

CELESTINO C. HERNANDEZ, RUBEN C. HERNANDEZ, PORFIRIA H. VALENCIA, FRANCISCO C. HERNANDEZ, LAURA H. CORNEJO, MAXIMO C. HERNANDEZ, JR., MA. ROSARIO C. HERNANDEZ, LOURDES DOMINGO H...

G.R. No. L-28296. November 24, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for mandamus to compel respondent judge to give due course to the appeal of the petitioners from the order of said respondent admitting to probate the alleged will of the deceased Maximo C. Hernandez, Sr., father of petitioners, the legalization of which petitioners had opposed. Petitioners also question the appointment, included in the same order, of respondent Dolores Mojica Vda. de Hernandez as executrix with the will annexed.

Main ground of the petition is that respondent judge disapproved their appeal notwithstanding that they had timely filed their notice of appeal, appeal bond and record on appeal, and with respect to the appointment of the executrix, the same was allegedly made without any hearing, and without the court receiving proof of her competency and fitness to act as such, despite the opposition of petitioners.

The order of probate in question was rendered on April 24, 1967; notice thereof was served on petitioners' counsel on May 3, 1967; on May 17, 1967, petitioners filed a motion to set aside said order; on June 29, 1967, respondent judge denied said motion pertinently holding that:

"The Court agree with the contention of the petitioner that the Motion to Set Aside the Order does not have the effect of a Motion for New Trial under the provisions of Secs. 1 & 2, Rule 37 of the Rules of Court, for Rule 37 does not require the movant to discuss the conclusions of the court in the decision sought to be set aside. Neither does it require the movant to discuss the evidence which shows the erroneousness of such conclusion. What the Rule requires is that there must be a specification of the Court's conclusions which are alleged to be erroneous and that there must be an express reference to the testimonial or documentary evidence alleged to be contrary to such conclusions. Villanueva vs. Court of First Instance of Capiz, C.A. G.R. No. 22859-R, July 7, 1958; Valdez vs. Jogo, No. 48859, Nov. 28, 1942; 2 O.G. (1943) 489; 74 Phil. 49.

WHEREFORE, and in consideration of the foregoing premises, the Court resolves to DENY as in fact hereby DENIES the oppositors' Motion to Set Aside Order of April 24, 1967 for lack of merit; and hereby considers the Order in question as now final and executory."

Notice of this denial order was served on petitioners' counsel by registered mail. According to the certification of Jose A. Mercado, Acting Mail Operation Chief, Registry Division, Manila Post Office, relied upon by respondents, the registered mail containing said order and "addressed to Atty. Andres R. Narvasa at 232 Madrigal Building, Escolta, Manila was delivered on July 24, 1967 to Cometa Villafior for the addressee upon presentation of the third notice issued on July 19, 1967" and that "the first notice was issued on July 10, 1967." (Italics supplied)

Petitioners' notice of appeal, appeal bond and record on appeal were filed on August 9, 1967, but on August 18, 1967, they filed a "Motion to Amend Record on Appeal," which respondent judge refused to act upon because, according to him, his order of probate had already become final. Accordingly, from May 3 to May 17, petitioners consumed fourteen (14) days, and if the resumption of their period to appeal is to be computed from July 24, 1967, when their counsel actually received delivery of the order of denial of June 29, 1967, August 9, 1967 would appear to be the thirtieth day of said period, there being sixteen (16) days from July 24 to August 9, 1967.

In their answer to herein petition, respondents contend that:

"24. That respondents specifically deny the allegations in paragraph 14 of the petition for mandamus, the truth of the matter being that on August 9, 1967, petitioners filed mere scraps of paper entitled notice of appeal, record on appeal and appeal bond and that the purported notice of appeal, record on appeal and appeal bond were filed much beyond the period within which to perfect an appeal.

"The alleged notice of appeal of petitioners dated August 8, 1967 is a mere scrap of paper because:

- (a). - as already stated it was filed out of time;
- (b). - it violated Section 4 of Rule 41 of the Rules of Court when it did not specify the parties to the appeal; and
- (c). - the order appealed from or the Order of April 24, 1967 (Annex "E" of the Petition for Mandamus, appearing on pages 80-88 thereof) has become final not only by lapse of time but by expressed judicial declaration contained in the Order of June 29, 1967 (Annex "K" of the Petition for Mandamus, appearing on pages 157-160 of the same). A copy of the fatally defective Notice of Appeal is hereto attached as Annex "6-Answer," appearing on page 59.

"The purported Record on Appeal of petitioners which is dated "August _____ 1967" is likewise a mere scrap of paper because:

- (a). - as just stated it was filed outside the reglementary period;
- (b). - it violated Section 6 of Rule 41 in conjunction with Section 1(a) of Rule 50 of the Rules of Court when it failed to show on its face such data as will show that the appeal was perfected on time;
- (c). - it violated also Section 6 of Rule 41 of the Rules of Court cause it did not contain a subject index; and
- (d). - in petitioners' motion to amend record on appeal (Annex "7" of this Answer, appearing on pages 60-61, petitioners and their counsel admit that there are omissions in the record on appeal and they are:
 - (a). - The text of the Order dated August 20, 1966 has not been reproduced;
 - (b). - The text of the last will and testament of the testator has not been included;
 - (c). - Portions of petitioners' 'Opposition to the Motion' dated May 26, 1967 have not been reproduced.

and the omission of the Last Will and Testament of the late testator which is the focal point of the appeal being interposed is certainly fatal;

"The alleged appeal bond is also fatally defective because:

- (a). - it was filed beyond the period provided for by law; and
- (b). - it was not accompanied by a certified statement of accounts; and
- (c). - it was signed only by one oppositor for himself alone."

Whether or not all these grounds alleged by respondents have basis in fact need not be passed upon at this stage.

Right now the only issue for resolution of this Court is whether or not petitioners took their appeal on time by filing their notice of appeal, appeal bond and record on appeal on August 9, 1967. On this score, two points are raised by respondents, namely: (1) that the petitioners' motion of May 17, 1967 to set aside the order of probate is pro-forma, and did not, therefore, suspend the period for appeal and (2) that assuming the contrary, the period for appeal of petitioners, after the order of denial of June 29, 1967, should be considered as having been resumed on July 10, 1967, when the first notice, as aforesaid, was "issued" by the Manila Post Office and not from July 24, 1967 when petitioners actually received delivery of said order.

We have examined the disputed motion to set aside dated May 17, 1967, and considering that it discusses, as respondent judge's order itself impliedly admits, "the conclusion of the court in the decision sought to be set aside" which are claimed to be erroneous and "the evidence which shows the erroneousness (sic) of such conclusion," it cannot be said that petitioners' motion is pro-forma. Indeed, the said motion discussed at length (1) why the court should not have rendered any decision without first resolving the question of whether or not the hearing before the commissioner who was designated to receive the evidence should have been terminated notwithstanding a reasoned motion for postponement of counsel for petitioners to which the lawyer of respondents had allegedly given his conformity; (2) that one of the attesting witnesses had admitted that part of the signing of the will in question by the testator and by one of the other attesting witnesses was not done in his presence; and (3) that the court did not pass upon the legal effect of a certain compromise agreement which had allegedly been entered into by the testator, during his lifetime, with the petitioners and which they claim had the effect of revoking the will in question by implication under Article 830 and the related provisions of the Civil Code. Under these circumstances, it was plain error for respondent judge to hold as he did that petitioners' said motion of May 17, 1967 is not a motion for new trial within the contemplation of Sections 1 and 2 of Rule 37. And incidentally, contrary to the contention of respondents, the failure of petitioners to include therewith an affidavit of merit is not fatal, inasmuch as the said motion was based on subdivision (c) of Section 1 and not on either subdivisions (a) or (b) of said section.

Anent respondents' argument that under Section 8 of Rule 13, which provides that:

"SEC. 8. Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

the period for appeal of petitioners should be deemed to have resumed upon the expiration of five days from July 10, 1967, the date the first notice was "issued," as certified by the post office, and not from July 24, 1967, when the registered mail containing the denial order was actually received by petitioners' counsel, as contended by him, it must be noted that respondents do not point to any evidence proving the date when the first notice from the Manila Post Office was actually delivered to the address of petitioners' counsel. All that appears in the record before Us is that the said notice was issued by the Post Office on July 10, 1967.

In view of this particular detail, a review of the pertinent jurisprudence should be of great help in resolving the point in dispute. Indeed, this is a good occasion to clarify once and for all the definite rule that should be observed in regard to proof of service when this is done by registered mail.

In *Pielago vs. Generosa*, 73 Phil. 654, it appeared that after judgment was rendered against the defendant in an ejectment case in the justice of the peace court, an appeal was taken to the Court of First Instance. "In due time, the clerk at the Court of First Instance of Negros Oriental addressed to the defendants, by registered mail, - the routine notice regarding the receipt of the appealed case and the period for pleading. This notice, however, failed

to reach the hands of the defendants because they did not claim the same from the post office - notwithstanding the fact that they were thrice informed thereof by the postmaster," and upon their consequent failure to appear and plead, the court declared them in default. Thus, there was no denial of the claim that information regarding the registered mail was furnished by the postmaster, and so, the claim of the defendant that failure to claim the said registered mail was due to ignorance and constituted excusable neglect was rejected by the Court. In other words, there was no question in that case that the defendants were aware of the notice of registered mail addressed to them and no problem of construction of the abovequoted rule arose.

Similarly, in the case of *Martinez vs. Martinez*, 90 Phil. 697, "there (was) no question that the usual three notices sent by the post office of Butuan regarding the registered notice of trial addressed to Atty. Apolonio D. Cuarto, were delivered to his residence and office in Butuan, Agusan," and so, the judgment based on evidence presented ex-parte by plaintiff was not set aside.

Again, in *Aldecoa vs. Arellano*, 3 SCRA 83, the mailman testified that he delivered the first notice of the registered mail containing the decision on March 31, 1958 to a person in the house of Atty. Jose Macasa and that for more than a year prior thereto, said person had been the one receiving the mail of said counsel, and he did the same on April 7 and 17, 1958 with respect to the second and third notices, but it was not until April 26, 1958 that the attorney claimed the letter at the post office. Accordingly, the Court held that the period for appeal was to be counted from April 6, 1958, the sixth day after March 31, 1958 pursuant to the provision of Section 8 of Rule 27 then that "service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, the service shall take effect at the time of the expiration of such time."

It is to be noted, at this juncture, that in all the above cases, application of the rule that completeness of the service should be based on the date of the first notice sent by the post office was more or less predicated on the factual finding that such first notice was actually received by the respective addressees. For this reason, the correctness of the rulings thus laid down cannot be open to debate.

In the earlier case of *Islas vs. Platon* 47, Phil. 162, the facts and the ruling of the Court were:

"The evidence having been received, the Court of First Instance on April 16, 1924, again denied the petition for a review and on May 5, 1924, the petitioners herein filed a motion for a new trial. The motion was heard and denied on the 17th of the same month and two days later due notice of the denial was sent to the attorney for the petitioners at his office address in Manila. The letter containing the notification was returned to the clerk of the Court of First Instance the latter part of June, 1924, marked 'unclaimed.' On August 26, 1924, the petitioners presented their exception to the order of May 17th denying the petition for a new trial and announced their intention to appeal to this court. A bill of exceptions was filed on August 29, 1924, but the trial court refused to approve and certify it on the ground that the time for presenting it had then expired.

"x x x. The bill was not presented until over three months after the notice of the order from which the petitioners desire to appeal should have reached their counsel in the ordinary course of the mails. The notice was duly sent by registered letter to counsel at his address in the City of Manila and it is not intimated that the address was erroneous. There is nothing in the record to show that the postal authorities did not properly perform their duty and we must presume that the usual notice of the arrival of the letter at the Manila post office was delivered at the office of said counsel. He failed to claim the letter and it was returned to the Court of First Instance marked 'unclaimed.' His failure to receive a copy of the order in question was therefore entirely due to his own negligence of which he cannot now be allowed to take advantage. As a practicing lawyer it was his duty to so arrange matters that official communications sent by mail would reach him promptly. Having failed to do so, he and his clients must suffer the consequences of his negligence. That he may have been absent from his office at the time the notification here in question arrived is no excuse."

Thus, the presumption of regularity in the performance of their functions by the postal authorities was considered controlling despite the contention of counsel that he might have been absent from his office at the time the notification arrived, for which reason he did not get it, the Court holding that such possible absence was no excuse. At any rate, it was found in that case that the notice of the registered mail was "sent" to counsel at his address.

Similarly, in *Villacruz vs. Estenzo*, 5 SCRA 560, it was "admit(ted) that the first notice of the registered mail containing the order of the trial court dated December 28, 1960 - was sent by the Davao City Postmaster to petitioner's counsel on January 24, 1961," and so also with the second and third notices, on February 1 and 6, respectively, but it was on this last date only that counsel actually received the registered mail. As may be seen, there was no proof of actual receipt of the first two notices but neither was there any denial of such receipt. The Court considered the service completed on January 30, 1961, the sixth day after the first notice was sent to counsel.

In like manner, in *Fojas vs. Navarro*, 32 SCRA 476, the post office certified that the corresponding notices of registered mail (containing the decision of the Court of Appeals) were "sent" to Atty. Francisco Ventura, counsel of record, on July 20 and 30 and August 3, 1965, and while there was no proof that Atty. Ventura actually received the said notice, neither was there any denial thereof from him, simply because he just "faded away from the case." Accordingly, the Court based the presumption of completeness of service on July 20, 1965, when the first notice was "sent," and refused to consider the motion for reconsideration of new counsel filed on September 6, 1965, on the ground that the judgment had already become final before said date.

The apparent teaching of these three cases, *Islas*, *Villacruz* and *Fojas*, is that in the absence of either proof or denial of actual receipt of the notices of registered mail certified "sent" by the post office to the corresponding addressees, the presumption obtains that the same had been duly received.

The Court, however, had earlier seemingly gone a step farther in *Grafil vs. Feliciano*, 20 SCRA 616. In that case, a copy of the pertinent order was "sent by registered mail to Atty. (Jose G.) Montilla at his given address at 204 Cinerama Building, Claro M. Recto Avenue, Manila, but despite three notices given him by the Manila Post Office on July 27, August 9 and 17, (1965), counsel failed to claim the mail with the result that it was returned to the court on September 10." Upon these facts, the Court held that "(T)he claim that Atty. Montilla did not receive any of the notices sent to him on July 27, August 9 and August 17, 1965 does not inspire belief. We cannot see how he could have missed any of the three notices which, according to the Chief of the Registry Division of the Manila Post Office, had been sent to him. Between the denial of a party and the assertion of an official whose duty is to send notices, the choice should not be difficult to make. As this Court said in disposing of a similar contention:

"The allegation that petitioners' former counsel never received the postal notices cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that three notices were sent to him, and such statement is fortified by the legal presumption that official duty was regularly performed."

the citation being from *Enriquez vs. Bautista*, 79 Phil. 220, wherein, similarly, as against the certification that the three notices were "sent" by the post office, the addressee denied having received them. Seemingly, the word "sent" thus used was considered as implying its ordinary connotation of including the idea that when one says something has been "sent", it usually means that such matter has been also received. Accordingly, not only in the absence of denial of receipt of the notices but even when there is nothing more than a bare denial thereof that the conclusion of receipt arising from the presumption of regularity in the post office's performance of its functions obtains.

The indication from all the foregoing cases should perhaps lead us to rule in the case at bar that proof of service of the disputed denial order may be deemed completed after the lapse of five days from July 10, 1967, when the post office "issued" the first notice. The word "issued", however, does not have exactly the same connotation as "sent", if only because, it is not very fair that on top of presuming from the word "issued" alone that the notice in question was actually delivered to the addressee, We should also presume that such presumed delivery took place on the same date the notice was issued, a circumstance which We are aware may not ordinarily be true in fact. Besides, there are two other decisions of this Court, the implications of which seem to justify the position of petitioners, particularly, if it is considered that as discussed later in this decision, there is obvious merit in their appeal.

In *Cabuang vs. Bello*, 105 Phil. 1135, decided July 15, 1959 the Court found and held thus:

"It would appear, according to respondent Judge, that copy of the decision was sent by registered mail to counsel for the applicants on March 31, 1958, and the first notice thereof was sent to their counsel on April 1, 1958, but that actually applicants' counsel withdrew the letter from the post office on April 15, 1958. And considering that under Section 8, Rule 27, of the Rules of Court, in case the addressee of the mail fails to claim the mail from the post Office within 5 days from the first notice sent to him, the service is deemed to take effect at the expiration of such time, respondent Judge concluded that counsel is deemed to have received copy of the decision on April 5, 1958. And since he submitted the record on appeal only on May 8, 1958, in his opinion the same was filed out of time.

"The foregoing is disputed by the applicants. They contend that the same is contrary to the true facts as shown by the affidavits attached to their motion for reconsideration which clearly indicate that the record on appeal was filed within the reglementary period. We have gone over the record and we find this claim to be well taken. Thus, it appears that the first notice sent by the post office to counsel for applicants advising him of the registered mail sent by the Clerk of Court, was actually received on April 1, 1958, by counsel's daughter, Aurora, who was only 11 years old, who in turn delivered same to her brother Manuel, also a minor, for which reason the notice never reached him. It likewise appears that when on April 8, 1958, counsel's other son, Lito, who was his helper in the office, went to the post office for an errand, the postmaster delivered to him the registered mail in question and on the same date Lito gave it to his father. But when counsel for applicants filed the record on appeal on May 7, 1958, the same was disapproved on the ground that it was filed out of time.

"We disagree with this finding. Section 8, Rule 27, provides that 'service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within 5 days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.' Note that the rule speaks of 'from the date of first notice of the postmaster,' which presupposes that the addressee has actually received the mail on said date, and when he fails to do so because of some justifiable excuse, the presumption of the law cannot apply, for to interpret this rule rigidly or to the letter may work injustice rather than promote justice. Such is the situation that obtains here. The first notice did not reach actually the counsel for the applicants because it was given to his minor children, but when he got the mail eight days thereafter, he saw to it that the record on appeal be filed within the reglementary period. In the circumstances, equity demands that the relief prayed for be granted in keeping with the principle that the rules should be liberally construed to promote the interest of justice."

In the majority opinion in *Grospe vs. Court of Appeals*, 106 Phil. 1144, decided a month and a half later, on September 30, 1959, We find the following:

"According to the statement of facts, notice of denial of the motion for new trial was sent to Uera's counsel by registered mail. He received the first notice from the postmaster on November 28, 1955. The Grospes and the courts hold that Uera's counsel must be deemed to have been notified on the fifth day after November 28,

1955, i.e. on December 3, 1955, according to Rule 27, sec. 8. On the other hand, Uera argues that he should be deemed to have been notified only on December 20, 1955, the date when he actually received the mail.

"Sec. 8, Rule 27 reads as follows:

'* * * Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.'

"Herein lies the issue: which part of the above provision controls?

"The second part, in our opinion. Uera failed to claim his mail within five days from first notice (November 28, 1955); therefore, he is deemed to have received it on December 3, 1955, no matter whether he never claimed it or received it afterwards (as in this case, on December 20, 1955). As we have held in several cases, 'if the addressee is so negligent that he fails to claim his mail from the post office within five days after the first notice by the postmaster, then the service is deemed complete and effective at the expiration of such time.'

"It is contended that this second part of the sentence applies only where the addressee never claims and never receives the mail. But the words are clear: 'If he fails to claim within five days.' They do not say 'if he never claims.' The best proof that applies even if the addressee receives his mail many days after notice is that we expressly invoked it in *Enriquez vs. Bautista*, 79 Phil., 220 wherein the addressee actually received his registered mail on January 6, 1947, but we held he is deemed to have received it on November 3, 1946, five days after he received the first notice of the postmaster on October 28, 1946. Therein, we deemed the service completed on the fifth day after the first notice, even if he actually received the mail months later. And in *Rouullo vs. Lumayno* we tacitly approved identical application of section 8.

"Indeed, the structure of the sentence permits no other inference. The second part is separated by a semicolon, and begins with 'but' which indicates that the following is an exception to the rule enunciated in the first that service is completed upon actual receipt.

"To make our thoughts specific, we may give examples: First notice of registered mail is received by addressee on December 1, and he gets his mail on December 3, service is complete on December 3, date of actual receipt (first part of the section). But if he does not get it until December 15, service is deemed complete on December 6, (five days after December 1) (second part). If he never gets the mail, service is also deemed complete on December 6 (second part). If he receives the mail two months after it is registered, but there is no proof of the first notice, actual receipt is the date of service (first part)."

Viewed in the light of each other, these two cases strongly suggest that the presumption embodied in the rule on proof of service under discussion would be more fairly applied if there were "proof of the first notice," to use the expression in *Grospe*, which must naturally be understood as contemplating the *Cabuang* ruling that such presumption "presupposes that the addressee has actually received the mail on said date." In this connection, it is interesting to note that in his dissenting opinion in *Grospe*, Chief Justice Paras contended:

"While the appeal could have been bounded upon a meritorious defense, it was not allowed by the trial court, because it was held to have been filed out of time. On this point, the Court of Appeals said:

'Petitioner's motion for new trial denominated by him as a petition for relief from judgment was denied by respondent Court on November 16, 1955. Copy of the order of denial was sent to petitioner's counsel by registered mail, of which the first notice was served upon him on November 28, 1955. However, it was not until December 20, 1955, that he claimed his mail and actually received said copy of the order; and on the same day he filed a motion for reconsideration thereof, which was likewise denied on January 3, 1956, copy of

the order of denial being received by him on January 16, 1956. On the said day counsel for petitioner filed his notice of appeal, appeal bond and record on appeal, which was thereafter disapproved on the ground that they were filed beyond the reglementary period.

'The question raised between the parties is whether or not the appeal was perfected on time. It is admitted that if petitioner should be considered as having been notified of the denial of his motion for new trial only on December 20, 1955, when he actually claimed the registered mail containing such notice, his appeal would be within the prescribed period. However, it is maintained by the respondents that notice to petitioner was complete and effective upon the expiration of five days after November 28, 1955, and thus computed, the period of appeal had already expired when the record on appeal was presented.'

"Section 8, Rule 27, of the Rules of Court says:

'x x x Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.

"It needs no argument to show that notices are either actual or constructive: registered mail is either claimed or unclaimed.

"In my opinion, the first part of the rule above quoted refers to actual notice arising from having claimed the registered mail; whereas, the second part, preceded by a semi-colon, concerns constructive notice only, for failure to claim the said mail. It is incongruous with reality and reason that a letter actually received, for instance, on the 10th day from notice should be construed to have been received on the 6th day. To my mind, it is only when a letter is returned unclaimed that there arises the necessity of fixing a date for purpose of record and computation. Hence, the need of the rule on constructive notice.

"To adopt respondents' contention to the contrary is to be needlessly unreasonable. Experience has shown that not infrequently addressees of registered mail, when sent notices, are out of town attending to some legitimate business or occupation. It will be grossly unreasonable and unfair to visit upon the rigid interpretation of the rule that service has to be deemed completed on the 6th day after first notice should they be able to claim said mail only thereafter. The first Rule of Court on the matter which took effect on January 1, 1919, follows:

Rule 13. The period within which all notifications required by these rules shall take effect, unless otherwise expressly provided, shall be as follows:

'Five days, if service is made in the city of Manila, or the Provinces of Rizal, Cavite, or Bulacan; seven days if the service is made in any other province directly connected with Manila by any line of railroad; ten days if service is made in any province of Luzon not directly connected with Manila by any line of railroad, except the provinces of Cagayan, Isabela, Albay, Ambos Camarines, and Sorsogon; twenty days if service is made in any province in the islands of Panay, Cebu or Negros, or in the Provinces of Mindoro, Albay, Ambos Camarines or Sorsogon, except the Province of Antique; thirty days if service is made in any province of the Archipelago for which no shorter period is provided by this rule. Such periods shall be computed to begin with the day following that upon which the notice is served.' (35 Phil. Reports)

and the second rule which took effect on April 1, 1933, provides:

'Rule 12. Whenever by these rules a notice is required to be given by the parties, and the period thereof is not elsewhere prescribed, the time of the notice shall be governed by Rule 13. All notices of motions shall be given in writing by the moving party to the adverse party, shall state generally the nature and grounds of the motion, and shall be accompanied by copies of all affidavits or other papers presented to the court in support thereof. Proof of the service of such notice shall be filed, such proof to consist of a written acceptance of the service, or the affidavit of the person making the service that he has delivered a copy of the papers to the attorney for the

adverse party, or has left it at his office or residence in the hands of some person, to be designated by name, employed or resident therein and of sufficient discretion to receive the same, or the certificates of a sheriff or other authorized process server that he has made such service. Service may also be made by sending a copy of the papers to the attorney for the adverse party by registered mail, and proof of such service shall be made by affidavit as to the mailing of the papers, and by the production of the registry return card or the letter unclaimed.' (55 Phil. Reports)

"In any event, the period to claim registered mail from the post office is relatively short, as three notices only are sent to the addressee at an interval of three days (See *Palisoc vs. Locsin*, 57 Phil., 332; *Enriquez vs. Bautista*, 79 Phil., 220).

"Apart from the foregoing consideration, it will be observed that the return card accompanying the registered mail that has been claimed, when returned to the sender, does not show the date or dates when the first or subsequent notices have been sent to the addressee. The absence of any indication as to their respective dates will give rise to a cumbersome investigation of the records of the post offices concerned so as to verify the date when the five-day period expired. To adopt respondents' interpretation will certainly create situations that will promote or induce protracted litigations as has happened in the case of *Roullo vs. Lumayno*, 103 Phil., 1044."

and in the earlier case of *Enriquez vs. Bautista*, supra, Mr. Justice Perfecto pointed out in his dissent:

"Section 8 of Rule 27 is invoked. To apply it, it is necessary that the addressee must have received the notice of the postmaster mentioned in the section. The question here is resolved as to whether petitioners' counsel received the notice. Petitioners' former counsel alleged that he never received any of the three postal notices allegedly sent to him.

"The majority is of opinion that said allegation cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that the three notices were sent to him. It is added that the statement is fortified by the legal presumption that official duty was regularly presumed.

"Delivering notice and receiving it are two different things. The superintendent's statement to the effect that the notices were sent is not evidence to the effect that they were actually received. As a matter of fact, reception is denied.

"When Section 8 of Rule 27 uses the words 'from the date of first notice of the postmaster,' it should refer to notice actually received by the addressee and not to a notice merely sent but could not have been received at all. We must not suppose that the authors of the rules had the far-fetched idea of giving effect to a notice merely sent but not received.

"Notice means information or announcement. The word came from the Latin words "notitia," a being known or knowledge, "notus," known, and "nosecere," to know. Therefore, a notice simply sent is no notice at all if it is not actually received by the person to whom information is intended to be imparted."

Withal, referring to a different but related aspect of service by registered mail, the Court held in *Cayetano vs. Ceguerra et al.*, 13 SCRA 73, this wise:

"It is conceded that defendants received a first registry notice on January 13, 1961, but they did not claim the letter, thereby giving rise to the presumption that five (5) days after receipt of the first notice, the defendants were deemed to have received the letter. This Court, however, cannot justly attribute upon defendants actual knowledge of the decision, because there is no showing that the registry notice itself contained any indication that the registered letter was a copy of the decision, or that the registry notice referred to the case being ventilated. We cannot exact a strict accounting of the rules from ordinary mortals, like the defendants."

The tendency discernible in all these opinions just quoted is towards being more realistic than technical. Indeed,

the demands of due process and considerations of equity, and what is more important, the obvious preference of said opinions to approximate what is factual and true, compel that We pursue such trend. And in this connection, it is but proper to take judicial notice of the fact that the Postal Manual of the Philippines sets out in unmistakable terms the procedure that the post office is supposed to observe not only in the delivery of notices of registered mail but also in providing proof of such delivery. The corresponding provisions in said manual reads as follows:

"SEC. 608. Notice to addressee. - The addressee of registered matter shall be requested to call for the article at the post office. For this purpose, a registry notice card (Form No. 1525) shall be accomplished, postmarked and sent to the addressee. Important information which the addressee should know, like customs duties or restricted delivery, should be indicated thereon. If the addressee fails to call within three days, a second notice shall be sent, and after a reasonable period from the date the second notice was sent, a third notice. The words "Second notice" or "Third notice" shall be written on the notice. The date on which second and third notices are sent shall be noted on the article and the corresponding records.

"2. The registry notice required by these regulations shall be dispensed with as regards registered special-delivery articles which shall be delivered immediately to the addressees' places or residence or business. (See Section 702)

"3. The provisions of the next preceding paragraph shall not apply to packages weighing more than 5 kilos. However, as soon as such packages are received in the post office, the necessary notices shall be sent immediately to the addressees as special-delivery matter, advising them of the existence of the packages in the post office and urging them to take the same either personally or by their authorized agents. (See Section 698)

"4. Registry notices, including those for C.O.D. articles, shall be delivered under receipt to the addressee or, in his absence, to any member of his family or to any responsible person living with him. The person receiving the notice shall sign on the corresponding entry on the list, followed by the hour of delivery to him. If at the time the carrier calls there is no person to receipt for the notice, the notice shall be left at the residence.

"5. Before the letter carrier starts out to deliver mail matter in any one trip, the postmaster shall prepare a list of all registry notices to be delivered by him. The list to be known as "Registry notice delivery sheet" shall be substantially in the following form:

REGISTRY NOTICE DELIVERY SHEET

(DATE)_____

NUMBER:

NAME OF ADDRESSEE:

RECIPIENT AND HOUR OF DELIVERY :

:
:
:
:
:
:
:

This list shall state the number of the registered article, the full name of the addressee, and the date the list is prepared. When the registry notice was merely left at the addressee's residence without having been signed for, a notation to that effect and of the hour the notice was thus left shall be made by the carrier on the corresponding line on the list. If the notice is addressed to a post-office box, the employee in charge of mails for lock boxes shall sign for it on the list. A separate list for notices addressed to post office boxes may be prepared. (See Section 481)

"6. Immediately upon the return of the letter carrier from his trip, the postmaster shall examine the delivery sheet to determine whether all notices handed to the carrier have been accounted for. The delivery sheet shall then be filed by the postmaster and it shall be kept for at least six months, after which period it may be disposed of in accordance with the regulations. The delivery sheets shall be filed by date."

Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made. Accordingly, the certification in the case at bar that the first and second notices addressed to Atty. Narvasa had been "issued" can hardly suffice to requirements of equity and justice. It was incumbent upon the post office to further certify that said notices were reportedly received. When there are several related acts supposed to be performed by a public officer or employee in regard to a particular matter, the presumption of regularity in the performance of official functions would not arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them have been performed is available under the law or office regulations to the officer making the certification. In other words, the omission of some of the acts in the certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed. Of course, where the certification is worded in general terms that reasonably comprehend performance of all the related acts, the presumption of regularity holds as to all of them. We hold, therefore, that there being no showing that the first and second notices were received by Atty. Narvasa, the service of the order of probate in question upon him must be deemed to have been made on July 24, 1967, the date he actually received the same.

To be very clear, nothing in this decision is intended to pass on the correctness or completeness of petitioners' notice of and record on appeal and appeal bond or the propriety of the motion of August 18, 1967 to amend the same, for these are matters not properly before Us and actually within the province of the trial court to rule on. Much less, and for the same reasons are We making any ruling herein with respect to the merits of petitioners' motion for new trial, and even less as regards the merits of their opposition to the probate of the will in question. All that We decide at this juncture is that petitioners' motion of May 17, 1967 is not pro-forma and their period for appeal must be deemed resumed as of July 24, 1967, and, therefore, their appeal was on time and should be given due course upon completion and/or correction of the record on appeal, appeal bond and notice of appeal, if, in the opinion of His Honor, there is necessity for such completion and/or correction.

As an additional remedy, petitioners are also asking that the Court set aside the appointment, as executrix with the will annexed, of respondent Dolores Mojica Vda. de Hernandez contained in the questioned order of April 24, 1967, upon the ground that it was made without the court having received any evidence regarding her competence and fitness which were directly challenged on the specific grounds alleged in their opposition quoted earlier in this decision. Technically, such a matter can hardly be within the ambit of petitioners' main remedy of mandamus; and considering that the trial judge ruled out their appeal, a specific petition for certiorari would be more appropriate, which obviously is not the case here. To be sure, however, considering that the parties have dealt on

the matter, more or less extensively in their pleadings herein, there seems to be enough basis in the record for the Court to pass upon the issue of whether or not the portion of the respondent court's order in question appointing Mrs. Hernandez is regular and legal, it being uncontroverted that in spite of the opposition filed by petitioners, and notwithstanding that the court had made the parties understand there would be a hearing thereon separate from the probate aspect of the case. Indeed, We are not altogether powerless to act in the premises, if only to avoid prolonging the controversy between the parties.[1] On the other hand, a majority of the Court considers the said issue of such importance that nothing short of a separate certiorari proceeding should be ventilated to thresh out the question of the legality of the impugned order of appointment insofar as the competency and fitness of Mrs. Hernandez are concerned, specially because, since she was appointed by the testator, a definite ruling has to be made by the trial judge as to whether or not the oppositors, herein petitioners, have sufficiently shown that she is disqualified or is not suitable for the trust.[2] In other words, all things considered, it would be best that the respondent court set the questioned appointment for hearing to receive evidence relative to the alleged incompetence and unsuitability of Mrs. Hernandez and thereafter issue the corresponding order against which, it goes without saying, the appropriate remedy may be taken by whomsoever may be aggrieved thereby.

Having arrived at the foregoing conclusions, We consider the rest of the issues raised by the parties inconsequential for the purposes of this case.

WHEREFORE, the petition for mandamus is granted. Under the authority of Section 15 of Rule 41, the order of the respondent judge of June 29, 1967 declaring the order of April 24, 1967 final and executory is set aside and he is hereby ordered to give due course to petitioners' appeal, after passing on the correctness and completeness of their notice of appeal, appeal bond and record on appeal in accordance with the rules.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., on official leave.

[1] See *Matute vs. Court of Appeals*, 26 SCRA 768 at p. 783.

[2] *Mercado vs. Gorordo Vda. de Jaen*, 64 Phil. 75, 78.

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