

**ALBERTA VICENCIO AND EMILIANO SIMEON, PETITIONERS, VS.
GAVINO TUMALAD, GENEROSO R. TUMALAD AND HON. JUDGE
GREGORIO T. LANTIN, RESPONDENTS.**

G.R. No. 13399. January 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for certiorari and mandamus against the Court of First Instance of Manila, Hon. Gregorio T. Lantin, presiding, to reverse a court order disapproving the appeal bond filed by petitioners herein, as defendants in Civil Case No. 43073, in which respondents Gavino Tumulad and Generoso R. Tumulad are plaintiffs, and praying for an order to give course to the appeal of petitioners filed in said case.

Civil Case No. 43073 of the court below was an action for ejectment. In both the justice of the peace court and in the court of first instance, the defendants filed a motion to dismiss which was denied and thereafter plaintiffs presented their evidence in support of the complaint without defendants presenting their own. Judgment having been entered by the respondent judge of first instance, the defendants filed their notice of appeal and an appeal bond on November 8, 1957, and their record on appeal on November 9, 1957. The appeal bond was as follows:

"APPEAL BOND

WHEREAS, judgment in the above-entitled case has been rendered against defendants;

WHEREAS, not being satisfied with the said judgment, defendants have appealed said judgment to the Court of Appeals, Manila;

NOW, THEREFORE, WE, ATTY. JOSE Q. CALINGO AND FAMILIA E. CALINGO, both residents of the City of Manila, hereby bind ourselves in favor of the defendants in the amount of Sixty Pesos (P60.00) Philippine Currency, to answer the costs which the defendants may be condemned to pay by the Court of Appeals.

(Signatures)

WE, JOSE Q. CALINGO AND FAMILIA E. CALINGO, after having been duly sworn according to law, declare: That we are both solvent in the amount of Sixty Pesos (P60.00) Philippine Currency, over and above all claims and indebtedness and properties exempt from execution.

(Signatures)

SUBSCRIBED AND SWORN to before me this 6th day of November, 1957; Affiant exhibited to me their Residence Certificates Nos. A-0228860 and A-0123347 both issued in Manila on March 1, 1957 and January 12, 1957, respectively.

IN WITNESS WHEREOF, I have hereby affixed my hand and notarial seal on the date and place first above written.

(s) ISMAEL GALI

NOTARY PUBLIC

Until December 31, 1958."

(Annex A, ROA)

Respondents claimed that the above appeal bond is insufficient on the ground that it is a mere promissory note. The court held that the bond is not the proper appeal bond and therefore denied the appeal. Petitioners moved the court to set aside the order of disapproval, offering a bond with a surety, in lieu of the previous one, but the judge denied the offer on the ground that the new bond was filed but of time. Hence the present petition for certiorari and mandamus.

The petition should be granted. The case of Maria Javier Cruz, et al., vs. Hon Juan P. Enriquez, 103 Phil., 62 is on all fours with the case at bar. In said case we held that an appeal bond similar to the one presented in the court below is sufficient. The bond in said case is as follows:

"WHEREAS, Maria Javier Cruz and Jose Ma. Cruz, in the above-entitled proceedings, have appealed to the Supreme Court from the order entered against them in the above-entitled action;

NOW, THEREFORE, in consideration of the premises, and of such appeal, we the undersigned Atty. Jesus J. Cruz and Atty. Eleazaro A. Samson, of Rm. 211 E.V.D. Building, Quiapo, Manila, as sureties, do "hereby jointly and severally bind ourselves in favor of Evangelino Laserna, in the amount of sixty pesos, (P60.00) Philippine Currency, conditioned for the payment of costs which the appellate court award against the appellants."

And we said:

"The provision of law does not prescribe special form for appeal bond. It only requires that the same be for the amount of sixty pesos, 'conditioned for the payment of costs which the appellate court may award against the appellant.' The bond in question complies substantially with the provision of law, and we see no reason why the respondent judge found it defective. When he approved the record on appeal, there has been an implied approval of the original bond, and we find no reason either why after such approval, he had to disapprove said bond and dismiss the appeal on the allegation that the new bond was filed out of time. Furthermore, granting that the first bond was really defective, justice demands that herein petitioners, as appellants in that case, be given an opportunity to cure its defect by filing, as they did, another bond. In dismissing the appeal the respondent judge has entirely overlooked the fact that the second bond was not a new one but merely a correction of the original supposedly defective bond. We conclude that, under the circumstances, it is very apparent that there has been committed an abuse of discretion, if not an excess of jurisdiction, when respondent judge sweepingly dismissed the appeal and denied petitioners' motion for reconsideration on January 28, 1956."

The objection to the appeal bond filed is that there is no assurance as to the solvency of the ones who undertook to respond for the costs of the appeal, P60.00, and so only a surety company may act as bondsman. We do not believe that respondent is justified in assuming that the bondsmen are not worth the sum of P60.00, value of the bond, especially in view of the fact that the bondsmen actually declare under oath in the bond that they are worth

the amount thereof. If the solvency of the sureties or the bond is questioned, objection thereto should be based on such ground, in which case the appellants could prove the worth of the bondsmen, or substitute them with others. This last procedure has uniformly been followed in cases involving sufficiency of bondsmen. (*Tirangbuaya vs. Judge of First Instance of Rizal*, 14 Phil., 613; *Taroc, et al. vs. Judge of Court of First Instance of Pampanga, et al.*, 36 Off. Gaz., 942; *Medina vs. Yatco*, L-2521, resolution of January 25, 1949).

The writ prayed for is hereby granted and the appeal in the court below is given due course. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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