

EUSEBIO TORIBIO, GREGORIA TORIBIO, CIRILA TORIBIO, AGUSTINA TORIBIO, RUPERTA TORIBIO, CONSORCIA TORIBIO, VICTORIANO TORIBIO, MARCIANO TORIBIO, AND CATALINA TORIBIO, PETITIONERS,...*G.R. No. L-28453. March 21, 1975*

Ponente: FERNANDO, J.

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There is aptness in the characterization by petitioners in this suit for mandamus that the assailed order of the then respondent Judge Gregorio D. Montejo,[1] declaring a decision rendered by him final and executory and disapproving the record on appeal filed by plaintiffs, now petitioners, merely because it was unsigned was inspired by pure technicality. The order on its face then cannot escape the imputation of arbitrariness sufficient to warrant the invocation of procedural due process. It reads thus: "Under consideration is the approval of the Record on Appeal filed by the plaintiffs in this case and Motion to declare decision final and executory, dated October 31, 1967, filed by counsel for the defendants; and to the latter issue, counsel for the plaintiffs filed an opposition, dated November 10, 1967, to which counsel for the defendants filed a reply, dated November 15, 1967. While it is true that the Notice of Appeal, appeal bond and Record on Appeal were filed on October 9, 1967, the last day to perfect the appeal in this case, however, the Record on Appeal is unsigned by any of the plaintiffs or their counsel; and the Notice of Hearing, dated October 17, 1967, filed by counsel for the plaintiffs on the same date in this Court to calendar the hearing of the Record on Appeal on October 21, 1967, in the opinion of the Court does not and cannot cure this fatal defect." [2] In the dispositive portion, it was ruling of the lower court "that the appeal in this case has not been perfected on time and the appeal is [dismissed]; with the further declaration [that] the decision in this case [is] final and executory." [3]

Deference to previous authoritative rulings call for the nullification of such order. In *Arcega v. Dizon*, this Court,[4] through Justice Perfecto, held: "It is true that section 3 of Rule 41 requires appellant to serve upon the adverse party his notice of appeal, an appeal bond and a record of appeal within the same thirty-day period for filing in court. While there is no reason why the requirement should not be enforced, when noncompliance thereof would not impair any substantial right of the adverse party, it should be considered as merely directory and shall not impair the right of appeal. This stand is strengthened by the fact that failure to serve the adverse party with copies of the above-mentioned papers is not specifically stated in section 1 of Rule 52 as one of the grounds to dismiss an appeal." [5] Nor is there any need for appellant to set it for hearing.[6] Neither is the party appealing under a duty of securing from the court the approval of the appeal bond. It is the court that should attend to it.[7] What is indispensable is that within the thirty-day period, the notice of appeal, the record on appeal, and the appeal bond must be filed.[8]

In *Philippine Resources Development Corporation v. Narvasa*,[9] where appellant failed to serve appellee a copy of the appeal bond resulting in the lower court dismissing the appeal, this Tribunal reversed his order, stressing that "it would be most unfair if the appeal be defeated on a mere technicality. * * *." [10] Such a ruling was not

only cited with approval but also reinforced with a reference to the Arcega decision with its principle reaffirmed in *Roska v. Ramolete*[11] "that where non-compliance with service of the notice of appeal, appeal bond and record on appeal upon the adverse party does not cause an impairment of his right, it will not be considered a ground for dismissal and in such an event the court's discretion in giving due course to the appeal would be guided [by] the interest of justice." [12] In the two subsequent cases of *Rosales v. Court of Appeals*[13] and *De Luna v. Palacio*, [14] this liberal attitude was once again adhered to, the insufficiency of the appeal bond being considered an excusable oversight in the former and, in the latter, even its non-filing in time being held as not sufficient ground to dismiss the appeal where it was in fact procured with appellant having paid the requisite premium and having prepared the documents ahead of the expiration date.

This Court, as is thus evident, has been quite consistent in preserving the right to appeal and has viewed with disfavor attempts on the part of appellees to denigrate its effectiveness. That is in line with the basic postulate that the system of procedure, to quote from Cardozo, "is perverted from its proper function when it multiplies impediments to justice without the warrant of clear necessity." [15] So it has been in the Philippines from the leading case of *Alonso v. Villamor*, [16] a 1910 decision, with Justice Moreland correctly stressing: "Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." [17] Clearly then, a record on appeal filed on time, even if inadvertently unsigned, is not to be deprived of any force or effect. A lower court under the circumstances should have counsel affix his signature. It is as simple as that.

WHEREFORE, the petition for mandamus is granted and the successor of respondent Judge ordered to approve the record on appeal filed by petitioners. The preliminary injunction issued in this case against the enforcement of the assailed order of November 22, 1967, dismissing the appeal and declaring the decision in Civil Case No. 627 of the Court of First Instance of Zamboanga City final, is made permanent. Costs against private respondents.

Barredo, Antonio, and Fernandez, JJ., concur.

Makalintal, C.J., concurs in the result.

Aquino, J., on sick leave.

[1] Private respondents are the spouses Justa Toribio and Rosendo Cabaya Cruz.

[2] Order of Respondent Judge dated November 22, 1967.

[3] *Ibid.*

[4] 76 Phil. 164 (1946).

[5] *Ibid.*, 167.

[6] *Cf. Olvido v. Ferraris*, 90 Phil. 555 (1951).

[7] *Cf. Espartero v. Ladaw*, 92 Phil. 704 (1953) and *Gammad v. Arranz*, 92 Phil. 1048 (1953).

[8] *Garcia v. Santico*, 97 Phil. 108 (1955). *Cf. Singbengco v. Arellano*, 99 Phil. 952 (1952) and *Buena v. Surtida*, 101 Phil. 355 (1957).

[9] L-12803, Feb. 27, 1962, 4 SCRA 414.

[10] *Ibid.*, 417.

[11] L-18266, June 30, 1962, 5 SCRA 553.

[12] Ibid, 557.

[13] L-25882, July 28, 1969, 28 SCRA 813.

[14] L-26927, Dec. 27, 1969, 30 SCRA 912.

[15] Reed v. Allen, 286 US 191, 209 (1932).

[16] 16 Phil. 315.

[17] Ibid, 322.

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