

**BERNARDINA CANOY PONGASI, FRUCTUOSA CANOY TUBALADO,
SATURNINA CANOY, MARIANO ARAÑAS, BONIFACIO ARAÑAS,
DIONISIO PONGASI AND NORBERTO TUBALADO, PETITIONERS, VS.
HON. COURT OF APP...**

G.R. No. L-40999. June 30, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

We are confronted once more with a dismissal of an appeal by respondent Court of Appeals which constrains Us to set aside such action on the ground that it was performed with grave abuse of discretion.

Petitioners were the defendants in Civil Case No. 8621-R of the Court of First Instance of Cebu for Partition and Damages and from an adverse judgment they filed a timely appeal with respondent Court of Appeals docketed as CA-G.R. No. 50475-R.

On October 9, 1974, the counsel of petitioners received notice requiring him to file the defendants-appellants' brief within 45 days from notice. (p. 7, rollo)

On November 19, 1974, petitioners' counsel filed a motion for 45 days extension of time within which to file appellants' brief counted from November 23, 1974 "due to pressure of work in the office and (his) attending court trials." (p. 30, *ibid.*)

Acting on the above motion respondent Court granted 90 days extension instead of the 45 days prayed for, to expire on February 21, 1975. (p. 7, *ibid.*)

On February 19, 1975 petitioners' counsel moved for a special extension of 15 days or until March 8, 1975 to file appellants' brief alleging in his motion that "undersigned counsel is heavily preoccupied with other cases particularly in assisting trials before the lower courts, preparing pleadings, memoranda and briefs in other cases" and that the brief "needs more polishing and (citation of) other authorities to support his arguments." (p. 31, *ibid.*) This was denied by respondent Court as "there is no special reason at all given; * * *" and accordingly, the appeal was dismissed. (p. 17, *ibid.*)

Before petitioners' counsel received this last resolution of February 24, 1975, the brief was filed on March 3, 1975 well-within the 15 days prayed for in the motion for special extension of time. (p. 8, *ibid.*)

Upon receipt of the resolution dismissing appellants' appeal, a motion for reconsideration was immediately sub-mitted with the prayer for the admission of appellants' brief.

In the meantime, respondent Court, apprised that the brief in question had been filed, ordered the same to be stricken from the record.

On June 19, 1975, the appellate tribunal denied the reconsideration prayed for by petitioners' counsel. (p. 29,

ibid.)

Hence this petition.

Required to comment on this Petition for Review, respondent Court alleged that

"Although the Rules of Court should be liberally construed, their strict observance which have been considered indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business, is an imperative necessity. . . . Granting any extension of time to parties for compliance with any rule or order in filing briefs is not a matter of right but of sound judicial discretion . . . In the absence of any special circumstance shown why counsel could not have prepared and filed the brief in due time, like in the case at bar, it would be unwarranted to suspend the application of the rules." (pp. 44-45, rollo)

Verily, the granting of extension of time for filing briefs is a matter of judicial discretion; however, as stressed by this Court more than once, that discretion is to be exercised soundly and judiciously with an understanding of human limitations and pressing circumstances which warrant a relaxation, nay, even a suspension of the rules.

In *Cucio vs. Court of Appeals*,^[1] where respondent Court denied "for lack of sufficient merit and not having taken advantage of the last chance" an urgent motion for a third and last extension of time (30 days) to submit printed brief for defendant-appellant and ordered the dismissal of the appeal, notwithstanding the plea of (a) advanced age (67 years) of counsel and his recurrent attacks of arthritis, (b) the distance of 150 kilometers required to be travelled from his office in Guimba to Manila for the preparation of the brief, requiring more than the normal three hours because of circuitous and muddy roads due to their being under construction in addition to the pressure of other professional work, and (c) the filing of the brief well within the third and last extension timely sought by appellant, this Court held that the appellate court acted with grave abuse of discretion in denying petitioners' reasonable request based upon good and sufficient cause, citing former Chief Justice Makalintal's admonition in *Limon vs. Candido*, L-22418, April 28, 1969, that the exercise of judicial discretion "should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby."

In the very recent case of *Obut vs. Court of Appeals, et al.*^[2] this Court ordered the reinstatement of the appeal of petitioner after considering the attendant circumstances such as (a) the appeal involved three cases the records of which were voluminous, (b) petitioner therein claimed that the preparation of the consolidated brief involved a comparative study of many exhibits, and (c) two of the cases appealed by petitioner were criminal in nature which carried in each case a penalty of imprisonment from 1 year and 1 day to 3 years, 6 months and 20 days of prison correccional, plus fine of P1,000.00, holding that a "too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration."

In *Barrido vs. Court of Appeals, et al.*^[3] appellants, after having been granted an extension of 90 days within which to file their brief, again asked in a formal motion for another extension of 30 days. The appellate court denied the motion and dismissed the appeal, after "considering that the appellants have already been given a total of 135 days within which to file the brief," and that the failure to file the brief was due to "inexcusable negligence." On appeal, this Court held that

"the particular circumstances obtaining (in this case) call for the relaxation of the rule that the client must bear the adverse consequence of counsel's failure to observe the procedural requirements prescribed by the Rules of Court. Two of the petitioners have been convicted of grave offenses and sentenced to long prison terms. Through no fault of their own their appeal would fail not on the merits but on a procedural lapse of counsel which was not entirely inexcusable. The ends of justice will be better served if their appeal is reinstated."

Nor has the Court confined this conclusion to appealed cases which are criminal in nature. In *Monticines, et al. vs. Court of Appeals, et al.*[4] involving a land controversy, the Court of Appeals likewise dismissed the appeal for failure of appellants to file their brief within the period fixed by it. In their motion for reconsideration and to admit printed brief, appellants' counsel alleged that he had to attend to the properties left by his deceased father in the provinces of Laguna and Quezon to ascertain the extent of the damages caused by the floods, as a consequence of which he suffered from acute rheumatism and slight cardiac trouble necessitating complete physical and mental rest, and that was the cause of his failure to "finalize, polish and type" in time the draft of the brief he had prepared for his clients. On appeal, this Court ordered the Court of Appeals to allow the appeal to take its due course on the ground that the case "falls squarely within the concept of *caso fortuito* or *forcemajeure*." In the words of Mr. Justice Enrique M. Fernando:

"(t)his is one instance where a failure of this particular litigation being passed upon by an appellate court may be fraught with undesirable consequences . . . What is before the courts is a land controversy. Defendants-appellants rely on long-continued possession. The parcels they occupy may be considered minuscule, but that appears to be all the wordly goods with which they are endowed. * * * One, however, is entitled to the full protection of the law, whether at the stage of trial or on appeal . . ." (Italics supplied)

Coming to the case at bar, it is clear that at this particular stage of the proceedings (filing of appellants' brief) no substantial right of the plaintiffs-appellees could have been affected by the granting of the motion for special extension especially if We consider the fact that petitioners' counsel filed a timely motion for special extension of time on February 19, 1975, two days before the expiration date on February 21, 1975, and that petitioners' counsel filed defendants-appellants' brief on March 3, 1975, well within the 15 days special extension prayed for by him in his motion.

Petitioner's counsel alleges in his Petition before Us that he "had a hard time in preparing the brief as the case involved hard questions of fact and law. On top of this is that the undersigned counsel was not the lawyer who assisted in the lower court; he only entered his appearance when the case was on appeal in the Court of Appeals when petitioners' former counsel, Atty. Protasio Cañalita died." (p. 6, Petition; p. 10, rollo) Although the foregoing allegation was not stated in petitioners' motion for special extension nor in the motion for reconsideration and for admission of appellants' brief, an examination of the records with the Court of Appeals which We ordered elevated for purposes of this Review, shows that Atty. Protasio Cañalita was indeed the counsel for appellants in the court a quo and because of his death he had to be substituted by the present counsel now, Atty. Dionisio A. Ababon, who entered his appearance in the Court of Appeals only on June 21, 1974, (p. 89, CA rollo).

This litigation is one for partition and the conflicting assertions of the parties herein over property rights deserve to be passed upon by the appellate court if only to assure itself that the properties in question are awarded to those who rightfully deserve them.

We repeat what "We said in *Obut vs. Court of Appeals, et al.*, supra, that "what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities." (Italics supplied)

In dispensing justice Our action must reflect a deep insight into the failings of human nature, a capability for making allowances for human error and/or negligence, and the ability to maintain the scales of justice happily well-balanced between these virtues and the application of the law.

IN VIEW OF THE ABOVE CONSIDERATIONS, the resolutions of respondent Court dated February 24, March 11 and June 19, 1975, are hereby set aside. The appeal of petitioners is ordered reinstated and their appellants'

brief admitted. Respondent Court is accordingly directed to proceed with the consideration of petitioners' appeal. Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Aquino, and Martin, JJ., concur.

Aquino, J., was designated to sit in the First Division.

[*] Third Division composed of Honorable Magno S. Gatmaitan, Chairman, Honorable Crisolito Pascual and the Honorable Francisco Ma. Chanco, Members.

[1] Cucio vs. Court of Appeals, L-38020, per Teehankee, J., May 24, 1974, 57 SCRA 64.

[2] L-40535, April 30, 1976, per Munoz Palma, J.

[3] L-38945-47, September 12, 1974, 59 SCRA 168, per Chief Justice Makalintal

[4] L-35913, September 4, 1973, 53 SCRA 14, per Fernando, J. See also Sollorano vs. Court of Appeals, L-28018, Feb. 25, 1975, 62 SCRA 478, Ordoveza vs. Raymundo, L-45155, July 31, 1936, 63 Phil. 275 Padasas, et al. vs. Court of Appeals, et al., L-38071, April 25, 1974, 56 SCRA 619.

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