

ADELA VELASQUEZ, PETITIONER, VS. BONIFACIO YSIP, JUDGE OF FIRST INSTANCE OF BULACAN, AND ELENA GONZALES, RESPONDENTS.

G.R. Nos. L-1458 and L-1469. November 28, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

A petition for mandamus is filed in these two cases to compel the respondent Court of First Instance of Bulacan to give due course to petitioner's appeal.

The records of the two cases Nos. 118 and 177 of the Court of First Instance of Bulacan were destroyed in the war of liberation of the Philippines and later reconstituted. Notice of the order declaring the cases duly reconstituted was served upon petitioner on January 17, 1947, and notice of the reconstituted decisions was served upon her on January 31, 1947. A motion to set aside the reconstituted decisions was filed by petitioner on February 22, 1947, upon the ground that the trial in the two cases had been held without previous notice upon her. The motion was denied and the notice of denial was served upon petitioner on April 7, 1947. Whereupon, petitioner filed her notice of appeal on April 9, 1947, and her record on appeal and appeal bond on April 12, 1947. On May 13, 1947, the respondent court dismissed the appeal upon the ground that it had been filed out of time since the period for appeal should be computed from the date petitioner was notified of the order declaring the cases duly reconstituted. This theory is made to rest on section 41, Act 3110 which is as follows:

"SEC. 41. All terms fixed by law or regulation shall cease to run from the date of the destruction of the records and shall only begin to run again on the date when the parties or their counsels shall receive from the clerk of the court notice to the effect that the records have been reconstituted."

This provision has reference to those terms fixed by law which were already running when the destruction occurred. But the time to take an appeal in these two cases does not appear to have already started to run before the records were destroyed. No notice of the decisions upon petitioner prior to the destruction appears to have been reconstituted. It is, therefore, essential that such notice should be served anew (*San Jose vs. De Venecia and Romero*, p. 636, ante), and as a matter of fact, it was actually served on January 31, 1947. From that date up to April 12, 1947, when appeal was perfected, deducting the time during which the motion to set aside was pending which was from February 22 to April 7, 1947, the thirty-day period for appeal has not expired.

Petition is granted and respondent Court of First Instance of Bulacan is ordered to give due course to the appeal taken by petitioner in these two cases. Without costs.

Feria, Pablo, and Bengzon, JJ., concur.

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