

PETER PO, PETITIONER, VS. MEMBERS: HONORABLE ERIC F. MENCHAVEZ, IN HIS CAPACITY AS THE ASSISTING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 27, LAPULAPU CITY, BENJAMIN SUN, JR. A...

Ponente: INGLES, G. T., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d4af8bd3aea5/>

INGLES, G. T., J.:

Assailed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the Resolution[1] dated May 14, 2012 in Civil Case No. 6306-L of the Regional Trial Court, Branch 27, Lapulapu City.

Likewise assailed is the Order[2] dated September 21, 2012 denying petitioner's motion for reconsideration of the May 14, 2012 Resolution.

The facts of the case as culled from the records before us, are as follows:

This case stemmed from a complaint[3] lodged by Peter L. Po against Benjamin Sun, Jr. and Abigail Sun for Declaration of Nullity of Original Certificates of Title (OCT) Nos. 144[4] and 146,[5] Nullity of Miscellaneous Sales Application (M.S.A.) Proceedings, Damages and Attorney's Fees.

Plaintiff alleged in the complaint that he is the registered owner of Lot No. 5058-A covered by Transfer Certificate of Title (TCT) No. 27478 situated at Punta Engaño, Lapulapu City. Adjacent to the said lot are the lots registered under the names of defendants Benjamin Sun, Jr. and Abigail Sun covered by Original Certificates of Title (OCT) No. 144 and 146.

Plaintiff further alleged that the lots owned by the defendants were originally intended by the Provincial Government of Cebu for “wharfs and public beach purposes” hence, the Miscellaneous Sales Application covering it were rejected. The said lots are also within the twenty (20) meter zone from the margin of Hilutungan Channel. Yet, the defendants were able to fraudulently secure the approval of their Miscellaneous Sales Application with the Department of Environment and Natural Resources (DENR). The sales patent issued[6] in their favor are therefore null and void as they were obtained through fraud, deceit and misrepresentation with the help of some DENR personnel.

Moreover, defendants and their predecessors-in-interest were not actual occupants of the subject parcels of land, hence are not entitled to a sales patent. The statements in their joint affidavit[7] that defendants have constructed houses on the said parcels of land and that they are occupying these are untrue and are already subject of various criminal complaints.

Lastly, plaintiff averred in the complaint that being the riparian owner, he has the preferential right to acquire from the government the subject lots of the defendants.

Plaintiff then prayed that the proceedings in the Miscellaneous Sales Application of the defendants be declared null and void; that the award and issuance of patent in the name of defendants be likewise declared null and void;

that OCT Nos. 144 and 146 in the name of the defendants be canceled; and that damages be awarded in plaintiff's favor.

Defendants in their Answer with Counterclaim denied the allegations in the complaint and averred that the subject parcels of land were legally acquired by them through Miscellaneous Sales Application. All the requirements for the issuance of a sales patent were duly complied with. Moreover, the subject parcels of land are not foreshore in nature but are all dry land. Plaintiff's land does not adjoin a shore, hence, plaintiff is not a riparian owner of the subject parcels of land, hence, the latter has no legal standing to file the instant case.

By way of special and affirmative defenses, defendants sought for the dismissal of the case on the following grounds: (1) plaintiff has no cause of action because the subject parcels of land are dry land and that defendants are qualified to acquire the same; (2) plaintiff is not the real party-in-interest as it is only the Solicitor General who has the personality to file the instant case; (3) plaintiff failed to exhaust administrative remedies before filing this case in court; (4) failure to implead necessary/indispensable parties particularly the DENR officials involved in the Miscellaneous Sales Application proceedings were not impleaded.

On September 19, 2011, the RTC, per its Resolution[8] of the same date, ruled on defendants' affirmative defenses and after examining the allegations in the complaint, declared that the same states a cause of action.

Anent defendants' allegation that plaintiff has no legal capacity to sue, not being the real party-in-interest, the RTC declared that the issue will better be threshed during trial on the merits as the allegations in the complaint initially shows plaintiff's legal capacity to sue. With regard the ground of failure to implead necessary and or indispensable parties, the RTC noted that this is not one of the grounds for a motion to dismiss and that parties may be joined or removed as such. As to plaintiff's failure to exhaust administrative remedies, the RTC likewise found the same bereft of merit on the ground that there is an allegation of fraud which makes the same fall under the exception to the general rule of exhaustion of administrative remedies.

Defendants moved for the reconsideration[9] of the September 19, 2011 Resolution which was opposed[10] by the plaintiff.

Per Resolution[11] dated December 19, 2011, the RTC reconsidered its earlier ruling and dismissed the case. The RTC opined that since the parcels of land subject of the Miscellaneous Sales Application are public lands, then plaintiff has clearly no right over them and it is only the government, through the Solicitor General, who can bring an action to recover ownership thereof. The RTC also ruled that plaintiff failed to exhaust administrative remedies as required by paragraph (j), Rule 16 of the Rules of Court.

Plaintiff moved for the reconsideration[12] of the December 19, 2011 Resolution. This was opposed[13] by the defendants. On May 14, 2012, the RTC issued a Resolution[14] denying the motion for reconsideration.

On July 31, 2012, plaintiff filed his Notice of Appeal[15] with an admission that the same was filed and perfected five (5) days beyond the reglementary period as counsel was indisposed due to loose bowel movement (LBM) per medical certificate[16] dated July 25, 2012.

Per Order[17] dated August 3, 2012, the RTC disapproved the Notice of Appeal for being filed out of time. Plaintiff moved for the reconsideration[18] thereof but the same was denied per Order[19] dated September 21, 2012.

Aggrieved, petitioner filed the instant petition for certiorari on the following ground, to wit:

PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE DISCRETION IN DISAPPROVING PETITIONER'S NOTICE OF APPEAL.

The petition is bereft of merit.

Sections 2 (a) and Section 3, Rule 41 of the Rules of Court provides:

“Section 2. Modes of appeal. —

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

XXX

Section 3. Period of ordinary appeal. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.”

It is not disputed in the instant case that petitioner's notice of appeal was filed beyond the reglementary period fixed by the above cited rules. Despite the fact the notice of appeal was filed out of time, petitioner insists that the same must be given due course as his right to appeal must not be defeated by a mere procedural technicality.

We do not agree with petitioner.

Instructive is the ruling of the Supreme Court in the case of *REPUBLIC OF THE PHILIPPINES vs. COURT OF APPEALS and TRADERS ROYAL BANK*,^[20] to wit:

Time and again, we have emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory.^[21] This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law.^[22] In this case, we find no reason to depart from this rule.

Petitioner seeks consideration for his case on grounds of equity and fair play. He cited various Supreme Court rulings where notices of appeal were given due course despite having been filed out of time.

The Supreme Court, in the case of *HEIRS OF TEOFILO GAUDIANO, Namely: HONORIA GAUDIANO, ERLINDA G. SANDE, PHILIP GAUDIANO, JAMES GAUDIANO, EDISON GAUDIANO and TERESITA GAUDIANO-APORA vs. CONSTANCIO BENEMERITO, MELECIO LOQUINARIO, DOMINGO CORONEL and MACARIO ESCULTOR*,^[23] has ruled that:

“Petitioners’ reliance on this Court’s power to relax and disregard the application of technical rules of procedure in the interest of substantial justice is misplaced. The liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice. In *Neypes v. Court of Appeals*,^[24] the Court declared:

In setting aside technical infirmities and thereby giving due course to tardy appeals, we have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules. In those situations where technicalities were dispensed with, our decisions were not meant to undermine the force and effectivity of the periods set by law. But we hasten to add that in those rare cases where procedural rules were not stringently applied, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement

of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[25]”

In the above cited case of *REPUBLIC vs. COURT OF APPEALS*,[26] the Supreme Court made a similar ruling, to wit:

“Petitioner invokes the judicial policy of allowing appeals, although filed late, when the interest of justice so requires. Citing *Bank of America, NT & SA v. Gerochi, Jr.*,[27] it contends that this Court, in meritorious instances, has allowed the rules on the periods for perfecting appeals to be relaxed.[28] Unfortunately for petitioner, even a cursory reading of the very case upon which it relies for support shows that the policy invoked is qualified by the requirement that there must be exceptional circumstances to justify the relaxation of the rules. The case cited, which involved an appeal made five days late, illustrates how questions of this nature have been resolved by this Court:

True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when her counsel of record was already dead. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stands to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In *Olacao vs. National Labor Relations Commission*, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.”

In the case at bar, we find no extraordinary circumstance which may justify a deviation from the rule on timely filing of appeals. As pointed out by the RTC, since the parcels of land subject of the Miscellaneous Sales Application are public lands, then petitioner has clearly no right over them and it is only the government, through the Solicitor General, who can bring an action to recover ownership thereof. Instructive is the ruling of the Supreme court in the case of *FELIPE SEVILLE* in his capacity as judicial administrator of the estate of *JOAQUIN ORTEGA* and/or *FELIPE SEVILLE*, *EMILIA ESTRADA*, *MARIA S. TELDER*, *MA. ISABEL SEVILLE*, *MA. TERESITA LICARDO*, *FRANCISCO SEVILLE*, *RAMON O. SEVILLE*, *JOSE MARIE SEVILLE*, *GEMMA ALVAREZ-ASAYAS*, *ANNABELLE ALVAREZ-GONZALES*, *SYLVIA ALVAREZ-LIOK*, *ADOLFO O. ALVAREZ JR.*, *DIANA ALVAREZ-DABON*, *MARIA SALVADOR O. POLANCOS* and *JOAQUIN ORTEGA II* as successors-in-interest of *JOAQUIN ORTEGA* and his estate vs. *NATIONAL DEVELOPMENT COMPANY*, *LEYTE SAB-A BASIN DEVELOPMENT AUTHORITY*, *PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION*, *LEPANTO CONSOLIDATED MINING CO.*, *PHILIPPINE PHOSPHATE FERTILIZER CORPORATION*, *CALIXTRA YAP* and *REGISTER OF DEEDS OF LEYTE*,[29] to wit:

“Considering that the land was public before the Miscellaneous Sales Patent was issued to LSBDA, petitioners have no standing to ask for the reconveyance of the property to them. The proper remedy is an action for reversion, which may be instituted only by the Office of the Solicitor General, pursuant to section 101 of the Public Land Act, which reads as follows:

SEC. 101. All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the [Republic] of the Philippines.”

From the foregoing it is clear that the RTC was correct when it denied due course to the notice of appeal filed by

petitioner. The imputation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Honorable Eric F. Menchavez, in his capacity as Assisting Judge, Branch 27 of the Regional Trial Court of Lapulapu City, Cebu is unfounded. This Court finds that the respondent judge committed no reversible error, much less, grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders.

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the petition filed in this case and AFFIRMING the assailed resolution dated May 14, 2012 and the order dated September 21, 2012 denying petitioner's motion for reconsideration of the May 14, 2012 resolution of public respondent Honorable Eric F. Menchavez, in his capacity as Assisting Judge, Branch 27 of the Regional Trial Court of Lapulapu City, Cebu.

SO ORDERED.

Lagura-Yap, and Quijano-Padilla, JJ., concur.

[1] Rollo at pp. 136-138..

[2] Rollo at pp. 157-158.

[3] Rollo at pp. 34-40.

[4] Rollo at p. 43.

[5] Rollo at p. 41.

[6] Rollo at pp. 58-59.

[7] Rollo at pp. 64-65.

[8] Rollo at pp. 93-99.

[9] Rollo at pp. 100-107.

[10] Rollo at pp. 108-111.

[11] Rollo at pp. 123-126.

[12] Rollo at pp. 127-129.

[13] Rollo at pp. 130-135.

[14] Rollo at pp. 136-138.

[15]Rollo at pp. 142-146.

[16] Rollo at p. 147.

[17] Rollo at pp. 25.

[18] Rollo at pp. 26-31.

[19]Rollo at pp. 32-33.

[20] G.R. No. 129846. January 18, 2000.

[21] Bank of America, NT & SA v. Gerochi, Jr., 230 SCRA 9 (1994) citing Alto Sales Corp. v. IAC, 197 SCRA

618 (1991), *Falcon Mfg. v. NLRC*, 199 SCRA 814 (1991), *Kabushi Kaisha Isetan v. IAC*, 203 SCRA 583 (1991)

[22] *Bello v. Fernando*, 4 SCRA 135 (1962); *Borre v. Court of Appeals*, 158 SCRA 660 (1988); *Pedrosa v. Hill*, 257 SCRA 373 (1996); *People v. Esparas*, 260 SCRA 539 (1996)

[23] G.R. No. 174247 , February 21, 2007.

[24] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 643.

[25] *Id.*

[26] *Supra.*

[27] 230 SCRA 9 (1994)

[28] *Petition*, p. 10; *Rollo*, p. 11

[29] G.R. No. 129401. February 2, 2001.

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.