

JESUS P. GARCIA, PETITIONER, VS. COURT OF APPEALS, JOSE RECOLETO AND JUDITH A. RECOLETO, RESPONDENTS.*G.R. No. L-34620. April 29, 1977*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cb8332d593f5/>**FERNANDO, J.:**

The facts of this certiorari, prohibition, and mandamus proceedings are simple and uncomplicated. The Court of First Instance of Cebu having on September 30, 1970 rendered a decision in favor of petitioner against private respondents, the spouses Jose Recoleta and Judith A. Recoleta, in an action for the recovery of a portion of Lot No. 1357 of the Banilad Friar Lands Estate in Cebu City, the latter filed on January 21, 1971 a notice of appeal and thereafter on January 28, 1971, a record on appeal, which did not state when such decision was received by them.[1] Then on February 11, 1971, they filed a motion "seeking to detach and substitute page 3 of the record on appeal, by offering to change it with a new page, which would add the phrase 'and which decision was received by plaintiffs on January 7, 1971.'"[2] Such a motion was denied by the lower court on February 20, 1971, acting favorably on an opposition of petitioner.[3] It was thus a record on appeal that did not show when the decision was received that was transmitted to respondent Court of Appeals, but it denied nonetheless petitioner's motion to dismiss appeal in its Resolution of May 27, 1971,[4] sustaining the opposition filed by private respondents. Such resolution reads: "Upon consideration of the motion to dismiss appeal, the opposition thereto and the reply to opposition, the Court [resolved] that since the opposition appears to be well-founded, motion to dismiss appeal is [denied]; appellant is given 10 days from notice hereof to insert and add the phrase, 'and which decision was received by the plaintiff on January 7, 1971' on par. 21 of the typewritten record on appeal." [5] It was this resolution, the reconsideration of which was denied, that is now assailed in this proceeding.[6] The question that emerges from such a state of facts is whether respondent Court of Appeals gravely abused its discretion in not dismissing appeal in view of the failure of private respondents to observe literally the material data rule.[7] The answer is supplied by a recent decision, *Krueger v. Court of Appeals*. [8] It is adverse to the claim of petitioner.

Respondent Court did not commit a grave abuse of discretion. Hence this petition must be dismissed.

1. This is the opening paragraph of the opinion of Justice Muñoz Palma in the *Krueger* decision: "This is another case covered by the liberalized interpretation and application of the 'material data rule' enunciated in recent decisions of this Court." [9] The facts of the case correspond to that in the present litigation. Petitioner *Krueger* as plaintiff-appellant failed to state the date he received the decision appealed from. Accordingly, there was a motion to dismiss such a pleading. Respondent Court of Appeals, through its Ninth Division, issued the challenged resolution of April 10, 1975 granting such a motion. It was reversed by this Court. As stated in the opinion of Justice Muñoz Palma: "We now find and so hold that petitioner Frank *Krueger* is deserving of relief." [10] She pointed out that the once prevailing doctrine as to the literal adherence to the material data rule being of mandatory and jurisdictional character, first announced in *Government v. Antonio*, [11] has been eroded considerably by the more recent decisions of this Court. Reference was made by her to *Berkenkotter v. Court of Appeals* [12] as reflecting this new trend. It should be said that such a tendency is discernible as far back as *Design*

Masters v. Court of Appeals,[13] where this Court, in an opinion of former Chief Justice Concepcion, reversed the Court of Appeals for granting a motion to dismiss upon the ground that nowhere in the record on appeal does the date of its filing appear although said date is stamped on the first page of the original record. Chief Justice Concepcion explained why: "The printed record on appeal in L-31510 does not show the date on which it was filed with the trial court, but such date is stamped on the original record on appeal, which was approved by said court and forwarded to the Court of Appeals. Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date aforementioned, by examining the original record on appeal thereto, forwarded, and, hence, forming part of its own records. Accordingly, petitioner's record on appeal meets the objective of said provision of the Rules of Court, which may be deemed to have been substantially complied with." [14] The rigidity of a previous doctrine was thus subjected to an inroad under the concept of substantial compliance. Such a ruling was followed in *Ever Ice Drop and Ice Cream Factory v. Court of Appeals* [15] where this Court, through Justice Barredo, categorically stated: "Clearly, therefore, the alleged failure of petitioners to comply with Section 6 of Rule 41 found by the Court of Appeals would be true only, if the printed joint record on appeal alone is used as basis. Actually, however, the original thereof on file also with said appellate court bears out the contention of counsel that petitioners' notice of appeal and joint record on appeal are in order." [16] He then referred to the *Design Masters* opinion. Again, such a ruling was cited with approval in *Villarica v. Court of Appeals*, [17] the opinion being penned by the then Associate Justice, now Chief Justice, Castro.

2. There is no doubt, however, that as pointed out by Justice Muñoz Palma, after *Berkenkotter* this Court has consistently applied the liberal doctrine whenever the material data rule is invoked to dismiss an appeal. [18] The latest decision in point, *Libongco v. Court of Appeals*, [19] was promulgated on February 28, 1977. In this case, the material data allegedly omitted in the record on appeal consisted of the resolution of the entire court on the defendant's alleged motion for extension of time to file his record on appeal and the date when the defendant received a copy of such resolution. After referring to *Berkenkotter* and five other cases, [20] this Court, through Justice Concepcion, ruled: "In view thereof, the respondent Court of Appeals did not commit an error, much less abuse its discretion, in denying the petitioners' motion to dismiss the appeal of the defendant Raul Casumpang." [21] So we rule again.

3. There is even less justification for another ground invoked by petitioner to manifest what he considered a grave abuse of discretion on the part of respondent Court of Appeals when according to him, private respondents in submitting their mimeographed record on appeal added a new page not found in the typewritten record on appeal. [22] Ever alert to detect any procedural irregularity, petitioner filed anew a motion to dismiss appeal [23] Respondent Court, in a resolution of October 26, 1971, denied petitioner's motion in a minute resolution notable for its adherence to the law and sound procedural principles: "[Resolved]: Denied; the main point has already been ruled upon in the resolution of 2 September, 1971, page 167; and this Court does not see its way clear to changing its former position; as to the fact that appellants added in the mimeo-graphed Record on Appeal the names of all the defendants, yes, this is a defect, and therefore, such additional names should be as they are hereby ordered to be, stricken out, but this defect is not jurisdictional, and this Court does not believe that it would be enough to justify dismissal of the appeal." [24] It would be to magnify a trifle to dismiss an appeal based on such allegation.

4. It is not amiss to refer to this excerpt from *Toribio v. Montejó*: [25] "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.' So it has been in the Philippines from the leading case of *Alonso v. Villamor*, 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.'"[26]

WHEREFORE, this petition for certiorari, prohibition and mandamus is dismissed.

Barredo, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., on leave.

[1] Petition, pars. 2-5.

[2] *Ibid*, par. 6.

[3] *Ibid*, pars. 7 and 8.

[4] *Ibid*, pars. 10-14.

[5] *Ibid*, Annex G.

[6] *Ibid*, pars. 15-16.

[7] Rule 41, Section 6 of the Rules of Court insofar as pertinent reads as follows: "Record on appeal; form and contents thereof.- The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time."

[8] L-41063, January 20, 1976, 69 SCRA 50.

[9] *Ibid*, 51.

[10] *Ibid*, 53.

[11] L-23736, October 19, 1965, 15 SCRA 119.

[12] L-36629, September 28, 1973, 53 SCRA 228.

[13] L-31510, March 31, 1971, 38 SCRA 296.

[14] *Ibid*, 318.

[15] L-33366, October 30, 1972, 47 SCRA 305.

[16] *Ibid*, 310.

[17] L-28363, May 15, 1974, 57 SCRA 24.

[18] Cf. *Philippine Bank of Communications v. Court of Appeals*, L-37362, Nov. 29, 1973, 54 SCRA 217; *Alfonso v. Court of Appeals*, L-37068, July 18, 1974, 58 SCRA 43; *Marcelo Steel Corp. v. Court of Appeals*, L-35851, Oct. 8, 1974, 60 SCRA 167; *Pimentel v. Court of Appeals*, L-39423, June 27, 1975, 64 SCRA 475; *Heirs of Ceferino Morales v. Court of Appeals*, L-37229, Oct. 21, 1975, 67 SCRA 304; *Republic v. Court of Appeals*, L-40495, Oct. 21, 1975, 67 SCRA 322; *Luna v. Court of Appeals*, L-37123, Oct. 30, 1975, 67 SCRA 503; *Villanueva v. Court of Appeals*, L-29719, Nov. 28, 1975, 68 SCRA 216; *Rodriguez v. Court of Appeals*, L-37522, Nov. 28, 1975, 68 SCRA 262; *Pan American World Airways v. Espiritu*, L-35401, Jan. 20, 1976, 69

SCRA 36; Aggabao v. Philippine Commercial and Industrial Bank, L-39833, Feb. 20, 1976, 69 SCRA 354; Diola v. Court of Appeals, L-36455, April 30, 1976, 70 SCRA 511; Canturna v. Court of Appeals, L-40934, April 30, 1976, 70 SCRA 563; Andaya v. Court of Appeals, L-37124, May 5, 1976, 71 SCRA 20; San Pedro v. Court of Appeals, L-38351, Aug. 31, 1976, 72 SCRA 537.

[19] L-39439.

[20] The other cases are Pimentel v. Court of Appeals, L-39423, June 27, 1975, 64 SCRA 475; Republic v. Court of Appeals, L-40495, Oct. 21, 1975, 67 SCRA 322; Luna v. Court of Appeals, L-37123, Oct. 30, 1975, 67 SCRA 503; Tambunting v. Court of Appeals, L-40768, Feb. 27, 1976, 69 SCRA 551; Diola v. Court of Appeals, L-36455, April 30, 1976, 70 SCRA 511.

[21] Libongco v. Court of Appeals, L-39439.

[22] Petition, par. 19.

[23] Ibid, par. 20.

[24] Ibid, Annex K.

[25] L-28453, March 21, 1975, 63 SCRA 150.

[26] Ibid, 153-154. Reed v. Allen from which the quotation from Justice Cardozo was taken is reported in 286 US 191, 209 (1932) and Alonso in 16 Phil. 315, 322.

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