

BARANGAY 24 OF LEGAZPI CITY REPRESENTED BY BGY. CHAIRMAN RICARDO ABUNDA, PETITIONER, VS. ELIAS IMPERIAL, RESPONDENT.*G.R. No. 140321. August 24, 2000*

Ponente: GONZAGA-REYES, J.

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The only question presented before us in this petition for review on certiorari is whether the appellate court correctly dismissed a special civil action for certiorari for failure of petitioner to pay the proper docket fees within the prescribed period.

This case originated from an action for forcible entry filed by respondent Elias S. Imperial with the Municipal Trial Court (MTC) on March 6, 1995 against Barangay 24 of Legazpi City, as represented by its then incumbent barangay chairman - Lorenzo Jarcia, which case was docketed as Civil Case No. 4132. Respondent sought to recover possession of a parcel of land designated as Lot No. 1113-M-3, covered by Transfer Certificate of Title No. 978, and located in said barangay. Respondent claims that the barangay constructed a chapel thereon without his consent and has consistently refused to turn over said premises to him despite several oral and written demands to vacate. On May 29, 1995, the MTC rendered judgment in favor of respondent and a writ of execution enforcing the same was issued on August 30, 1995. When the writ of execution was not complied with the MTC, upon motion of respondent, issued an order of demolition dated December 15, 1995.[1]

However, before the order of demolition could be carried out, petitioner herein, as represented by its new barangay chairman - Ricardo Abunda, filed on December 10, 1997, an action for annulment of the May 29, 1995 judgment of the MTC with the Regional Trial Court (RTC) of Legazpi City (Civil Case No. 9471). According to petitioner, respondent and Lorenzo, its former barangay chairman, employed fraud during the trial before the MTC in order to defeat the lawful claims of the barangay in said property.[2] On December 15, 1997, respondent filed a motion to dismiss the action for annulment. The motion was granted and on March 23, 1998, Civil Case No. 9471 was dismissed. Petitioner filed a motion for reconsideration, but this was denied by the trial court in its order dated May 26, 1998.

On August 31, 1998, petitioner filed a special civil action for certiorari and mandamus with the Court of Appeals assailing the orders of the trial court dismissing the action for annulment and denying its motion for reconsideration. The appeal was docketed as CA-G.R. SP No. 49013.[3] On September 24, 1998, the appellate court issued a resolution requiring private respondent to file its comment to the petition and ordering petitioner “to remit within five (5) days from notice, the additional amount of P665.00 to complete payment of the prescribed docket and other legal fees; otherwise the petition will be dismissed.”[4] However, petitioner failed to pay the required docket fees, thus, the Court of Appeals dismissed the petition in its resolution dated March 29, 1999.[5] The assailed resolution states –

In the Resolution dated September 24, 1998, the Court required petitioner to remit within five (5) days from notice, the additional amount of P665.00 to complete payment of the prescribed docket and other legal fees; otherwise, the petition will be dismissed. Copy of said Resolution was received by counsel for petitioner on

October 6, 1998 as per return card (p. 51-A, rollo). From the report of the Judicial Records Division dated March 16, 1999, it appears that petitioner has not remitted the required additional amount of docketing fees.

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

On September 23, 1999,[6] the appellate court denied petitioner's motion for reconsideration.

Hence, the present petition. In justification of its failure to pay the prescribed docket fees, petitioner offers the following explanation –

Sometime in September 1998, herein counsel received the first resolution of the Honorable Court of Appeals giving the respondent 10 days to file his comment to the petition and informing herein counsel of the balance of P665.00 to complete payment of the prescribed docket and other legal fees. In turn, the latter informed petitioner's representative of said obligation via long distance because of the considerable distance between counsel's office and petitioner's office which is more than a hundred kilometers;

Several days after herein counsel informed petitioner, he received receipts of the docket fees coming from the Court of Appeals without any accompanying note. Copies of the receipts are hereto attached as Annexes "H, I and J" and made integral parts of this petition. Herein counsel presumed that petitioner must have already complied and paid the balance there being receipts already sent by the Honorable Court of Appeals;

Several weeks later, herein counsel received another resolution from the Honorable Court granting the motion of respondent's counsel for extension of time to file comment on the petition. In this resolution, nothing was anymore mentioned of the balance of P665.00. A copy of said resolution is hereto attached as Annex "K" and made an integral part hereof. All the while, herein counsel thought that the obligation of petitioner to pay the balance has been complied with, and all he had to do was wait for the resolution of the Honorable Court on the merits of the petition.

Sometime in April, 1999, herein counsel received the resolution of the Honorable Court of Appeals dismissing the petition for failure to pay docket fees. x x x

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It is a well established doctrine that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.[7] In the recent case of *Gegare vs. Court of Appeals*,[8] this Court upheld the appellate court's dismissal of an appeal for failure of petitioner to pay the docket fees within the reglementary period despite a notice from the Court of Appeals informing him that such fees had to be paid within fifteen (15) days from receipt of such notice. Denying petitioner's plea for judicial leniency, we held that –

Also without merit, in our view, is petitioner's plea for a liberal treatment by the said court, rather than a strict adherence to the technical rules, in order to promote substantial justice. For it has consistently held that payment in full of docket fees within the prescribed period is mandatory. As this Court has firmly declared in *Rodillas vs. Commission on Elections* [245 SCRA 702 (1995)], such payment is an essential requirement before the court could acquire jurisdiction over a case:

"The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968] ; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege

and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law.”

The importance of the payment of docket fees was similarly affirmed in *Pedrosa v. Hill*[9] wherein we held that the appeal of respondents was not perfected because they paid the docket fees only after four (4) months from the date of notice. The reasons adduced by respondents’ counsel – that his clients were out of the country and could not thereby attend to his communications and that, by sheer inadvertence, he had failed to note the period for payment of the docket fees – did not convince the Court, which ruled that -

Payment in full of docket fees within the prescribed period is mandatory. Non-compliance therewith may cause the dismissal of the appeal pursuant to Sec. 1, Rule 50 of the Rules of Court xxx

Squarely in point is *Guevarra v. Court of Appeals* [157 SCRA 33 (1988)]. In that case docket fees were not paid within fifteen (15) days as required by the Court of Appeals. Instead, they were paid forty-one (41) days late allegedly due to “inadvertence, oversight and pressure of work.” The appeal was dismissed by the Court of Appeals. When the case was elevated to us, we said –

It is the “duty of the appellant” in the Court of Appeals, “within fifteen (15) days from the date of the notice referred [to] in the preceding section, to pay to the clerk of the Court of Appeals the fee for the docketing of the appeal.” The appellants did not comply seasonably with this duty. Concededly, they paid forty one (41) days late. For such tardiness, they must suffer the sanction imposed by the Rules of Court – dismissal of their appeal x x x x

In *Palteng v. Court of Appeals* [26 SCRA 736 (1969)] we pronounced that there was no abuse of discretion in the Court of Appeals’ ruling that there had been proper and adequate notice to defendants (petitioners) to pay the docket fees, a requirement that they failed to observe, and as failure to pay the docket fee is ground for dismissal of an appeal, the Court of Appeals acted correctly in issuing the resolution in question. Earlier in *Lee vs. Republic of the Philippines* [10 SCRA 565 (1964)] we decided that even though half of the appellate court docket fee was deposited, no appeal was deemed perfected where the other half was tendered after the period within which payment should have been made. In *Aranas v. Endona* [117 SCRA 753 (1982)] we reiterated that if the appellate docket fee of P20.00 is not paid in full within the reglementary period the decision of the municipal court becomes final and no longer appealable.

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In the present case, the docket fees paid by petitioner were insufficient. Petitioner was made plainly aware of this circumstance by its receipt of the September 24, 1998 resolution of the Court of Appeals which declared that petitioner had to pay the additional amount of P665.00 in docket fees within five days from receipt of such resolution. However, despite such notice, petitioner failed to pay or to even take the most rudimentary of measures to ensure the payment of this amount to the appellate court, thereby resulting in the dismissal of its petition on March 29, 1999. From the time petitioner was notified of the deficiency in the docket fees up until the time his petition was actually dismissed, petitioner had approximately six months to see to it that the docket fees assessed by the appellate court as still due were actually paid, but it did not.

In the petition filed with this Court, Atty. Borja, the counsel of petitioner, claims that he was misled into believing that his client had already paid the deficiency in the docket fees when he received receipts from the appellate court for the payment of docket fees and a resolution from the Court of Appeals granting respondent’s motion for an extension of time to file comment but which resolution did not make mention of any docket fees still due from petitioner. Petitioner’s excuses are unacceptable. First of all, even a cursory examination of the said receipts would have quickly revealed to counsel that they were issued for the docket fees which he himself had previously paid to the appellate court by money order. Three separate receipts were issued by the Court of Appeals for the

amounts of P48.00, P352.00 and P15.00, received from Atty. P.M. Gerardo Borja, whose name appears in all three receipts as the payor of such amounts.[10] Taking into account the fact that he himself had arranged for the payment of the amounts covered by the aforementioned receipts, Atty. Borja's feeble excuse that he was fooled into thinking that such receipts covered the deficiency in the docket fees in the amount of P665.00 strains the credulity of this Court. Similarly, the mere issuance of a resolution by the appellate court allowing respondent an extension of time to file his comment cannot be considered, by any stretch of the imagination, as an indication that said docket fees were already paid. Rather than rely on vague implications, counsel for petitioner should have taken the time to verify whether his client had actually paid the docket fees. A single phone call to a representative of his client or to the clerk of court of the appellate court would have cleared the matter up, but counsel did no such thing.

A client is bound by the action of his counsel, as well as by his mistake or his negligence.[11] Besides, in the instant case, a representative of petitioner was immediately given notice by petitioner's counsel that the docket fees paid were insufficient.[12] If it was truly interested in questioning the orders of the trial court, petitioner should have seen to it that such fees were immediately paid.

The right to appeal is not a natural right or a part of due process. It is purely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[13] Well-rooted is the principle that 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 of jurisdiction to alter the final judgment much less to entertain the appeal.[14]

Given the circumstances obtaining in this case, the delay in the payment of the docket fees was clearly unjustified and cannot, by any measure, constitute excusable negligence or mistake. The actuations of petitioner and of its counsel manifest to this Court an utter lack of interest and apathy in pursuing the case before the Court of Appeals. All matters considered, we hold that the appellate court correctly dismissed the petition for certiorari.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Records, 27-28.

[2] Records, 29-30.

[3] The case was assigned to the Twelfth Division, composed of Justices Consuelo Ynares-Santiago, Chairman; Presbitero J. Velasco, ponente; and B.A. Adefuin de la Cruz.

[4] Records, 52-53.

[5] Rollo, 140-141.

[6] Rollo, 137-138.

[7] *Suson v. Court of Appeals*, 278 SCRA 284 (1997), citing *Sun Insurance Office, Ltd. v. Asuncion*, 170 SCRA 274 (1989).

[8] 297 SCRA 587 (1998).

[9] 257 SCRA 373 (1996).

[10] Rollo, 42-44.

[11] Agpalo, *The Code of Professional Responsibility For Lawyers*, 207 (1991), citing *Viviero v. Santos*, 98 Phil 500 (1956); *Inocando v. Inocando*, 110 Phil 266 (1960).

[12] Rollo, 9.

[13] *Ortiz v. Court of Appeals*, 299 SCRA 708 (1998); *Republic v. Register of Deeds of Quezon*, 244 SCRA 543 (1995); *Bello v. Fernando*, 4 SCRA 138 (1962).

[14] *Pedrosa v. Hill*, 257 SCRA 373 (1996), citing *Acda v. Minister of Labor*, 119 SCRA 306 (1982).

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