

**CONCEPCION CHAVEZ, ANTONIO CHAVEZ AND ROSARIO CHAVEZ,
PETITIONERS, VS. HON. GABRIEL V. VALERO, PRESIDING JUDGE OF
BRANCH I OF THE COURT OF FIRST INSTANCE OF CAMARINES
NORTE, RAQ...**

G.R. No. L-34923. July 29, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Original action for certiorari, prohibition and mandamus with preliminary injunction, to enjoin respondent Judge Gabriel V. Valero of the Court of First Instance of Camarines Norte, Branch I, from enforcing his Decision, dated December 21, 1971, in Civil Case No. 1954, subject of appeal; to annul his Order, dated March 1, 1972, dismissing the appeal; to compel said respondent Judge to approve the Appeal Bond and Record on Appeal of the petitioners; and to give due course to their appeal in said case.

The antecedent events and circumstances that give rise to the instant petition are as follows:

Petitioners Concepcion Chavez, Antonio Chavez and Rosario Chavez are the plaintiffs, while private respondents Raquel Chavez and her husband, Gerardo Gimenez, and Pepito Ferrer are the defendants, in Civil Case No. 1954 of the Court of First Instance of Camarines Norte, Branch I, presided over by respondent Judge Gabriel V. Valero. This action is for Annulment of Sale and Specific Performance with Damages.

On December 21, 1971, respondent Judge Gabriel V. Valero rendered a Decision in said Civil Case No. 1954,[1] dismissing the complaint filed by the plaintiffs, herein petitioners, dissolving the preliminary writ of injunction previously issued by the Court, and ordering the petitioners to pay the costs, without pronouncement as to damages. A copy of the Decision was received by the petitioners on January 11, 1972.

On February 1, 1972, the petitioners, through their counsel, filed a Notice of Appeal and an Appeal Bond in the amount of P120.00, consisting of real properties owned by the sureties, petitioners' counsel, Atty. Jose L. Lapak and his wife, Dolores I. Lapak.[2]

On February 3, 1972, petitioners filed an Urgent Motion for extension of fifteen (15) days from February 10, 1972 to file Record on Appeal,[3] which urgent motion was granted by the respondent Judge in his Order of February 7, 1972 giving the petitioners an extension of ten (10) days only, to be counted from the date of said Order, or until February 17, 1972, within which to file their Record on Appeal.[4] This period was later extended by the Court, upon motion of the petitioners,[5] up to February 25, 1972 within which said party shall file their Record on Appeal.[6]

On February 25, 1972, or during the period granted, the petitioners filed their Record on Appeal consisting of forty-eight (48) pages, serving copies thereof upon the respective counsels for the defendants, herein private respondents, and setting the hearing for the approval thereof on February 29, 1972.

On the same day, February 25, 1972, private respondent spouses, Raquel Chavez and Gerardo Gime-nez, filed a Motion to Dismiss the Appeal on the ground that the Property Appeal Bond, when filed on February 1, 1972, did not contain any certification from the Treasurer's Office that the property covering the same is fully paid of its realty taxes and, as such, said property bond cannot take the place of the appeal bond as required by the Revised Rules of Court, and, consequently, petitioners' appeal should be dismissed for not having been perfected within the reglementary period.[7]

On February 28, 1972, petitioners filed a Rejoinder and Opposition to the Motion to Dismiss the Appeal.[8] On the same date, February 28, 1972, the respondent Judge issued an Order giving the petitioners' counsel "a period of two (2) days from today to submit evidence of payment of the taxes on the property subject of the bond, otherwise the same will be disapproved if the said property is delinquent in the payment of the realty taxes", and considering that the appeal bond is only for plaintiff Concepcion Chavez, the appeal of the other plaintiffs, Antonio Chavez and Rosario Chavez, are ordered dismissed for failure to file the necessary appeal bond.[9]

On February 29, 1972, the petitioners filed their "Compliance and Motion for Reconsideration", attaching thereto the corresponding certification from the Treasurer's Office showing that the realty taxes of the properties of the sureties or bondsmen were fully paid, and requesting for reconsideration of the Order of the court dismissing the appeal of Antonio Chavez and Rosario Chavez, for said appeal bond is for the appeal of all the plaintiffs and the sureties undertake the bond for all of them.[10]

On March 1, 1972, respondent Judge issued an Order granting the Motion to Dismiss Appeal on the ground that the appeal had not been duly perfected, since the appeal bond, although filed on February 1, 1972, can only be approved after, or on February 29, 1972, when the realty taxes of the properties subject of said bond were fully paid, well beyond the period of thirty (30) days after notice of judgment on January 11, 1972. Said Order is quoted as follows:

"In the order of this Court of February 28, 1972, resolution on the motion to dismiss appeal was deferred to afford Atty. Jose Lapak to submit evidence of payment of taxes on the property bond filed by appellants. From the compliance submitted by counsel for appellants, where he himself and his wife appear to be the property owners and bondsmen at the same time, the certificate of the Acting Provincial Treasurer regarding the payment of taxes of Dolores Lapak was only paid on February 29, 1972 and that of Jose Lapak as per certificate of the Municipal Treasurer of Basud was on February 28, 1972. The notice of appeal, although filed within the reglementary period, and accompanied by the appeal bond on February 1, 1972, it was only on February 29, 1972 that the same exist seized of any defect- not delinquent in the payment of realty taxes, that it may be approved by this Court (Rule 41, sections 3 & 5, Rules of Court). Since decision was received by counsel for the appellant on January 11, 1972, he should have filed the bond not later than February 12, 1972. The appeal therefore has not been perfected since the appeal bond can only be approved after or on February 29, 1972, well beyond the period of 30 days after notice of judgment (Calo vs. Fuentes, 5 SCRA 397).

"WHEREFORE, the motion to dismiss appeal is hereby granted for failure of appellant to perfect its appeal within the reglementary period."[11]

On March 13, 1972, petitioners filed a Motion for Reconsideration of said Order of March 1, 1972, but this motion was denied by respondent Judge in his Order of March 16, 1972. Thereafter, or on April 6, 1972, petitioners instituted the present petition for certiorari, prohibition and mandamus, with preliminary injunction. On June 9, 1972, this Court issued a temporary restraining order against the respondents.

The only legal issue for determination in the present petition is whether or not the respondent Judge has gravely abused his discretion or acted without or in excess of his jurisdiction in issuing his Order of March 1, 1972, dismissing petitioners' appeal.

We resolved the issue in the affirmative and find the petition meritorious.

Sections 3 and 5 of Rule 41 of the Revised Rules of Court, cited by respondent Judge Gabriel V. Valero as authority, do not provide that any appeal bond in the amount of P120.00, not in cash but in real properties, is a nullity if the real estate tax due thereon is not paid at the time of its filing in court. Section 3 of Rule 41 provides that an appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond and a record on appeal. Section 5 of the same Rule only provides that the appeal bond, which shall answer for the payment of costs, shall be in the amount of P120.00, and if the appeal bond is not in cash, it must be approved by the court before the transmittal of the record on appeal to the appellate court. The first requirement is made in order that the adverse party may not only be notified of the intention of the appellant to take the case to the appellate court, but also to afford him an opportunity to register his opposition to any of them, if he desires to do so.[12] The second requirement is merely to insure that the costs which the appellate court may award against the appellant shall be paid. From the foregoing provisions, it can be seen that said Sections 3 and 5 of Rule 41 do not prescribe the form for appeal bond, nor require that the realty taxes on the properties of the sureties be paid at the time the bond is filed. Thus, the law does not prescribe special form for appeal bonds. It only requires that the appeal bond be for the amount of P120.00, conditioned for the payment of costs which the appellate court may award against the appellant. A bond which complies substantially with the afore-cited provisions of the procedural law is not defective.[13]

The Property Appeal Bond filed on February 1, 1972 by the petitioners reads:[14]

"APPEAL BOND

WHEREAS, CONCEPCION CHAVEZ, one of the plaintiffs in the above entitled case has appealed to the Supreme Court from the judgment rendered against her in the above entitled action.

NOW, THEREFORE, in consideration of the premises and of such appeal, we the undersigned, JOSE L. LAPAK and DOLORES I. LAPAK, as SURETIES, do hereby jointly and severally bind ourselves in favor of the defendants RAQUEL CHAVEZ, MANUELA BUENAVISTA and PEPITO FERRER in the amount of ONE HUNDRED TWENTY PESOS, conditioned for the payment of costs which the Supreme Court may award against plaintiff-appellant.

Daet, Camarines Norte, January 31, 1972.

(Sgd.) CONCEPCION CHAVEZ

Principal

(Sgd.) DOLORES I. LAPAK (Sgd.) JOSE L. LAPAK

Surety Surety

JUSTIFICATION OF SURETIES

JOSE L. LAPAK and DOLORES T. LAPAK, whose names are subscribed as sureties in the above entitled undertakings, after being duly sworn, each for himself, depose and say: that each is worth the sum of ONE HUNDRED TWENTY PESOS (P120.00) Philippine Currency mentioned in said undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

(Sgd.) DOLORES I. LAPAK (Sgd.) JOSE L. LAPAK

SUBSCRIBED AND SWORN to before me at Daet, C. Norte Jose L. Lapak with Res. Cer. No. A 3600435, issued at Talisay, C. Norte on Jan. 3, 1972 and Dolores I. Lapak with Res. Cer. No. A 3600633 issued at Talisay, C. N. on Jan. 11, 1972, on this 31st day of January, 1972.

(Sgd.) AUGUSTO M. RACELIS

Clerk of Court"

As can be gleaned from the above-quoted terms and conditions of petitioners' Appeal Bond, the same was duly subscribed by two (2) persons, namely, petitioners' counsel, Atty. Jose L. Lapak and his wife, Dolores I. Lapak, as sureties, who jointly and severally bound themselves in favor of aforesaid defendants (including herein private respondents Raquel Chavez and Pepito Ferrer) in the amount of P120.00, conditioned for the payment of costs which the appellate court may award against the plaintiffs-appellants, and that, in the "Justification of Sureties", said sureties also stated that each of them is worth the sum of P120.00 mentioned in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. We hold that the above-quoted Appeal Bond of petitioners complies substantially with the provisions of law and is not defective. Under Article 2056 of the Civil Code of the Philippines, it is enough that a guarantor must be one who possesses integrity, capacity to bind himself, and with sufficient property to answer for the obligation which he guarantees. Private respondents do not dispute the fact that the sureties have sufficient properties to answer for the obligation. Granting that the real estate bond is defective because the current real estate taxes were not paid at the time the bond was filed on February 1, 1972, justice and equity demand that petitioners be given an opportunity to cure its defect by paying the current real estate taxes, as they did in the case at bar. In dismissing the appeal, the respondent Judge completely overlooked the fact that the payment of the real estate taxes merely corrected a supposedly defective bond which was admittedly filed on time. We declared in *Ramirez v. Arrieta*[15] that: "* * * 'A defective appeal bond, which is not a nullity, given in good faith and not the mere purpose of delay, is sufficient, at least, to confer jurisdiction upon the Court of First Instance to order its amendment, and the appeal should not be dismissed without giving the appellant an opportunity, upon reasonable terms, to perfect the bond wherein it is defective, or to file a new bond, such as is required by the rules.' * * *"

The petitioners having established a clear right to the approval of their Appeal Bond, the respondent Judge, therefore, had acted with grave abuse of discretion amounting to lack of jurisdiction in dismissing the appeal for which they are entitled to the issuance of the writs prayed for.[16]

WHEREFORE, the petition for certiorari, prohibition and mandamus is GRANTED, the Order dated March 1, 1972 dismissing the appeals set aside for being null and void, and respondent Judge is hereby ordered to reinstate the appeal and to elevate the records of the case to the appellate court. The temporary restraining order issued on June 9, 1972 is made permanent. Costs against private respondents.

Concepcion, Jr., and Santos, JJ., concur.

Fernando, J., (Chairman), concurs in the opinion and observation of J., Aquino., about the desirability of lawyers and litigants exhibiting a little more sense to avoid litigations of the character.

Barredo, J., concurs. It should be assumed that no lawyer who has a client for a fee can possibly be involved or incapable to pay P120.00

[1] Annex "A", Petition, SC Rollo, pp. 15-28.

[2] Annexes "B" and "C", Ibid., SC Rollo, pp. 15-28.

[3] Annex "D", Ibid., SC Rollo, p. 32.

[4] Annex "E", Ibid., SC Rollo, p. 33.

[5] Annex "F", Ibid., SC Rollo, pp. 34-35.

- [6] Annex "G", Ibid., SC Rollo, p. 36.
- [7] Annex "H", Ibid., SC Rollo, pp. 37-38.
- [8] Annex "I", Ibid., SC Rollo, pp. 39-40.
- [9] Annex "J", Ibid., SC Rollo, p. 41.
- [10] Annex "K", Ibid., SC Rollo, pp. 42-43.
- [11] Annex "L", Ibid., SC Rollo, pp. 44-45.
- [12] Philippine Resources Development Corporation v. Narvasa, 1141 Phil. 347.
- [13] Contreras v. Dinglasan, 79 Phil. 42; Vicencio and Simeon v. Tumulad, et al., 106 Phil. 1042; Castro v. De los Reyes, 109 Phil. 64; Cruz v. Enriquez, 103 Phil. 62.
- [14] Annex "C", Petition, SC Rollo, p. 31.

[15] 6 SCRA 722, 724.

- [16] Secs. 1, 2 and 3, Rule 65 of the Revised Rules of Court.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. I wish to add that, following the rule in Ramirez vs. Arrieta, 116 Phil. 1039, the petitioners (who are not paupers) should be required to deposit P120 as cash appeal bond so as to remove any doubt as to the propriety of their appeal bond. The time of this Court would not be wasted if the trial court, litigants and their lawyers were sensible and pragmatic in the observance of trivial requirements like the filing of an appeal bond.

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