

RAFAEL RUEDA, PLAINTIFF AND APPELLEE, VS. MARCELO JUAN, ET AL., DEFENDANTS. VICTORIANO C. LULUQUISIN, DEFENDANT AND APPELLANT.

G.R. No. 13764. January 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On November 21, 1957, Victoriano C. Luluquisin filed a motion before the Court of First Instance of Nueva Ecija praying that the decision rendered by that court on September 13, 1954 be annulled on the ground that it was rendered without giving him his day in court.

To this motion, Rafael Rueda filed his opposition contending that the court has already lost its jurisdiction to act thereon and so the motion cannot be entertained. In support of his opposition, he invoked Section 3, Rule 38 of the Rules of Court which provides that a petition for relief from a judgment or order of the court must be filed within 60 days after the petitioner learns of the judgment or order to be set aside, and not more than 6 months after said judgment is rendered, to be accompanied by affidavits of merit alleging facts constituting petitioner's defense or cause, of action, and since the motion of Luluquisin was apparently filed beyond the periods above-mentioned, hence the decision in question has already become binding and final and can no longer be set aside.

On December 13, 1957, the court issued an order sustaining the opposition and denying the motion, and when his motion for reconsideration was denied, Luluquisin interposed the present appeal.

The circumstances under which the decision which appellant seeks, to set aside was rendered appears in the decision itself, the pertinent portion of which we quote:

"When this case was called for trial on September 3, 1954, Atty. Luis A. Cruz, did not appear notwithstanding that notice of this trial had been sent to him by registered mail on August 5, 1954. The return card, however, had not been received by this court. Considering the lapse of time from the date of the hearing, it must be presumed that Atty. Luis A. Cruz had received the notice to this trial, or should have received it in the ordinary course of mail. It must be observed that the records shows that two previous notices to Atty. Luis A. Cruz had been returned to this court, the same not having been received by the addressee. It would appear, therefore, that Atty. Cruz had deliberately refused to receive the notice. The plaintiff closed his evidence and the court considered the case submitted for decision."

The reason now advanced by appellant for the failure of his former counsel Luis A. Cruz to receive the several notices of hearing sent to said counsel by registered mail and the consequent failure of appellant to be notified of the hearing and be present at the trial is the fact that said counsel died on April 4, 1954 for which reason said notices were returned without the mail having been called for, but when he came to know of his death, he immediately took steps to have the decision set aside and the case reopened in order that he may be given his day in court. The trial court, however, did not consider this explanation satisfactory and denied the motion on the

ground that, even if appellant's counsel has already died when the notices of hearing were sent to him by registered mail, said notices which were sent to the last known address of counsel constitute constructive notice which binds the counsel and his client and as such failure to receive them on that ground cannot serve as basis for the annulment of the decision. More specifically, the court made on this matter the following comment:

"The death of Atty. Luis A. Cruz and his consequent failure and that of the defendants to receive the notices are not sufficient grounds for the annulment of the decision. Notices having been sent by registered mail at the last known address of the counsel for the defendants and having been returned to this Court, the same constitutes constructive notice to counsel and defendants. That the notice had not been received because of the death of Atty. Luis A. Cruz does not make that failure a jurisdictional requisite which would annul the decision. The notice having been sent but not having been received by the lawyer because he is dead and as a consequence thereof defendants had not known of the status of the case only entitles the defendants to relief under Rule 38, Section 3. It was the duty of the defendants to inquire into the status of the case either from their lawyer or from the Court. The fact that they had allowed more than three years from the date of the decision to the filing of the motion is evidence of inexcusable negligence on their part. At any rate, the period prescribed by Rule 38 has already lapsed, and it is now too late to grant relief to the defendants."

We fail to agree to the foregoing finding of the trial court for the record shows that when the notices of hearing were sent to the former counsel of appellant, said counsel was already dead, having died on April 4, 1954, or about one month before the date set for the hearing of the case. While in the ordinary course of business notice sent by registered mail to the correct address of a lawyer may be considered as a constructive notice that may bind him even if he fails to receive the mail within a reasonable time from notice (Section 8, Rule 27), the rule cannot apply when the addressee is already dead and there" is no showing that the notice was received by a person of sufficient discretion to receive the same in behalf of said counsel (Section 4, Rule 27). Here there is no such showing. As a matter of fact, the two notices sent to appellant's former counsel were returned with the mail unclaimed which shows that they did not reach any person of sufficient discretion to receive the same in behalf of counsel, and appellant could not have known within a reasonable time the death of his counsel because while, the latter resided in Manila the former was then living in Zaragoza, Nueva Ecija. The record shows that appellant was not given personal or constructive notice of the hearing which accounted for his failure to appear in court.

It is a well settled rule that "no one shall be personally bound until he has had a day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is a judicial usurpation and oppression, and can never be upheld where justice is justly administered[1] (Moran, Comments on the Rules of Court, Vol. I, 1957 ed., p. 476). And it has been held that a final and executory judgment may be set aside with a view to the renewal of the litigation when the judgment is void for lack of due process of law (Moran, Comments on the Rules of Court, supra, p. 523; Banco Español-Filipino vs. Palanca, 37 Phil., 921).

Wherefore, the orders appealed from are hereby set aside and the case is remanded to the trial court for further proceedings. The decision rendered by the trial court on September 13, 1954 is also set aside. Costs against appellee.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur. Barrera, J., took no part.

[1] Ong Su Han vs. Gutierrez David, 76 Phil., 546, quoting Lerma vs. Antonio, 6 Phil., 236, Muerteguy vs. Delgado, 22 Phil., 109; Lavitoria vs. Judge, 32 Phil., 204; Villegas vs. Roldan, 76 Phil., 3493

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