

THE REPUBLIC OF THE PHILIPPINES, THROUGH THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, REPRESENTED BY ITS DIVISION SUPERINTENDENT REGION 2, TUGUEGARAO, CAGAYAN, PETITIONER, V...

G.R. No. 132425. August 31, 1999

Ponente: BUENA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132425/>

BUENA, J.:

This is a petition for review on certiorari seeking the reversal and setting aside of the decision of the Court of Appeals dated January 28, 1998 in CA-G. R. SP No. 45579 entitled "The Republic of the Philippines through the Department of Education, Culture and Sports, etc. versus Hon. Rolando V. Salacup, et al."

The antecedent facts of the case are as follows:

A complaint for recovery of possession and ownership with damages was filed by plaintiffs Lucas Tanguilan, Juliana Tanguilan assisted by her husband Roberto Tanguilan, Domingo Tanguilan, Juan Tanguilan, Jose Tanguilan, Catarina Tanguilan, Paulino Tanguilan, Pedro Tanguilan, Digna Tanguilan, and Ines Tanguilan (herein private respondents) against the Department of Education, Culture and Sports, represented by its Division Superintendent of Schools of Cagayan, Region 2, Tuguegarao, Cagayan (DECS, for brevity).[1]

The parcel of land in question is designated as Lot No. 7133 of the Cadastral Survey of Tuguegarao, Cagayan with an area of three thousand four hundred ninety-four (3494) square meters and covered by OCT No. 2145 issued in the name of the spouses Domingo Tanguilan and Modesta Addun.[2]

On January 18, 1996, summons was served upon the defendant DECS (petitioner herein).[3] Peregrino N. Alan, the Schools Division Superintendent, filed a motion for extension of time to file a responsive answer.[4] In the order of the trial court on February 2, 1996 the motion was granted whereby the defendant was given until February 17, 1996 within which to file its answer.[5]

On February 22, 1996, defendant DECS filed a manifestation and motion for new period to file answer to the complaint.[6]

On February 23, 1996, the plaintiffs moved to declare defendant DECS in default for failure of the latter to file an answer within the period fixed by the court.[7] A hearing on the said motion was set on March 1, 1996.[8]

On even date, in open court, an order was issued (1) finding that there is no more legal basis to grant the motion for extension to file an answer since the same was filed after the expiration of the original 15-day period, (2) declaring defendant in default, and (3) setting the reception of plaintiffs' evidence that afternoon.[9]

The following motions were thereafter filed by the defendant: a motion for reconsideration,[10] a motion to admit attached answer[11] with the corresponding answer,[12] and a rejoinder.[13] An opposition to the motion for reconsideration[14] and an opposition to the motion to admit answer[15] were filed by plaintiffs.

On September 10, 1996, a resolution was issued denying, for lack of merit, the motion for reconsideration.[16]

On October 29, 1996, the trial court rendered its decision,[17] the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, this Court renders judgment in favor of the plaintiffs and against the defendant by:

"1. Ordering the defendant to pay the amount of TWO THOUSAND (P2,000.00) PESOS from January, 1972 up to this date representing the monthly rentals of its occupancy or a total amount of FIVE HUNDRED SEVENTY SIX THOUSAND (P576,000.00) PESOS;

"2. To vacate the land in suit;

"3. To pay attorney's fee in the amount of TWENTY THOUSAND (P20,000.00) PESOS; and

"4. Payment of costs of this suit.

IT IS SO ORDERED." [18]

A copy of the decision was received by defendant on November 5, 1996. Consequently on November 20, 1996, a motion for reconsideration[19] was filed. An opposition thereto was filed by plaintiffs.[20] The motion for reconsideration was denied for lack of merit in the resolution of March 14, 1997.[21]

A motion for the issuance of a writ of execution was thereafter filed by the plaintiffs.[22] An opposition to the said motion was filed by defendant DECS.[23] Reply to the same was subsequently filed.[24]

A notice of appeal dated March 31, 1997 was then filed by defendant.[25] A motion to dismiss the notice of appeal was filed.[26] Comment (re: motion to dismiss the notice of appeal and reply to the opposition to the motion for the issuance of writ of execution)[27] and rejoinder to the comment[28] were filed.

On August 1, 1997, a resolution was issued by the trial court dismissing the notice of appeal for being filed out of time and ordering the issuance of a writ of execution for the enforcement of the decision dated October 29, 1996.[29]

Subsequently a writ of execution was issued on August 21, 1997.[30]

On October 9, 1997, an Order was issued authorizing the Sheriff to withdraw the amount garnished from the Land Bank of the Philippines to satisfy the obligation of the defendant and to immediately deliver the same to the plaintiffs.[31]

Accordingly a petition for certiorari and prohibition with urgent prayer for a temporary restraining order and/or preliminary injunction was filed with the Court of Appeals docketed as CA-G.R. SP No. 45579.[32]

After the requisite pleadings had been filed, the Court of Appeals issued its questioned decision dated January 28, 1998 dismissing the petition for lack of merit.[33]

Hence this petition.

Petitioner assigns the following lone error:

THE HONORABLE COURT OF APPEALS ERRED GRAVELY IN RENDERING THE QUESTIONED DECISION

The petition is without merit.

The right to appeal is not a constitutional, natural or inherent right. It is a statutory privilege of statutory origin

and, therefore, available only if granted or provided by statute.[34] As such it may be exercised only in the manner and in accordance with the provision of law.[35]

Section 39 of Batas Pambansa Blg. 129 provides:

"Sec. 39. Appeals. - The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from:" x x x (Underscoring supplied)

Petitioner admits the following in the Opposition to the Motion for the Issuance of a Writ of Execution it filed with the trial court: (1) that it should have filed its notice of appeal on March 26, 1997; (2) that the same was not filed until April 1, 1997 because from March 24-27, 1997, Ma. Zorayda V. Tejones-Zuniga, the Associate Solicitor handling the case was in General Santos City attending the hearing in Civil Case No. 5026 entitled "Board of Liquidators v. Munsayac, et al."; (3) that it was only around 4:00 o'clock in the afternoon of March 31, 1997 that she (Tejones-Zuniga) received the resolution denying the motion for reconsideration of the decision dated October 29, 1996; (4) that the notice of appeal was filed two (2) days late (excluding March 27, 28, 29 and 30, being holidays).[36]

It is well-settled that failure to perfect an appeal within the period provided for by law has the effect of rendering the decision or judgment final and executory.

Petitioner acknowledged that the appeal was filed two (2) days after the expiration of the period to appeal. This being the case the decision of the trial court dated October 29, 1996 became final and executory upon the expiration of the period to appeal.

Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, and deprives the appellate court or body of jurisdiction to alter the final judgment much less to entertain the appeal.[37] (Emphasis ours)

We can not and must not countenance the practice of asking that a final judgment or order be set aside or be reopened every time the counsel fails to personally receive a copy thereof because at the time it was delivered to her office she was absent therefrom. For to do so would mean that the end to litigations would be speculative, if not dependent upon the will of the parties and/or their lawyers.[38] Not to mention that it would result in cases dragging and clogging the already congested dockets of the court.

Petitioner cites the ruling in *Dimayacyac vs. Court of Appeals*[39] to bolster its argument that the petition for certiorari they filed before the Court of Appeals is the appropriate remedy.

We disagree. Certiorari cannot be used as a substitute for the lost or lapsed remedy of appeal especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[40] And it is undisputed that the cause for the late filing of the notice to appeal is the neglect of the counsel for petitioner to do so.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.

[1] Annex "B"; Rollo, p. 56

[2] *Ibid.*, p. 57

- [3] Annex "1"; Rollo, p. 189
- [4] Annex "2"; Ibid., p. 191
- [5] Annex "3"; Ibid., p. 192
- [6] Annexes "C" and "7"; Ibid., pp. 61 and 196, respectively
- [7] Annex "4"; Ibid., p. 193
- [8] Annex "5"; Ibid., p. 194
- [9] Annex "6"; Ibid., p. 195
- [10] Annexes "E" and "8"; Ibid., pp. 65 and 199, respectively
- [11] Annexes "G" and "9"; Ibid., pp. 71 and 203, respectively
- [12] Ibid., p. 74; Annex "10"; Ibid., p. 206
- [13] Annexes "H" and "13"; Ibid., pp. 78 and 214, respectively
- [14] Annexes "F" and "11"; Ibid., pp. 69 and 210, respectively
- [15] Annex "12"; Ibid., p. 212
- [16] Annexes "I" and "14"; Ibid., pp. 82 and 218, respectively
- [17] Annexes "J" and "15"; Ibid., pp. 85 and 221, respectively
- [18] Ibid., pp. 89-90 and 225-226, respectively
- [19] Annexes "K" and "16"; Ibid., pp. 91 and 227, respectively
- [20] Annexes "L" and "17"; Ibid., pp. 98 and 234, respectively
- [21] Annexes "M" and "18"; Ibid., pp. 101 and 237, respectively
- [22] Annexes "O" and "19"; Ibid., pp. 105 and 240, respectively
- [23] Annexes "P" and "21"; Ibid., pp. 107 and 243, respectively
- [24] Annexes "R" and "23"; Ibid., pp. 114 and 250, respectively
- [25] Annexes "N" and "20"; Ibid., pp. 104 and 242, respectively
- [26] Annexes "Q" and "22"; Ibid., pp. 112 and 248, respectively
- [27] Annexes "S" and "24"; Ibid., pp. 117 and 253, respectively
- [28] Annex "25"; Ibid., p. 257
- [29] Annex "T"; Ibid., p. 121
- [30] Annex "U"; Ibid., p. 125
- [31] Annexes "Y" and "30"; Ibid., pp. 135 and 259, respectively
- [32] Annex "Z"; Ibid., p. 136
- [33] Annex "A"; Ibid., p. 51

[34] Aris (Phil.) Inc. vs. National Labor Relations Commission, 200 SCRA 246 [1991].

[35] Philippine Commercial International Bank vs. Court of Appeals, 229 SCRA 560 [1994].

[36] Annexes "P" and 21"; Rollo, pp. 108-109 and 244-245, respectively.

[37] Pedrosa vs. Hill, 257 SCRA 373 [1996].

[38] Sumbillo vs. Intermediate Appellate Court, 165 SCRA 232, 238 [1988].

[39] 93 SCRA 265 [1979].

[40] Sempio vs. Court of Appeals, 263 SCRA 617 [1996].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.