

**NATIONAL WATERWORKS AND SEWERAGE AUTHORITY,
PETITIONER, VS. THE MUNICIPALITY OF LIBMANAN, AND THE
PRESIDING JUDGE, BRANCH V OF THE COURT OF FIRST INSTANCE
OF CAMARINES SUR, RESP...**

G.R. No. L-27197. April 28, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari and mandamus with writ of preliminary injunction filed on February 13, 1967 which seeks to enjoin the Court of First Instance of Camarines Sur, Branch V, from executing its decision dated November 26, 1965 in Civil Case No. L-161 and to direct said court to approve the original record on appeal.

This case stemmed from the complaint for recovery of the Libmanan Waterworks System with damages, filed by herein private respondent against herein petitioner which took possession and control over the said waterworks pursuant to R.A. No. 1383. For failure of petitioner to file an answer within the reglementary period and upon motion of private respondent, the court in the order of September 3, 1965 declared petitioner in default and allowed private respondent to present its evidence ex parte.

In due time, petitioner filed a "manifestation" stating that the court has not acquired jurisdiction over it since it was not served with summons and praying, among others, that the order of September 3, 1965 declaring petitioner in default be set aside.

Without acting on the aforesaid manifestation, the court a quo on November 26, 1965 rendered judgment which, among others, ordered petitioner to return immediately the possession, control, supervision and maintenance of the waterworks, or to pay the private respondent the sum of P300,000 representing the cost of materials and labor. The decision was received by petitioner on December 10, 1965.

A motion to set aside the order of September 3, 1965 and for reconsideration of the decision of November 26, 1965 was filed by petitioner on December 20, 1965. Said motion having been denied by the court in the order of June 17, 1966, petitioner filed on the same day he received copy thereof on July 18, 1966 a notice of appeal, and on July 26, 1966, its appeal bond, and later, on August 1, 1966, its record on appeal.

Upon objection of private respondent, the court issued the order of October 8, 1966 requiring petitioner to submit an amended record on appeal, incorporating therein private respondent's "Ex parte Motion to Declare Defendant in Default." To enable petitioner to comply with the aforesaid order, it filed a petition praying that an order be issued directing the Clerk of Court and/or private respondent's counsel to furnish it with a copy of the aforesaid motion to declare petitioner in default since no copy of said motion was furnished petitioner. The petition, however, was denied by the court in its order dated October 28, 1966, copy of which was received by petitioner on November 11, 1966. Petitioner sent a telegraphic motion for reconsideration of the order of denial, but the same was not acted upon by the court.

Meanwhile, on October 26, 1966, the court granted private respondent's motion for issuance of the writ of execution of judgment pending appeal. On December 21, 1966, the court dismissed petitioner's appeal for failure to perfect the appeal within the reglementary period. Upon receipt of the aforesaid order of dismissal on January 9, 1967, petitioner filed a motion for reconsideration thereof; and on January 13, 1967, it submitted its amended record on appeal incorporating therein the aforementioned "Motion to Declare Defendant in Default." On January 18, 1967, the lower court issued two separate orders, one disapproving the amended record on appeal for having been filed beyond the period required by the court; and the other denying the motion for reconsideration of the order of December 21, 1966.

The sole issue in this petition is whether or not the appeal was perfected on time despite the fact that the amended record on appeal was filed late. This issue hinges upon the determination of whether the original record on appeal was filed on time. On the basis of the facts stated by petitioner in the petition and as admitted by private respondent in the answer, We find that the original record on appeal was filed on time. From receipt by petitioner on December 10, 1965 of the decision of respondent court to December 20, 1965 when it filed a motion for reconsideration which interrupted the running of the reglementary period for appeal, it not being a pro forma as examination of the contents thereof would readily show, only 10 days had elapsed; and from July 18, 1966, the date of receipt by petitioner denying his motion for reconsideration to August 1, 1966 when he filed the record on appeal to complete the requirements to perfect an appeal, just 14 more days had elapsed. In other words, petitioner had consumed only 24 days of the prescribed period of 30 days within which to perfect the appeal. Such being the case, the original record on appeal had been filed on time. The appeal is unquestionably filed seasonably, even if the amended record on appeal was filed late. This is wholly consistent with the oft-quoted doctrine enunciated in the early case of *Vda. de Oyzon v. Vinzon*,^[1] reiterated in several cases, the latest of which is *Pajarillo v. Court of Appeals*^[2] where the court said: "'The fact that the amended record on appeal was submitted after the reglementary period, did not render the perfection thereof, untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original which was done within the reglementary period.' As we explained in *Philippine Independent Church v. Juana Mateo, et al.*^[3] 'amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended.'"

It should be noted that counsel for petitioner took adequate and reasonable steps to comply on time with the order of the court by requesting the respondent judge to require the Clerk of Court and/or counsel to furnish petitioner with copy of the "ex parte motion to declare defendant in default." Counsel for petitioner stays in Manila, and a trip to Camarines Sur where the court sits may entail expenses and inconvenience. This fact may well explain why he chose to simply make the above request, followed by a telegraphic motion for reconsideration in view of the "difficulties and miscarriages in mail." The fate however of said motion remained unknown to him until January 9, 1967 when petitioner received an order, dated December 21, 1966, but one already dismissing its appeal. Likewise, while during the pendency of the motion for reconsideration counsel for petitioner was able to get a copy of the motion to declare defendant in default, as explained by him in his motion for reconsideration of the order of December 21, 1966 dismissing the appeal, that due to the holiday season coupled with the pressure of work of preparing briefs for petitioner's corporation in several cases in this Court, it was only on January 13, 1967 that it was able to file the amended record on appeal.

At any rate, applying the principle enunciated in *Vda. de Oyzon*, "the admission of the amended record on appeal presented no longer a jurisdictional question of timeliness of the perfection of the appeal but a question of compliance with the trial courts order requiring certain amendments which rested on the said court's sound discretion x x x."^[4] Once a party has complied or has failed to comply, it becomes discretionary too upon the judge to dismiss or not the appeal, but the discretion must always be a sound one to be exercised in accordance

with the tenets of justice and fair play.

An appeal is an essential part of our judicial system.[5] Courts should proceed with caution so as not to deprive a party of the right to appeal.[6]

PREMISES considered, the order of respondent court dated December 21, 1966 is hereby set aside and said court is directed to approve the original and amended records on appeal.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] L-19360, July 26, 1963, 8 SCRA 455.

[2] L-38344, November 29, 1976, 74 SCRA 151; See also Diola v. CA, L-36455, April 30, 1976, 70 SCRA 511, and Rodriguez v. CA, L-37522, November 28, 1975, 68 SCRA 265.

[3] L-14793, April 28, 1961, 111 Phil. 752.

[4] Diola v. CA, supra.

[5] L-41928, March 31, 1976, Tioson v. CA, 70 SCRA 285.

[6] L-31910, July 21, 1978, Bersabal v. Salvador, 84 SCRA 176.

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