

FELIMON BIGORNIA, SPO3 BORROMEO GORRES, ADELIANO RICO, SPO3 JOVENTINO BIGORNIA, SPO3 ALMANZOR JANGAO, SPO2 MESTERIOSO ARANCO, PETITIONERS, VS. COURT OF APPEALS (23RD DIVISION), ...

G.R. No. 173017. March 17, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari assails the Resolutions dated July 22, 2004[1] and April 3, 2006[2] of the Court of Appeals in CA-G.R. CV No. 73091. The appellate court dismissed petitioners' appeal and denied their motion for reconsideration.

The pertinent facts are as follows:

Private respondent Melchor Aroma filed an action for replevin with damages against petitioners before the Regional Trial Court (RTC) of Lanao del Norte. Petitioners allegedly detained Aroma's fishing vessel for 14 days after it was seized in a seaborne patrol.

On August 28, 2001, the RTC rendered a Decision[3] in favor of respondent. It ordered petitioners to pay jointly and severally the sums of P350,000 by way of actual and compensatory damages; P100,000 as moral and exemplary damages; attorney's fees of P20,000; and the costs of suit.

Petitioners appealed. On January 19, 2004, the office of Atty. Arthur L. Abundiente, counsel for petitioners, received notice requiring petitioners to file an appellants' brief within 45 days or until March 4, 2004. Petitioners however, filed their brief only on March 18, 2004, 14 days beyond the deadline. On July 22, 2004, the Court of Appeals issued the challenged Resolution. Its fallo states:

Having been unjustifiably filed out of time, the Appellant[s'] Brief is ORDERED EXPUNGED FROM/STRICKEN OFF THE RECORDS. This instant appeal is accordingly DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules on Civil Procedure for appellants' failure to file their Brief within the time provided for under the Rules.

SO ORDERED.[4]

Petitioners moved for reconsideration, but the same was denied in a Resolution dated April 3, 2006, as follows:

WHEREFORE, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.[5]

Hence, the instant petition which presents the single issue:

WHETHER OR NOT THE 23[RD] DIVISION OF THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT

ADMITTING THE APPELLANTS' BRIEF, AND IN ORDERING THAT THE SAME BE EXPUNGED FROM THE RECORD.[6]

Stated simply, the lone issue for our consideration is whether the Court of Appeals gravely abused its discretion in dismissing the appeal.

Petitioners explain that their counsel was unable to file the brief on time because he was busy campaigning as candidate for Vice Governor of Lanao del Norte.[7] Petitioners fault the Court of Appeals for giving notice to file brief only two years after they appealed.[8] They claim that they could have immediately submitted a brief had notice been sent earlier.

Petitioners contend that dismissal of an appeal under Section 1(e),[9] Rule 50 of the Rules of Court is directory, not mandatory. They cite the case of *United Feature Syndicate, Inc. v. Munsingwear Creation Manufacturing Company*,[10] where a lapsed appeal was allowed by the Court in the interest of substantial justice. According to them, a lesser offense of delay in filing of brief should merit the same consideration. Petitioners argue that rules of procedure should be liberally construed so that cases may be resolved on the merits, and not on technicalities.

Private respondent counters that technical rules of procedure were designed to effect expediency. Thus, a party seeking liberal application of the rules must adequately explain his failure to abide by them. Respondent believes that petitioners failed in this respect.

Technically, the Court of Appeals may dismiss an appeal for failure of the appellant to file the appellants' brief on time. But, the dismissal is directory, not mandatory. Hence, the court has discretion to dismiss or not to dismiss the appeal. It is a power conferred on the court, not a duty. The discretion, however, must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[11]

Petitioners had 45 days or until March 4, 2004 to file an appellants' brief. Unfortunately, petitioners could not be located as some of them retired while the rest were assigned to other places. It was their counsel who took the liberty of filing a brief in their behalf, but 14 days late and without a motion for leave of court for its admission. Nonetheless, the more pressing consideration of substantial justice compels this Court to heed the plea of petitioners. The amount of damages involved in this case is relatively substantial. Petitioners are police officers, and government employees who receive meager salaries for risking life and limb. It is but fair that they be heard on the merits of their case before being made to pay damages, for what could be, a faithful performance of duty.

The circulars of this Court prescribing technical and other procedural requirements are meant to promptly dispose of unmeritorious petitions that clog the docket and waste the time of the courts. These technical and procedural rules, however, are intended to ensure, not suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed to attain their prime objective for, after all, the dispensation of justice is the core reason for the existence of courts.[12] Thus, in a considerable number of cases,[13] the Court has deemed it fit to suspend its own rules or to exempt a particular case from its strict operation where the appellant failed to perfect his appeal within the reglementary period, resulting in the appellate court's failure to obtain jurisdiction over the case. With more reason, there should be wider latitude in exempting a case from the strictures of procedural rules when the appellate court has already obtained jurisdiction over the appealed case and, as in this case, petitioners failed to file the appellants' brief[14] on time.

WHEREFORE, in the interest of substantial justice, the instant petition is GRANTED. The Resolutions dated July 22, 2004 and April 3, 2006 of the Court of Appeals in CA-G.R. CV No 73091 are SET ASIDE; petitioners' appeal is reinstated; and the instant case is REMANDED to the Court of Appeals for further proceedings.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura[*], and Brion, JJ., concur.

* Designated member of Second Division pursuant to Special Order No. 571 in place of Associate Justice Dante O. Tinga who is on sabbatical leave.

[1] Rollo, pp. 57-58. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Estela M. Perlas-Bernabe and Edgardo A. Camello concurring.

[2] Id. at 46-47. Penned by Associate Justice Edgardo A. Camello, with Associate Justices Normandie B. Pizarro and Ricardo R. Rosario concurring.

[3] Id. at 41-45. Penned by Judge Mamindiara P. Mancotara.

[4] Id. at 58.

[5] Id. at 47.

[6] Id. at 11.

[7] Id. at 9-10.

[8] Id. at 9.

[9] 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;

x x x x

[10] G.R. No. 76193, November 9, 1989, 179 SCRA 260.

[11] *Aguam v. Court of Appeals*, G.R. No. 137672, May 31, 2000, 332 SCRA 784, 789.

[12] *Acme Shoe, Rubber & Plastic Corp. v. Court of Appeals*, G.R. No. 103576, August 22, 1996, 260 SCRA 714, 719.

[13] *Tamayo v. Court of Appeals*, G.R. No. 147070, February 17, 2004, 423 SCRA 175; *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304.

[14] *Tamayo v. Court of Appeals*, id. at 179-180.

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