

**FELICISIMA LUMBRE Y SARITA, FLORDELIZA VINA Y LUMBRE,
RICARDO LUMBRE Y SARITA, PRISCILLA S. LUMBRE, LUZVIMINDA
SILLA Y LUMBRE, EMETERIA SILLA Y LUMBRE, EMILIA S. LUMBRE,
ANICIA ...**

G.R. No. 160717. July 23, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, praying that the Court of Appeals (CA) be directed by this Court to admit petitioners' Appeal Brief and to reinstate petitioners' appeal. CA Resolution [2] dated April 22, 2003, dismissed the appeal of petitioners in CA-G.R. CV No. 75119, and its Resolution[3] dated September 25, 2003 in the same case, denied their Motion for Reconsideration.[4]

The antecedents are as follows:

On December 15, 1992, private respondent Florante I. Francisco (Florante) filed a case for Quieting of Title with Damages[5] against petitioners Felicisima Lumbré y Sarita, Flordeliza Vina y Lumbré, Ricardo Lumbré y Sarita, Priscilla S. Lumbré, Luzviminda Silla y Lumbré, Emeteria Silla y Lumbré, Emilia S. Lumbré, Anicia Argana y Lumbré, Clemente Belondo, and Conrado Cantada (petitioners) with the Regional Trial Court (RTC) of Imus, Cavite.

Florante alleged that he is the registered owner of a parcel of land known as Lot 7402-D of Subdivision Plan Psd-042106-054870 which is a portion of Lot 7402 (Fls-2285) of the Imus Friar Lands Estate, with an area of 13,090 square meters, situated in Barangay Paliparan, Dasmariñas, Cavite and covered by Transfer Certificate of Title (TCT) No. T-361460 [6] (subject property). He claimed to have bought the subject property from his sister, Isabelita Francisco (Isabelita), on September 1, 1992, who in turn bought the subject property from one Ildefonso Maliksi on October 28, 1989. Florante further averred that his sister Isabelita had earlier demanded that petitioners vacate the subject property, but the latter claimed that they are the registered owners of the same.

Traversing Florante's allegations, petitioners claimed (1) that the parcel of land which is in their possession and covered by their respective TCTs,[7] particularly known as Lot 7571 consisting of 9,130 square meters, is different from the property subject of Florante's petition; (2) that they acquired their property from their predecessor-in-interest, one Tomas Lumbré, whose right may be traced to one Rufo Reyes who occupied the property since 1927 and who bought the same from the government through the Bureau of Lands on October 20, 1947; and (3) that sometime in February 1990, petitioners subdivided the property among themselves[8] and the corresponding TCTs were individually issued in their favor.

Trial on the merits ensued. Thereafter, in its Decision[9] dated June 7, 2002, the RTC ruled in favor of Florante, thus:

WHEREFORE, premises considered, this Court hereby renders judgment in favor of the plaintiff and against

the defendants as follows:

- Declaring Transfer Certificate of Title Nos. T-348674, T-348675, T-348676, T-348677, T-348678, T-348679, T-348680 and T-348681 issued in the names of defendants as null and void[;]
- Declaring Transfer Certificate of Title No. T-361460 issued in the name of Florante I. Francisco to be valid and existing;
- Ordering the defendants to vacate Lot 7402-D;
- Ordering the defendants to pay plaintiff, jointly and severally, the sum of P100,000.00 as reasonable litigation expenses and attorney's fees;
- Ordering the defendants to pay plaintiff, jointly and severally, the sum of P100,000.00 as actual and compensatory damages; and
- To pay the costs of suit.

SO ORDERED.[10]

Aggrieved by the RTC decision, petitioners, on June 24, 2002, went to the CA on appeal.[11]

On October 23, 2002, petitioners' counsel received the CA's Notice to File Brief[12] dated October 16, 2002, which required the filing of the appellants' brief within forty-five (45) days from receipt of said notice pursuant to Section 7, Rule 44 of the 1997 Rules of Civil Procedure. On November 22, 2002, petitioners' counsel filed a Motion for Extension of Time to File Appellants' Brief[13] alleging that counsel has until December 7, 2002 within which to file said Brief; that in view of her daily court appearances and other equally important professional commitments, the said Brief could not be possibly filed on time; that considering the nature of the issues involved, she needs additional time to intelligently prepare the required Brief; and that said Motion for Extension is not intended to delay the proceedings before the CA. Counsel prayed for an additional period of thirty (30) days from December 7, 2002, or until January 6, 2003, within which to file the Appellants' Brief.

In its Resolution[14] dated December 19, 2002, the CA granted the motion, giving petitioners an additional period of thirty (30) days within which to file the Appellants' Brief, as prayed for.

However, petitioners' counsel failed to file the Appellants' Brief on January 6, 2003. On January 28, 2003, Florante, invoking Rule 50 of the Rules of Civil Procedure, filed a Motion to Dismiss[15] the appeal for failure of petitioners to file the required Appellants' Brief.

On February 5, 2003, petitioners' counsel filed an unverified Motion to Admit Herein Attached Appellants' Brief[16] and the Appellants' Brief[17] itself. Counsel claimed that she was not able to submit said Brief because she needed more time for legal research in order to intelligently and comprehensively prepare the same, considering the nature of the issues involved. She further alleged that she had been pre-occupied with other cases of equal importance, daily court appearances and other professional commitments. As the non-filing of the said Brief on time is not intended to delay the proceedings, counsel prayed that, in the interest of substantial justice, the said Appellants' Brief be duly admitted.

On February 13, 2003, Florante filed his Opposition[18] to petitioners' Motion to Admit Appellants' Brief, pointing out that the grounds relied upon by petitioners' counsel are the very same grounds alleged in her earlier Motion for Extension to File said Brief. Florante opined that the underlying reason for limiting the period to file a Brief or other pleadings under the Rules of Civil Procedure is to improve the administration of justice.

On February 17, 2003, petitioners filed their Reply[19] to the Opposition. Petitioners' counsel ratiocinated that the

delay in filing the Appellants' Brief was mainly due to her desire to file a competent and luminous presentation of petitioners' case in order to unburden the CA of the trouble of reading the records of the case. Counsel also mentioned that the case was commenced way back in December 1992, and that she was already the fifth (5th) counsel to advocate the petitioners' cause; as such, she needed sufficient time to go over the voluminous records and to familiarize herself with the case in order to intelligently prepare the Appellants' Brief.

In the assailed Resolution dated April 22, 2003, the CA held:

Thus, Rule 44, Section 7 provides that defendants-appellants must file their brief within forty-five (45) days from receipt of the letter/notice from this Court. Defendants-appellants were further given an additional thirty (30) days to file their appeal brief. They had, therefore, a total of seventy-five (75) days to prepare a brief.

While courts may exercise their equity jurisdiction and give a liberal interpretation to rules of procedure, as provided in Section 6, Rule 1 of the 1997 Rules of Civil Procedure, such jurisdiction should be exercised with extreme caution, lest it may defeat the very purpose of the rules of procedure, which is to facilitate the orderly administration of justice.

THE FOREGOING CONSIDERED, the present motion to admit the attached [appellants'] brief is hereby DENIED. For failure of the defendants-appellants to file the required number of copies of their appeal brief within the time allowed by the 1997 Rules of Civil Procedure, and within the additional time granted by this Court, the instant appeal is accordingly DISMISSED, pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED.[20]

On May 23, 2003, petitioners filed their Motion for Reconsideration,[21] alleging that the RTC Decision which is the subject matter of the appeal, is contrary to law and proven facts, such that the dismissal of the appeal not on the merits but on mere technicalities would cause grave miscarriage of justice, as petitioners would lose the lands of which they are the registered owners and which they occupied for more than thirty (30) years. The CA, however, denied said Motion for Reconsideration in its Resolution[22] dated September 25, 2003, reiterating that despite the additional time given to the petitioners, they still failed to file their Brief on time.

Hence, this Petition claiming that the CA gravely abused its discretion, amounting to lack or excess of jurisdiction, when it denied petitioners' Motion to Admit Appellants' Brief and dismissed the appeal based purely on technicalities.

Reiterating their previous arguments that to sustain the CA's ruling would result in petitioners' loss of their property and that the slight relaxation of the rules would not in any way prejudice Florante's rights, petitioners maintain that the liberal construction of the rules is the controlling principle to effectuate substantial justice. Petitioners asseverate that Florante is capitalizing on petitioners' non-observance of the rules to claim ownership over the subject property even if his title is of dubious character. Petitioners also claim that they are the aggrieved parties in this case, as their previous counsel had abandoned them, leaving the task of pursuing their cause to their present counsel, who needed all the time to study the instant case. The non-filing of the Appellants' Brief on time was not deliberate or in disregard of the rules but a mere oversight, and thus, petitioners contend that litigations, as much as possible, should be decided on the merits and not on mere technicalities.[23]

Florante, on the other hand, submits that a special civil action of certiorari under Rule 65 is not the proper remedy in this case because (1) the CA did not act with grave abuse of discretion because in the two assailed Resolutions, the CA only enforced Section 1(e), Rule 50 of the Rules, which mandates that appeals be dismissed upon unreasonable failure of the appellants to file their Brief within the reglementary period; and (2) the instant petition is not directed against a mere interlocutory resolution or order but a final resolution of the CA that can be

reviewed only on appeal pursuant to Rule 45 of the Rules of Civil Procedure, and the petition for certiorari should not be used as a substitute for lost appeal.[24] Finally, Florante argued that the petition failed to specify the acts constitutive of grave abuse of discretion on the part of the CA and that the failure of petitioners' counsel to file the brief on time was due to her ineffective time management, which cannot be used as a ground to reverse the CA's ruling.[25]

The core issue here is whether the CA acted with grave abuse of discretion in dismissing the appeal for petitioners' failure to file the appellants' brief seasonably.

The Petition lacks merit.

The extraordinary writ of certiorari may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[26]

Thus, certiorari as a special civil action can prosper only when the following requisites concur: (a) a tribunal, a board or an officer exercising judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or plain, speedy and adequate remedy in the ordinary course of law for annulling or modifying the proceeding.[27]

Both requisites are absent in this case.

First. There is no grave abuse of discretion on the part of the CA. The CA properly dismissed the appeal on account of petitioners' failure to file an appellant's brief. This is in accordance with Section 7, Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the CA, thus:

SEC. 7. Appellant's brief. -- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds to dismiss the appeal, as provided in Section 1(e) of Rule 50 of the Rules of Court:

SECTION 1. Grounds for dismissal of appeal. -- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

This Court in *Pineda v. Arcalas*,[28] citing *Enriquez v. Court of Appeals*,[29] provided the rationale for requiring an appellant's brief:

[T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

Petitioners and their counsel do not deny their procedural infractions, but they ask this Court's indulgence to relax the rules. Unfortunately for petitioners, their plea is not entirely for this Court to decide. If we grant this prayer, we would effectively be faulting the CA for its faithful compliance with the rules of procedure. The 1997 Rules of Civil Procedure, specifically Rules 44 and 50 which are designed for the proper and prompt disposition of cases before the CA, truly cannot be ignored. The rules provide for a system under which suitors may be heard in the correct form and manner at the prescribed time in an orderly confrontation before a judge whose authority is acknowledged. We cannot simply turn a blind eye to, and tolerate, the transgressions of these rules; [30] to do so would be a disavowal of our own pronouncements. In sum, we cannot attribute grave abuse of discretion to the CA which merely followed the said rules in dismissing the appeal.

Petitioners seek liberality in the application of the rules. They conveniently forget that such liberality was, at the outset, accorded to them by the CA when the appellate court granted them an extension of thirty (30) days, giving their counsel a total of seventy-five (75) days to prepare said brief. Despite such leniency, counsel allowed the extended period to lapse without even filing another motion for extension. It took nearly a month from the lapse of the extended period before counsel filed an unverified Motion to Admit Herein Attached Appellants' Brief together with the said Brief, and only after Florante had already filed a Motion to Dismiss petitioners' appeal. [31]

With respect to motions for extension, our ruling in *Bergonia v. Herrera* [32] is instructive:

Section 12 of Rule 44 of the Rules of Court provides that an extension of time for the filing of a brief shall not be allowed, except when there is good and sufficient cause, and only when the motion is filed before the expiration of the extension sought.

From time to time, a request for extension becomes necessary when an advocate needs more time to study the client's position. Generally, such request is addressed to the sound discretion of the court. Lawyers, who, for one reason or another, decide to dispense with the filing of the required pleading, should promptly manifest this intent to the court. It is necessary for them to do so in order to prevent delay in the disposition of the case. Those who file motions for extension in bad faith misuse the legal process, obstruct justice, and thus become liable to disciplinary action.

A lawyer who requests an extension must do so in good faith and with a genuine intent to file the required pleading within the extended period. In granting the request, the court acts on the presumption that the applicant has a justifiable reason for failing to comply with the period allowed. Without this implied trust, the motion for extension will be deemed to be a mere ruse to delay or thwart the appealed decision. The motion will thus be regarded as a means of preventing the judgment from attaining finality and execution and of enabling the movant to trifle with procedure and mock the administration of justice.

Given these circumstances, along with the obviously rehashed excuses of petitioners' counsel, we find the petition completely devoid of merit. Diligence is required not only from lawyers but also from their clients. [33]

Second. The instant petition is a wrong remedy because of the availability of an appeal. After the CA denied their Motion for Reconsideration, petitioners allowed the reglementary period for filing an appeal to lapse, opting instead to file this Petition for Certiorari. Well-settled is the rule that certiorari is not a substitute for the lost or lapsed remedy of appeal. Although there are instances when certiorari may be allowed despite the availability of appeal, in this case we find no compelling reasons to do so, particularly because the issue raised clearly pertains to the wisdom and soundness of the assailed CA Resolutions, [34] which should have been assailed before this Court via a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure. Thus, on this score also, the petition should be dismissed.

Furthermore, the petition was filed way beyond the 15-day reglementary period within which to file the petition for review under Rule 45. Accordingly, the assailed Resolutions of the CA had already become final and

executory and beyond the purview of this Court to act upon.[35]

Finally, if it appears that the consequences for incurring procedural infractions before the CA and for pursuing the wrong remedial tack are ostensibly harsh, it should be remembered that there is no innate right to appeal. Appeal is a statutory right, which may be exercised only within the prescribed limits. The 1997 Rules of Civil Procedure provides for a rational and orderly method by which appeal can be pursued, and even contingency remedial measures if appeal can no longer be timely pursued.[36] For the failure to duly comply with the said Rules and to undertake a timely appeal despite the existence of such remedy, the petitioners must bear the consequences.

Once again, we stress that the rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. To the contrary, they help provide for the orderliness vital to our system of justice. Indeed, public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[37]

WHEREFORE, the petition is DISMISSED. Costs against petitioners.

SO ORDERED.

Quisumbing, Ynares-Santiago, (Chairman), Austria-Martinez, and Reyes, JJ., concur.

* In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Rollo, pp. 3-12.

[2] Penned by Associate Justice Danilo B. Pine, with Associate Justices Godardo A. Jacinto and Renato C. Dacudao, concurring; id. at 47-49.

[3] Rollo, p. at 13.

[4] Id. at 50-53.

[5] Records (Vol. I), p. 1-9.

[6] Id. at 10.

[7] TCT Nos. T-348674, T-348675, T-348676, T-348677, T-348678, T-348679, T-348680 and T-348681; Records (Vol. II), pp. 643-650.

[8] Deed of Subdivision; id. at 653.

[9] Records (Vol. II), pp. 708-716.

[10] Id. at 715-716.

[11] Notice of Appeal; id. at 718.

[12] CA rollo, p. 64.

[13] Id. at 46-47.

[14] Id. at 49.

- [15] Id. at 50-52.
- [16] Id. at 53-54.
- [17] Id at 55-74.
- [18] Id. at 86-88.
- [19] Id. at 89-92.
- [20] Rollo, pp. 48-49. (Citations omitted).
- [21] Supra note 4.
- [22] Supra note 3.
- [23] Petitioners' Memorandum dated August 6, 2004; rollo, pp. 94-104.
- [24] Florante's Comment dated January 28, 2004; id. at 63-67.
- [25] Florante's Memorandum dated August 5, 2004; id. at 80-88.
- [26] *Redeña v. Court of Appeals*, G.R. No. 146611, February 6, 2007, 514 SCRA 389, 403, citing *Lalican v. Vergara*, 276 SCRA 518 (1997).
- [27] *Del Mar v. Court of Appeals*, 429 Phil. 19, 28 (2002).
- [28] G.R. No. 170172, November 23, 2007, 538 SCRA 596, 605.
- [29] 444 Phil. 419, 429 (2003).
- [30] *Casim v. Flordeliza*, 425 Phil. 210, 219 (2002) (Citations omitted).
- [31] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 299.
- [32] 446 Phil. 1, 6-7 (2003).
- [33] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 17.
- [34] *Rosita L. Flaminiano a.k.a. Rose Flaminiano v. Hon. Arsenio P. Adriano, Pairing Judge (RTC, Branch 64, Tarlac City), et al.*, G.R. No. 165258, February 4, 2008.
- [35] *AMA Computer College-Santiago City, Inc. v. Chelly P. Nacino*, substituted by the Heirs of Chelly P. Nacino, G.R. No. 162739, February 12, 2008.
- [36] *Victory Liner, Inc. v. Malinias*, G.R. No. 151170, May 29, 2007, 523 SCRA 279, 299.
- [37] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385.

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