

## SEGUNDO LAZARTE, PETITIONER, VS. THE HON. COURT OF APPEALS AND DAVID GRIEGO, RESPONDENTS.

*G.R. No. L-45995. August 31, 1977*

Ponente: TEEHANKEE, J.

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### TEEHANKEE, J.:

The Court sets aside respondent appellate court's peremptory dismissal of petitioner's appeal for failure to file mimeographed/ typewritten copies of the record on appeal within the sixty-day reglementary period notwithstanding that such failure had been for justly excusable reasons and petitioner had thereafter promptly submitted such record on appeal.

Respondent appellate court in its Resolution of January 28, 1977 *motu proprio* dismissed herein petitioner's pending appeal before it as defendant-appellant[1] in forma pauperis for failure of his counsel, Citizens Legal Assistance Office (CLAO), to file the mimeographed/typewritten record on appeal within the reglementary period as per "docket report dated January 27, 1977."

The dismissal resolution was received on February 7, 1977 by the CLAO branch office in Sorsogon, Sorsogon and was forwarded to and received at its Special and Appealed Cases Division in Manila on February 14, 1977. It turned out that due to the CLAO's "great influx of cases coming from all over the country" its records of the case had been "inadvertently misplaced and (could) no longer be located" but borrowing respondent court's own records, the CLAO reproduced the necessary mimeographed copies of the record on appeal and on February 22, 1977 promptly filed its motion for reconsideration and to admit the copies of the record on appeal submitted by it therewith. Respondent court denied reconsideration and reinstatement of the appeal per its resolutions of February 28, 1977 and April 1, 1977.

Hence, the petition at bar which the Court finds to be meritorious and therefore grants on the strength of controlling jurisprudence that such failure to timely file the printed/mimeographed copies of the record on appeal for the convenience of the members of the appellate courts (as the original record on appeal as filed with and approved by the trial court is duly attached to the original record of the case) may be excused for justifiable reasons since the appellate court has the discretion to dismiss or not to dismiss the appeal but "said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." [2]

Here, the CLAO's failure to submit within the reglementary period the mimeographed copies of the record on appeal due to its having lost the records of the case does not appear to be inexcusable, although it is hereby admonished that it should certainly adopt greater safeguards and measures to insure the integrity of its records and the due fulfillment of its tasks in rendering legal assistance to indigent litigants.

At any rate, it would greater serve the ends of justice that the CLAO's fault in this regard be not used to inflict great injury on petitioner by imposing the capital penalty of dismissal of his appeal. As aptly submitted by the CLAO on his behalf: "(T)he issues raised for resolution in the appeal are important and vital to the petitioner. This

involves a parcel of residential land containing a total area of 600 sq. m. more or less which has been occupied by petitioner for the past 12 years in the concept of a sole and absolute owner and actual possessor and on which he constructed his residential house. This lot is also being claimed by (respondent) David Griego. It would be grave injustice to petitioner if he would lose his property without the benefit of a hearing on appeal." [3]

The case of *Maqui vs. Court of Appeals* [4] is fully applicable to the case at bar. As the Court held therein in ruling that the slight delay in the submittal of respondent court's copies of the record on appeal could not possibly prejudice any substantial rights, "(A) rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction."

ACCORDINGLY, respondent appellate court's resolutions dismissing petitioner's appeal are set aside and the case is remanded to it for further proceedings and disposition of the appeal on its merits. Without costs.

Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.  
Fernandez, J., took no part.

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\* Fourth Division, composed of Justices Ramon C. Fernandez, Chairman, Jose G. Bautista and Simeon Gopengco.

[1] C.A. -G.R. No. 59781-R, entitled *David Griego vs. Segundo Lazarte*.

[2] *PNB vs. Philippine Milling Co., Inc.*, 26 SCRA 712, 715 (1969).

[3] *Petition*, Rollo, p. 14.

**[4] 69 SCRA 369, 374 (1976).**

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