower court approved the record on appeal and directed the clerk of court to give due course to the appeal, but disapproved the supersedeas bond filed by the defendants therein because it did not bear the signatures and acknowledgment of the principals and it was without sufficient collateral to guarantee the solvency of the sureties (pp. 144-145, rec. on appeal).

On November 14, 1964, the defendants filed a motion for the approval of their supersedeas bond to stay execution pending appeal (p. 145, rec. on appeal), which supersedeas bond was approved on November 24, 1964 by the court provided the same is registered in the Register of Deeds of Capiz within thirty (30) days from notice thereof (pp. 149-150, rec. on appeal), despite plaintiffs' opposition thereto (pp. 146-149, rec. on appeal).

When private respondents herein noted that the petitioners-appellants did not do anything to prosecute their appeal from the time their record on appeal and supersedeas bond were approved respectively on September 16, 1964 and November 23, 1964, counsel for herein private respondents examined the records of the case and for the first time discovered that, from his viewpoint, petitioners' appeal was filed out of time.

So, on March 14, 1966, plaintiffs in said Civil Case, now herein private respondents, filed an urgent motion to dismiss appeal and for immediate execution (pp. 150-154, rec. on appeal) on the following grounds:

"(1) That the Decision dated June 2, 1964 subject matter of this appeal was deposited at the Roxas City post office on June 4, 1964, for service to Atty. Venicio Escolin, defend-ants' counsel, by registered mail.

"(2) That the first notice of the registered mail containing said decision was delivered to the residence of Atty. Venicio Escolin and received in his behalf by Irena Acurante on June 4, 1964, but Atty. Escolin actually claimed the registered mail containing the Decision at the Roxas City post office on June 16, 1964, after the second notice of said registered mail was received on his behalf of Atty. Escolin by the same Irena Acurante.

"(3) That on June 11, 1964, plaintiffs filed a motion for reconsideration and for execution of Decision pending appeal, which was duly served on Atty. Venicio Escolin on June 15, 1964.

"(4) That on July 15, 1964, Atty. Venicio Escolin filed a motion for reconsideration of the Decision in behalf of the defendants, which motion was denied by order of this Honorable Court dated August 12, 1964.

"(5) That on August 13, 1964, a copy of said order was sent to Atty. Escolin by registered mail by the Office of the Clerk of Court, and the first registry notice of said mail was delivered to the residence of Atty. Escolin on August 14, 1964, who claimed said mail by virtue of said first registry notice on August 20, 1964, at the Roxas City post office.

"(6) That on August 20, 1964, Atty. Escolin filed his notice of appeal and appeal bond at the same time asking for an extension of ten (10) days within which to file his record on appeal, which he actually filed on August 21, 1964.

"(7) That prior to August 20, 1964, Atty. Escolin did not ask for any extension of time within which to perfect his appeal, and the time within which he may perfect his appeal as provided by the Rules of Court has already long expired on August 20, 1964. As a matter of fact said period has already expired before he filed his motion for reconsideration on July 15, 1964 (counted from June 9, 1964, when defendants were presumed to have received a copy of the Decision after Irena Acurante received on June 4, 1964 the final registry notice).

"A R G U M E N T S

"Section 8, Rule 13 of the new Rules of Court, provides: 'Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.'

"In the case at bar, the first notice of the postmaster pertaining to the registered letter containing the Decision was served at the residence of Atty. Escolin on June 4, 1964. In accordance with the above cited provision of the Rules of Court, service of the Decision now appealed from to Atty. Escolin, was complete on June 9, 1964, and therefore his time within which to perfect his appeal began on June 10, 1964, and expired on July 10, 1964." (pp. 150-153, rec. on appeal).

Defendants therein filed on March 19, 1966 their opposition to said motion on the ground that: (1) the trial court had no more jurisdiction to pass upon the plaintiffs' motion for the reason that the trial court had already approved defendants' record on appeal in its order dated September 16, 1964 and what remains to be done is merely the clerical chore on the part of the clerk of court to transmit the records to the appellate court citing *Valdez vs. Juscado*;[1] (2) the five-day period mentioned in Section 8 of Rule 13 of the Rules of Court refers to a case wherein the registered mail was never claimed by the addressee, and not when the registered mail was actually received by the addressee, as in the instant case, in which case service is deemed completed upon actual receipt; and (3) the identity of the person of Irena Acurante, who allegedly received the registered notice on behalf of counsel for the defendants, is unknown to said counsel, that such person has never lived in his residence nor employed by him, much less authorized by him to receive any registered matter on his behalf (pp. 154-156, rec. on appeal).

After the defendants filed their opposition to the motion to dismiss their appeal, plaintiffs presented evidence both oral and documentary in support of their motion to dismiss appeal; while the defendants presented only oral evidence in support of their opposition thereto.

However, before the plaintiffs' motion to dismiss appeal could be resolved by the trial court, defendants filed on April 11, 1966 a motion to amend their record on appeal by including as part thereof a sworn statement executed by Atty. Venicio Escolin on the same day, April 11, 1966 (pp. 157-159, rec. on appeal), which states:

"That the defendants' appeal has been filed within the period fixed by the Rules of Court --

"(1) On June 16, 1964, he received the notice of the decision rendered by this Court;

"(2) On July 15, 1964, he filed the defendants' Motion of Reconsideration of the said decision;

"(3) On August 20, 1964, he received the notice of the Court's Order denying the motion for re-consideration;

"(4) On August 20, 1964, he filed the notice of appeal and appeal bond;

"(5) On August 20, 1964, he also filed a motion for 10-day extension to file record on appeal which was granted;

"(6) On August 21, 1964, he filed the record on appeal" (p. 158, rec. on appeal).

On April 13, 1966, plaintiffs filed their opposition to defendants' motion for inclusion of their counsel's sworn state-ment on the ground that the same was presented about one year, eight months and thirty (30) days after the record on appeal was submitted for approval and about one year, seven months, fifteen (15) days after said record on appeal was approved on September 16, 1964 and after one year, nine months, twenty-one (21) days after defend-ants' period for perfecting an appeal expired on July 10, 1964; that the period for perfecting an appeal can never be extended nor relief granted in case of failure to proceed in time, unless an application for extension of time for perfecting such an appeal is filed within the reglementary period; and that failure of the record on appeal to show on its face that the appeal was perfected within the reglementary period is a fatal defect. In the same opposition, plaintiffs in said civil case filed their rejoinder (should be supplement) to plaintiffs' memorandum, alleging among others that contrary to the claim of defendants' counsel, Irena Acurante, who received the registered mail for defendants' counsel, was already of age because she voted in the 1963 and 1965 elections in Precinct 24 of Roxas City according to the certificate of the municipal treasurer of Roxas City; that Atty. Escolin, defendants' counsel, admits in his memorandum that Irena Acurante is his laundrywoman, although she goes to his house only twice or thrice a week; that Irena Acurante received about one hundred (100) registry notices for the years 1964-65 from the mailman for and in behalf of Atty. Escolin at the latter's residence, which Atty. Venicio Escolin and his wife, Atty. Rebecca Escolin, presented to the post office to claim the corresponding letters stated in said registry notices (pp. 164-171, rec. on appeal).

In an order dated May 12, 1966 (pp. 173-184, rec. on appeal), which defendants' counsel claimed to have received on May 16, 1966, the trial court denied the motion to dismiss appeal, admitted the sworn statement of defendants' counsel containing the dates pur-ported to show that the record on appeal was perfected on time, and directed the defendants to so amend the record on appeal as to include the subsequent pleadings filed by the plaintiffs from March 14, 1966 and the said order of May 12, 1966, reasoning thus:

"The fact that Atty. Escolin lost no time in claiming the mail matter in question upon learn-ing that the within decision had been rendered vided (sic) in the light of the other facts and cir-cumstances alluded to above, tends to persuade the impartial mind to the belief that his inaction, now under inquiry, was not wittingly due to neg-ligence on his part, unless the Court should resort to a naked literal interpretation of the rule disregarding the doctrine of liberal con-struction designed to promote the interest of substantial justice. xx xx xx

"As an adjunct to the incident at hand, counsel for defendants filed a motion (Record, p. 638) attaching thereto a sworn statement containing certain data tending to show that the within appeal was perfected within season (Record, 639), in a belated compliance with the requirement of the rule that the record on appeal should contain such data as would show upon its face that the appeal was per-fected on time (Rule 41, Section 6, RC). This move of counsel for defendants is objected to by counsel for plaintiffs on the ground that the long delay in the transmittal of the record of this case to the appellate court amounts to loss of interest on the part of said defendants. Inquiry conducted by the Court, however, revealed that such delay has been caused mainly by lack of copies of the numerous documentary exhibits which are required under the rule to be retained in the trial court upon transmittal of the record on appeal to the appellate court (Rule 41, Sec-tion 11, RC). Under this condition, it would be unfair to deprive defendants of the right to appeal." (Pp. 175-183, rec. on appeal)

despite its finding that

"The record discloses that on June 4, 1964, notice of the within decision was sent through the mails by Deputy Clerk of Court Antonio Amosin to counsel for the defendants herein, Atty. Venicio Escolin, as evidenced by the Registry Receipt for Letter No. 1280 (Exhib-it A). On the same date of June 4, 1964, the first Registry Notice No. 7053 made by the post office on said letter No. 1280, covered by Exhibit A, was delivered by the Roxas City post office letter carrier Oscar Aguling at the residence of Atty. Venicio Escolin, and said first Registry Notice was received by one Irena Acurante (Exhibit D). On June 11, 1964, a second registry notice on said Letter No. 1280 was delivered by the same mail carrier at the residence of Atty. Escolin which was, again, received by Irena Acurante (Exhibit D). On June 16, 1964, Atty. Escolin personally came to the post office and claimed Letter No. 1280 (Exhibit A-1).

"Inasmuch as the date of first notice herein is June 4, 1964, and the mail was not claimed pursuant to said notice, the service in question should be deemed complete upon the expiration of five days from said date or on the 9th of June, xx xx.

"Evidence tend to establish the fact that the first registry notice covering aforementioned Letter No. 1280 was delivered by the mail carrier Oscar Aguling to Irena Acurante. Atty. Escolin identified Acurante as a daughter of his family laundry woman who frequented his house to help her mother whenever there was any laundering to do. He denied having authorized her to receive deliveries of mail matters for him. All these representations made by Atty. Escolin may be true. But the record of the local post office reveals that scores of registry notices during the years 1964 and 1965, intended for Atty. Escolin, had been delivered by the mail carrier Aguling to Irena Acurante (Exhibits D, D-1). This fact will not exempt Atty. Escolin from the charge that, even if he did not expressly authorize said Irena Acurante, he at least had been tolerating her in this regard, and to such an extent as to amount to his having positively authorized her.

"It is the insistence of Atty. Escolin that the first registry notice sent by the postmaster on the oft-mentioned letter No. 1280 did not actually reach his hands. So that he could not acquire knowledge, on the basis of said notice, of the mail matter in the post office waiting for him. Thus, as the evidence shows the notice in question was delivered to Irena Acurante, but there is no showing as to what was done with that notice after Irena Acurante received it. Of the scores of notice received by Acurante, only this particular notice on Letter No. 1280 has caused so much trouble. It could have been misplaced so that it failed to reach the hands of the addressee."

Accordingly, the defendants submitted on May 30, 1966 their amended record on appeal (pp. 184-185, rec. on appeal), which, despite plaintiffs' opposition, was approved by the court which directed the clerk of court to expedite giving due course to the appeal, in an order dated June 21, 1966 (pp. 187-188, rec. on appeal).

The clerk of court thereafter certified the said amended record on appeal on September 5, 1966 (p. 189, rec.).

The plaintiffs-appellees filed with the Court of Appeals a motion to dismiss appeal dated October 6, 1966 on the ground that the appeal was not perfected within the reglementary period; that the original record on appeal failed to show on its face that the appeal was perfected within the reglementary period, which defect cannot be corrected after the lapse of the said period; and that the failure of the clerk of court to certify to the appellate court the amended record on appeal within ten (10) days after its approval (Section 11, Rule 41, Revised Rules of Court) and failure on the part of the appellant to see to it that such a duty is complied with by the clerk of court, constitute abandonment of the appeal or failure to prosecute the same, citing *Maria Pacheco vda. de Miras, et. al. vs. Honorable Perfecto Quicho*,² *Government vs. Abrion, et. al.*,³ and Section 1(b) of Rule 51 in conjunction with section 3, Rule 48, Rules of Court (Annex B, pp. 23-30, rec.). The defendants-appellants filed their opposition dated November 28, 1966 to the motion to dismiss appeal (Annex D, pp. 33-34, rec.).

The Third Division of the Court of Appeals in its resolution dated December 22, 1966 dismissed the appeal after finding that:

"It is noted that the original record on appeal does not show when defendants-appellants received copy of the decision rendered by the trial court nor the date when they received the order denying his motion for reconsideration of July 14, 1964. It further appears that the record on appeal was approved by order of September 16, 1964 and that it was only on April 11, 1966 when defendants' counsel filed a sworn manifestation showing the omitted dates necessary for inclusion in the record on appeal as required under the Revised Rules of Court (Rule 41, Section 6) that the record on appeal shall include 'such data as will show that the appeal was perfected on time.' Over plaintiffs' objection, the trial court by order dated May 10, 1966 admitted the sworn state-ment mentioned above and accordingly ordered its inclusion in the amended record on appeal.

"The record shows that copy of the decision was served upon defendants by registered mail and the first notice dated June 4, 1964 and the second notice dated June 11, 1964 were received at counsel's residence by Sena Acurato of suffi-cient discretion who went to said house three days a week to help her mother wash clothes; that although counsel denied having authorized her to receive mail matters for him during the years 1964 and 1965, she received scores of registry notices for and in behalf of Atty. Escolin, and he never complained on account of this except in this case; that the registered letter was actually received by counsel on June 16, 1964.

"Under the facts and the law, service becomes complete on June 9, 1964 (*Gorospe vs. Court of Appeals*, L-11443, September 30, 1959; *Pielago vs. Generosa*, 73 Phil. 654; *Islas vs. Platon*, 47 Phil. 162; *Palisoc vs. Locsin*, 57 Phil. 322; *Yangco vs. Milan*, 67 Phil. 761). It follows that defendants' motion for reconsideration filed on July 15, 1964 was filed 6 days late since the decision became final on July 9, 1964. The appeal was manifestly perfected out of time.

"There is another consideration that leads to the same conclusion. Section 11, Rule 41 of the Revised Rules of Court imposes a mandatory duty upon the clerk and the trial court to transmit to the appellate court the record on appeal within 10 days after its approval (*Alliance Insurance & Surety Co. vs. Tan*, 52 O.G. 7634). It was accordingly held by the Supreme Court that after the lapse of 10 days from the approval of the record on appeal, the trial court can no longer order its amendment (*Gosiengfiao vs. Yatco*, L-16676, January 22, 1961). The *Yatco* case followed *Director of Prisons vs. Teodoro*, L-2043, July 30, 1955; and *Calingo vs. Tan*, L-10366, May 31, 1957; and the rule has been reiterated in *Commissioner of Immigration vs. Romero*, L-19782, January 31, 1964; *Santos Cuenca vs. Yatco*, CA-G.R. No. 35166-R, August 24, 1965 and *Mariano Cabiao vs. Court of First Instance of Zamboanga del Sur*, L-18454, August 22, 1966.

"Under the foregoing authorities, it seems that the trial court had no authority to order amendment of the record on appeal 20 months after its approval. This is more so when it is considered that the omitted dates sought to be included belatedly in the original record affect jurisdiction, for unless appeal is perfected on time, appellate court acquires no jurisdiction over the appealed case and has power only to dismiss the appeal (*Espartero vs. Ladaw*, 49 O.G. 1429). The sworn statement regarding the missing dates filed by appellants' counsel 19 months after approval of the record on appeal cannot restore the jurisdiction which has been lost (*Government vs. Antonio*, L-23736, Res. October 19, 1965; *Development Bank of the Philippines vs. Santos, et. al.*, L-26387, Res. September 27, 1966)." (Pp. 47-49, rec.).

In its resolution dated March 16, 1967, the Third Division of the Court of Appeals denied the motion of defendants-appellants for the reconsideration of its resolution dismissing the appeal (Annex G, p. 66, rec.).

Now said defendants-appellants file this petition before Us for review on certiorari of the resolution of the Court of Appeals dismissing their appeal.

The resolution of the Court of Appeals dismissing petitioners' appeal should be sustained for failure on the part of the petitioners to prosecute their appeal seasonably.

Pursuant to paragraph (c) of Rule 50 of the Revised Rules of Court, the Court of Appeals may dismiss the appeal

for "failure of the appellant to prosecute his appeal under section 3 of Rule 46," which provides that if the record on appeal is not received by the Court of Appeals within thirty (30) days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order directing the clerk of the lower court to transmit the record on appeal or to declare the same abandoned for failure to prosecute. It is conceded that the original record on appeal was approved by the trial court on September 16, 1964. Until April 11, 1966 or a period of about one year and seven months from September 16, 1964, the petitioners herein as defendants-appellants, did not do anything -- such as filing a motion -- to compel the clerk of the trial court to comply with his duty under Section 11 of Rule 41 of the Revised Rules of Court to transmit to the appellate court the original record on appeal within ten (10) days after its approval. Petitioners deliberately did not make any such move because for over three decades now they have been in possession and enjoying the fruits of the two parcels in litigation. The undue delay of the transmittal of the record on appeal to the Court of Appeals com-pelled counsel for herein private respondents in March, 1966 to examine the records to ascertain the reason for the delay.

The contention of herein petitioners that under the afore-said Section 3 of Rule 46 of the Revised Rules of Court, herein private respondents never filed any motion before the Court of Appeals to require the clerk of the trial court to transmit the record on appeal, prior to their motion to dismiss the appeal before the respondent Court of Appeals on October 6, 1966 and that they did not even invoke said ground in their motion filed on March 14, 1966 with the trial court for the dismissal of the appeal which was predicated solely on the appeal having been perfected out of time and not on failure to prosecute appeal, is devoid of merit; because said section 3 of Rule 46 does not impose on the appellees, herein private respondents, the duty to file such a motion to require the clerk of the trial court to transmit the record on appeal to the Court of Appeals. On the contrary, said section 3 of Rule 46 authorizes herein private respondents as appellees to file, as an alternative remedy, a motion with the Court of Appeals to declare the appeal abandoned for failure to prosecute, when the record on appeal is not received by the Court of Appeals within thirty (30) days after its approval by the trial court. And this motion to dismiss appeal for failure to prosecute was filed on October 6, 1966 with the Court of Appeals by herein private respondents as appellees.

Likewise untenable is the reliance of herein petitioners on the conclusion of the trial Judge that the long delay was justified by the lack of copies of the numerous documentary exhibits required to be retained in the trial court upon transmittal of the record on appeal to the appellate court under Section 11 of Rule 41 of the Revised Rules of Court; because it will not take a month to make copies of said documentary exhibits. And there is no showing that herein petitioners exerted efforts to urge the clerk of the trial court to expedite the preparation of such copies.

While the clerk of the trial court has the duty to transmit the record on appeal to the appellate court within ten (10) days after its approval together with a certified copy of the minutes of the proceeding, order of approval, certificate of correctness and the original documentary evidence referred to therein under Section 11 of Rule 41, it is equally the responsibility of herein petitioners as appellants to compel the clerk of court to perform his duty, and if necessary, by court order or by invoking the contempt powers of the court. Thus, in the 1968 case of *Fag-tanac, et. al. vs. Court of Appeals, et. al.*,⁴ WE enunciated:

"A rule long familiar to practitioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is appel-lant's duty to make the Clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was pre-cisely to spur on the slothful.

xx xx x xx x xx x

"But the decisive question is whether this Court should, in the discharge of its supervisory functions, compel dismissal of the appeals.

"By Section 3, Rule 46 of the Rules of Court, if the record on appeal 'is not received by the Court of Appeals within thirty (30) days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order xx xx to declare the same abandoned for failure to prosecute.' Section 1, Rule 50, Rules of Court, provides that an appeal may be dismissed by the Court of Appeals on its motion or of that of the appellee upon the ground of '(c) Failure of the appellant to prosecute his appeal under Section 3 of Rule 46.' Reason for this rule is not wanting. A lack of proper regard on the part of a defeated litigant to have his case promptly submitted to an appellate court for disposal of his appeal could result in a situation where 'litigation might become more intolerable than the wrongs it is intended to redress.'

xx x xx x xx x xx x

"The negligence of private respondents in prosecuting their appeals in these cases is palpably clear. Their failure to assist the courts of justice to dispose of these cases with reasonable dispatch is a sufficient reason to take away from their right to have the alleged errors in the appealed judgment corrected. They delayed the administration of justice by their delay in prosecuting their appeals. And this, in spite of the fact that the civil suit was commenced on June 5, 1951, and the land registration case, on September 14, 1951. In this situation, the spirit of the Rules of Court forbids that efficacy of the administration of justice be shackled by appellants' failure to prosecute the appeals. The rule in this respect is to be held rigid. Failure of an appellant to so prosecute must be reckoned against him. It would be a travesty in the administration of justice if we are to order now the return of the records to the lower court to complete the records on appeal; to procure approval of the amended record still to be presented by private respondents in the land registration case; and thereafter to elevate the cases once again to the appellate court for resolution of the appeals.

"Delays in litigation have always been a bane in our judicial system. And we have observed a growing tendency of defeated suitors and their lawyers to disregard their duties under the Rules of Court, in the hope that they may stall the final day of reckoning. These are the considerations that now impel this Court to make a policy statement that failure to prosecute will not be countenanced." (2 Moran, Rules of Court, 1970 Ed. 491-492).

Even as early as 1918, this Court, in the case of *Government vs. Abrion*⁵ ruled that:

"xx x xx If the clerk fails to perform his legal duty, the appellant has his remedy. But the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his. The appellant cannot justify his failure to comply with the rules of this court, and thus delay the final conclusion and decision of an appeal, by saying that the fault was that of the clerk of the lower court."

The appalling and irritating protraction in the termination of this case is as intolerable as it is oppressive on the herein private respondents, who were denied for over thirty (30) years the enjoyment of the possession and harvest of the property subject matter of the litigation. Herein petitioners have been reaping the produce of the lands since the father of herein private respondents died on August 27, 1935. Herein private respondents, it will be recalled, instituted this case in 1950 and the trial was commenced only after herein petitioners submitted an amended Answer, which was approved by the trial court on August 5, 1963 (pp. 46-48, rec.). And the decision was rendered by the trial court on June 2, 1964, over thirteen (13) years from the filing of the case, which decision in favor of the herein private respondents could not be executed for about seven years because of this incident.

WE repeat the warning in the *Fagtanac* case, *supra*, that failure on the part of an appellant to prosecute his appeal with reasonable diligence will not be countenanced.

There is no need to pass upon the assigned errors, in view of the foregoing pronouncement.

WHEREFORE, the resolution appealed from is hereby affirmed and this petition is hereby dismissed, with treble costs against herein petitioners.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] L-2366, April 27, 1951.

2 Decided by the Court of Appeals on July 15, 1961.

3 3 Phil. 679.

4 L-26922-3, March 21, 1968, 22 SCRA 1227, 1231, 1233-4.

5 38 Phil. 679, 683.

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.