

**JIMMY BANTING, ALFRED REYES AND MAXIMA ARCENO REYES,
PETITIONERS, VS. SPS. JOSE MAGLAPUZ AND RAYMUNDA BANDIN
MAGLAPUZ, RESPONDENTS.**

G.R. NO. 158867. August 22, 2006

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-158867/>

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court praying that we (1) declare the Decision[1] dated August 13, 2002 of the Metropolitan Trial Court, Branch 79, Las Piñas City (MeTC) as null and void; (2) declare the Order[2] dated February 4, 2003 issued by the Regional Trial Court, Branch 199, Las Piñas City (RTC) as null and void; and (3) reverse and set aside the Resolution[3] dated May 16, 2003 of the Court of Appeals (CA).

The antecedent facts are as follows:

An ejectment complaint was filed with the MeTC entitled, "Sps. Jose Maglapuz & Raymunda Bandin-Maglapuz,[4] represented by their Attorney-in-Fact Rosalinda Maglapuz-Agulay, Plaintiffs, v. Jimmy Banting and Sps. Alfred Reyes and Maxima Arceno-Reyes, Defendants" and docketed as Civil Case No. 5663.[5] It involved the right to possession of a parcel of land located at No. 405 Real Street, Talon I, Las Piñas City, containing an area of 258 square meters and covered by Transfer Certificate of Title (TCT) No. T-44306 registered in the name of the Heirs of Victoriana Ramos.[6] Raymunda Maglapuz is purportedly one of the heirs.[7]

The complaint alleged that spouses Alfred and Maxima Reyes (Spouses Reyes) paid rent to the Spouses Jose and Raymunda Maglapuz (Spouses Maglapuz) for the use of the property from 1994 to August 1997 at the rate of P3,500.00 per month; that beginning September 1997, however, Spouses Reyes stopped paying rent;[8] that spouses Maglapuz served a letter dated August 9, 1999 on Spouses Reyes demanding that the latter pay their rentals and vacate the property;[9] that this was received by Spouses Reyes on August 12, 1999;[10] that when no payment was made, Spouses Maglapuz filed said Civil Case No. 5663 against Spouses Reyes impleading Jimmy Banting (Banting) with whom Spouses Reyes entered into a partnership for the operation of a grocery store on the subject property.

Defendants Spouses Reyes and Banting filed an Answer with Counterclaim.[11] They argued that Spouses Maglapuz have no cause of action against them for their possession of the subject property is lawful as it is based on a contract of lease executed in their favor by one named Carmencita dela Cruz, allegedly the rightful owner of the property. They demanded compensation by way of moral damages in the amount of P1,000,000.00 for the allegedly vexatious suit filed against them. [12]

After preliminary conference and submission of position papers, the MeTC rendered judgment in favor of Spouses Maglapuz. The decretal portion of the August 13, 2002 Decision of the MeTC reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants for the following:

- 1) Ordering the defendants to vacate the plaintiff's property and to return possession thereof to the plaintiffs;
- 2) Ordering the defendant to pay rental of P3,500.00 per month from September 1997 up to the time they have finally vacated the premises;
- 3) Ordering the defendant to pay plaintiff the amount of P20,000.00 attorney's fees and P1,000.00 per court appearance;
- 4) To pay cost of suit.

SO ORDERED.[13]

From the foregoing decision, Spouses Reyes and Banting appealed to the RTC (Branch 199, Las Pinas City)[14] which issued an Order dated September 27, 2002 directing the parties to file their respective memoranda on appeal within thirty (30) days from receipt thereof.[15] The records reveal that defendants-appellants Spouses Reyes and Banting received copy of the Order on October 7, 2002.[16] Plaintiffs-appellees Spouses Maglapuz filed a Memorandum on Appeal.[17] Spouses Reyes and Banting did not file any memorandum.

In an Order dated November 21, 2002, the RTC dismissed the appeal, thus:

It appearing that Defendants-Appellants failed to comply with the Order of this Court dated September 27, 2002 and pursuant to Section 3 Rule 7 of the Revised Rules of Civil Procedure, the Appeal is hereby DISMISSED.

SO ORDERED.[18]

Spouses Reyes and Banting received copy of the Order on December 4, 2002.[19]

Earlier, however, on December 2, 2002, Atty. Dionisio Landero, collaborating counsel of the counsel of record, Atty. Jose Espinas, filed an Entry of Appearance with Omnibus Motion for Reconsideration and to Admit Late Memorandum for Defendants-Appellants.[20] He attached thereto a "Memorandum for Defendants Spouses Alfred Reyes and Maxima Arceno Reyes." [21] Counsel explained that the delay in filing the memorandum on appeal was due to excusable negligence attributable to his clients who called his attention to the need to file a memorandum on appeal only on November 27, 2002. Prior to that date, counsel was not aware of any order for submission of memorandum as he did not receive copy of the September 27, 2002 Order.[22] He asked that the memorandum on appeal be admitted for it is meritorious in substance. Specifically, it impugns the jurisdiction of the MeTC to issue the August 13, 2002 Decision on the following grounds: first, the complaint for ejectment was premature as Spouses Maglapuz failed to comply, much less allege compliance, with the requirement of prior referral of a case to the barangay council for conciliation under Section 12, Rule 70 of the Rules of Court in relation to paragraph c, Section 409, Chapter 7, Republic Act (R.A.) No. 7160 (Local Government Code); second, the case is actually one of accion publiciana cognizable by the RTC for it was filed only in 1999, more than one year from the time possession of the subject property by Spouses Reyes and Banting allegedly became unlawful in 1997; and third, Spouses Maglapuz utterly failed to establish their title to the property as would justify their claim to a better right of possession of the property.[23]

The RTC rebuffed the motion for reconsideration. It held in its Order of January 7, 2003 that the delay in filing the memorandum on appeal was due to the inexcusable negligence of both counsel and clients who were given sufficient notice to file memorandum but, for lack of coordination, failed to do so.[24] Spouses Reyes and Banting received copy of this Order on January 20, 2003.[25] On that same day, they filed with the RTC a Notice of

Appeal.[26] The RTC, in an Order dated January 23, 2003, disapproved the Notice of Appeal for failure of Spouses Reyes and Banting to pay appellate court docket fees.[27] The latter received copy of this Order on January 27, 2003. On the next day, it filed a Motion for Reconsideration on the ground that appellate court docket fees were actually paid on January 21, 2003 as shown by copies of receipts attached to the motion.[28] The RTC granted said Motion for Reconsideration in an Order dated January 30, 2003,[29] in effect giving due course to the Notice of Appeal to the CA.

On February 4, 2003, however, the RTC issued the following Order:

This court notes that the Notice of Appeal availed of by the defendants is misplaced under the circumstances. The proper remedy provided for by law is the filing of a Verified Petition for Review with the Court of Appeals paying at the same time to the said court the corresponding docket fees and furnishing this court and adverse party with a copy of the Petition.

In view thereof, the Order dated January 23, 2003 is hereby RECALLED and the Order of the Court dated January 30, 2003 is hereby amended accordingly.

SO ORDERED.[30]

Through counsel, Spouses Reyes and Banting received copy of the foregoing Order on February 19, 2003.[31]

Straightaway, they filed on February 24, 2003 a Petition for Review with the CA and paid on the same day the corresponding appellate docket fees.[32] They also served copies of the petition on the RTC and the adverse parties.[33]

The CA dismissed the petition in the herein assailed Resolution dated May 16, 2003, portions of which read:

The petition deserves but a short shrift.

- We cannot review, much less declare null and void, the Decision of the MeTC xxx dated August 13, 2002 (not August 6, 1992 as stated in the prayer of the petitioners; or August 13, 2003, as alleged in page 3 of the petition) for the simple reason that we have no appellate jurisdiction over it.
- For the same reason of lack of jurisdiction we cannot order the dismissal of the complaint for ejectment x x x;
- The Order of the RTC dated January 23, 2003 is correct at bottom, as the RTC rightly denied due course to the petitioners' notice of appeal; only its reasoning was faulty;
- We have no legal basis for awarding private respondents damages and attorney's fees.

WHEREFORE, the instant petition is DISMISSED outright.

SO ORDERED. [34]

Petitioners Spouses Reyes and Banting filed a Motion for Reconsideration[35] from the foregoing resolution but this was denied by the CA in a Resolution dated June 19, 2003.[36] Undaunted, petitioners' newly appointed counsel filed an Urgent Motion to Admit Supplemental Motion for Reconsideration with a Motion for Reconsideration attached thereto.[37] The CA merely took note of this motion.[38]

Hence, the present petition raising the following issues:

I

WHETHER THE COURT OF APPEALS IS COMPETENT TO REVIEW OR DECLARE NULL AND VOID THE DECISION DATED AUGUST 13, 2002 RENDERED BY THE METROPOLITAN TRIAL COURT.

II.

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE REGIONAL TRIAL COURT'S OUTRIGHT DENIAL OF THE HEREIN PETITIONERS' NOTICE OF APPEAL IS CORRECT.

III.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE CASE DESPITE ITS BEING MERITORIOUS, CONSIDERING THAT THE TRIAL COURT, WHICH DECIDED THE CASE ON THE MERITS, DID NOT ACQUIRE JURISDICTION.

IV.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE CASE DESPITE ITS BEING MERITORIOUS, CONSIDERING THAT THE PROPER ACTION TO BE FILED SHOULD HAVE BEEN ACTION PUBLICIANA OR ACTION REIVI[N]DICATORIA, RATHER THAN A CASE FOR EJECTMENT.

V.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE CASE DESPITE THE GROSS NEGLIGENCE OF PETITIONERS' FORMER COUNSEL IN FAILING TO FILE A MEMORANDUM OF APPEAL TO THE UTTER PREJUDICE OF THE HEREIN PETITIONERS.[39]

Upon motion of respondents, we granted the substitution of deceased-respondent Raymunda Bandin-Maglapuz by her heirs, namely: Jose Maglapuz, Ricardo Manahan, Angelita Maglapuz, Rodelio Maglapuz, Mauro Maglapuz, Emelita Maglapuz, Lolita Maglapuz-Lagmay, and Rosalinda Maglapuz-Agulay,[40] as party respondents.

The petition lacks merit.

The principal issue underlying the petition is whether the CA is correct in dismissing the Petition for Review of petitioners.

Appeal by petition for review under Rule 42 filed with the CA is the appropriate remedy from decisions or final orders issued by the RTC in the exercise of its appellate jurisdiction.[41] Section 1 of Rule 42 reads:

Section 1. How appeal taken; time for filing. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals x x x. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. x x x.

An order of the RTC dismissing an appeal from a decision of the MeTC for failure of appellant to file a memorandum on appeal is one such final order.[42] It is appealable by petition for review under Rule 42.[43]

In the instant case, the November 21, 2002 and January 7, 2003 RTC Orders dismissed petitioners' Appeal from the August 13, 2002 MeTC Decision for their failure to file a memorandum on appeal. These orders were therefore appealable by petition for review with the CA. The Notice of Appeal petitioners initially filed was clearly erroneous. Petitioners sought to rectify their error by filing the Petition for Review with the CA on February 24, 2003. The question then is whether such recourse would prosper.

In *Neypes v. Court of Appeals*,[44] we fixed a uniform period for appeals filed under Rules 40, 42, 43 and 45. Specifically, we set the period to appeal at 15 days from notice of the decision or final order appealed from or, where a motion for new trial or reconsideration is seasonably filed from the said decision or final order, within a

fresh period of 15 days from receipt of the order denying the motion for new trial or reconsideration.

Applying the foregoing rule to the present case, petitioners should have filed the Petition for Review on February 5, 2003. To recall, petitioners received notice of the November 21, 2002 RTC Order on December 4, 2002. Even before that, however, they were able to file an Omnibus Motion for Reconsideration on December 2, 2002. This was denied by the RTC in its January 7, 2003 Order. Notice of said Order was received by petitioners on January 20, 2003. Hence, they had a fresh period of 15 days or until February 5, 2003 to file a petition for review.

As it were, however, petitioners filed instead a Notice of Appeal on January 20, 2003. Such mode of appeal under Section 2 (a) of Rule 41 was faulty. Recourse to it did not toll the running of the period within which to file a petition for review. It is axiomatic that a fatally defective or erroneous appeal or motion will not toll the running of a period to appeal. A detour from the proper course of an appeal will not earn for the errant party a fresh start.[45]

Petitioners therefore got entangled in an erroneous mode of appeal and squandered away the remaining time it had to file a petition for review. The Petition for Review they filed with the CA on February 24, 2003 was out of time.

Moreover, the said Petition for Review was fatally defective. The petitioners prayed for the following reliefs:

WHEREFORE, premises considered, Defendants-Appellants, now the herein Petitioners respectfully pray this Honorable Court, the following:

- a) To issue a writ of Preliminary Injunction or Restraining Order ex-parte upon the filing of this Petition;
- b) That upon due consideration of the Petition, an order be issued making the Preliminary Injunction and/or Restraining Order permanent until after the final resolution of the instant Petition;

That after due notice and consideration of the herein Petition, Petitioner further pray the following:

- c) To issue an Order declaring the subject Decision Annex "C" of the Lower Court dated August 6, 1992 [sic][46] null and void;
- d) Ordering the Complaint dated September 21, 1999 (Annex "D") dismissed with prejudice.
- e) Ordering the Order [sic] of the Public Respondent Court RTC 199 dated January 23, 2003 null and void; and
- f) Furthermore, ordering the Private Respondent to pay the herein Petitioner damages and attorneys fees to be determined by the Honorable Court.[47]

The Petition for Review was directed at both the August 13, 2002 Decision of the MeTC and the January 23, 2003 Order of the RTC. This is odd. The August 13, 2002 MeTC Decision and the January 23, 2003 RTC Order are matters not proper for a petition for review under Rule 42. As correctly declared by the CA, it has no appellate jurisdiction over the MeTC and it cannot entertain a direct appeal from said decision. As to the RTC January 23, 2003 Order disapproving the Notice of Appeal, this was expressly reconsidered by the RTC in its January 30, 2003 Order,[48] in effect allowing the Notice of Appeal. This however was further amended by the RTC in its Order dated February 4, 2003 declaring that the Notice of Appeal to the CA was misplaced and that the proper remedy is the filing of a petition for review. When petitioners filed their Petition for Review, they did not question the February 4, 2003 Order of the RTC.

All told, the CA did not err in dismissing their Petition for Review for it was not only tardy but also fatally defective.

We will, nonetheless, briefly treat the substance of the petition for review with the CA, if only to settle the issue whether or not the RTC committed an error in dismissing petitioners' appeal on the ground that no memorandum

on appeal has been filed by them.

The RTC validly dismissed the appeal of petitioners from the August 13, 2002 Decision of the MeTC.

The appeal was deemed abandoned when petitioners failed to file their memorandum on appeal despite sufficient time given to them by the court. A memorandum on appeal or an appeal brief is vital to an appeal for only errors specifically assigned and properly argued in the brief or memorandum will be considered in the decision on the merits, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Hence, the lack of a memorandum on appeal is ground for the dismissal of an appeal.[49]

The excuse proffered by counsel for petitioners for their failure to file the memorandum of appeal did not help their cause any. Assuming that he did not receive copy of the September 27, 2002 Order, he could have nonetheless informed himself of this requirement by checking on the progress of the case from time to time. A counsel is required to inquire about the status of the cases assigned to him and the motions he has filed for a client.[50] He cannot pass this burden to his client and blame the latter for every mishap.[51] It was therefore due to the inexcusable negligence of counsel that the memorandum on appeal was not filed on time.

We stop short, however, from declaring the negligence of counsel as gross so as to liberate petitioners from the effects of their failure to file a memorandum on appeal. This is actually what petitioners would have us uphold. [52] They claim that their counsel's negligence was so gross that they were virtually deprived of due process and representation in the proceedings below.

Such argument fails to impress. We refer petitioners to their Entry of Appearance with Omnibus Motion for Reconsideration and to Admit Late Memorandum for Defendants-Appellants.[53] There they specifically argued that the failure of their counsel to file the memorandum on appeal was "x x x by reason of his excusable negligence." [54] Petitioners cannot now turn around and claim that the negligence of their counsel is gross and that they may be said to have been deprived of due process.

In the interest of substantial justice, we deem it likewise necessary to resolve the other issues raised by petitioners.

They argue that the MeTC had no jurisdiction to issue the August 13, 2002 Decision for respondents failed to comply with the requirement of barangay conciliation; and that the case was actually one of *accion publiciana* cognizable by the RTC.[55]

Such arguments lack merit.

It is settled that the requirement under Section 412 of the Local Government Code that a case be referred for conciliation before the Lupon as a precondition to its filing in court applies only to those cases where the real parties-in-interest actually reside in the same city or municipality.[56] Here, the complaint filed with the MeTC specifically alleged that the parties reside in different barangays and cities.[57]

As to the jurisdiction of the MeTC, this can be determined from the complaint itself. It plainly states that the last demand was made by respondents upon petitioners on August 9, 1999. The complaint for ejectment was filed on September 21, 1999 or before the lapse of the one-year period. It was therefore properly filed with the MeTC.[58]

All told, the appeal of petitioners fell short even on the merits. It was properly dismissed by the RTC. The Court of Appeals did not err in sustaining the RTC.

WHEREFORE, the petition is hereby DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Records, pp. 143-150.

[2] Id. at 349.

[3] Penned by Associate Justice Salvador S. Valdez, Jr. with the concurrence of Associate Justices Bienvenido L. Reyes and Danilo B. Pine, rollo, pp. 29-34.

[4] Spelled as "Bandin-Manlapuz" in other pleadings.

[5] Records, p. 1.

[6] Id. at 143.

[7] Id.

[8] Id. at 144.

[9] Id.

[10] Id. at 11.

[11] Id. at 21.

[12] Id. at 146.

[13] Id. at 150.

[14] Id.. at 157.

[15] Id. at 164.

[16] Id. at 169.

[17] Id. at 171.

[18] Id. at 188.

[19] Id. at 193.

[20] Id. at 198.

[21] Id. at 202.

[22] Id. at 199.

[23] Id. at 202-213.

[24] Id. at 241.

[25] Id. at 248.

[26] Id. at 250.

[27] Id. at 252.

- [28] Id. at 327-329.
- [29] Id. at 330.
- [30] Id. at 349.
- [31] Id. at 356.
- [32] CA rollo, p. 2.
- [33] Id. at 12.
- [34] Id. at 106.
- [35] Id. at 108.
- [36] Id. at 123.
- [37] Id. at 124-128.
- [38] Id. at 131.
- [39] Rollo, pp. 16-17.
- [40] Id. at 357.
- [41] Section 2(b), Rule 41; Section 1, Rule 42.
- [42] Elsie Ang v. Dr. Erniefel Grageda, G.R. No. 166239, June 8, 2006.
- [43] Gonzales v. Gonzales, G.R. No. 151376, February 22, 2006, 483 SCRA 57, 68.
- [44] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 639; see also Donato Sumaway v. Urban Bank, Inc., G.R. No. 142534, June 27, 2006; Apuyan v. Haldeman, G.R. No. 129980, September 20, 2004, 438 SCRA 402, 418.
- [45] National Commercial Bank of Saudi Arabia v. Court of Appeals, 444 Phil. 615, 621 (2003); Kuizon v. Desierto, G.R. Nos. 140619-24, March 9, 2001, 354 SCRA 158, 173.
- [46] This should be August 13, 2002.
- [47] CA rollo, p. 9.
- [48] See note 31.
- [49] Elsie Ang v. Dr. Erniefel Grageda, *supra* note 42; Gonzales v. Gonzales, *supra* note 43, at 66; Enriquez v. Court of Appeals, 444 Phil. 419, 428 (2003).
- [50] Zarate v. Maybank Philippines, Inc., G.R. No. 160976, June 8, 2005, 459 SCRA 785, 796-797.
- [51] Sps. Manalili v. Sps. de Leon, 422 Phil. 214, 221 (2001).
- [52] Rollo, pp. 16-17.
- [53] See note 22.
- [54] Id.
- [55] Rollo, 17-21.

[56] Pascual v. Pascual, G.R. No. 157830, November 17, 2005, 475 SCRA 268, 274.

[57] Records, p. 1.

[58] Peralta-Labrador v. Bugarin, G.R. No. 165177, August 25, 2005, 468 SCRA 308, 314.

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.