

**FELIZA JOVEN DE JESUS, DULY ASSISTED BY HER HUSBAND
GREGORIO B. DE JESUS, PLAINTIFFS AND APPELLEES, VS.
PHILIPPINE NATIONAL BANK, DEL CARMEN BRANCH AND THE
PAMPANGA SUGAR MILLS,...**

G. R. No. 19299. November 28, 1964

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This appeal presents a procedural question on the dismissal of an appeal as perfected out of time. Specifically it involves application of Section 13, Rule 41 of the Rules of Court:

"SEC. 13. Effect of failure to file notice, bond, or record on appeal. — Where the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided, the appeal shall be dismissed."

Appellant invokes liberality in the interest of justice. Appellees cite among other things our statement in *Reyes vs. Court of Appeals*, 74 Phil. 235, 238: "We cannot fix a period with the solemnity of a statute and disregard it like a joke. If law is founded on reason whim or fancy should play no part in its application."

The controversy originated in Pampanga, in Civil Case No. 1128 of the Court of First Instance herein entitled "*Feliza Joven de Jesus vs. Philippine National Bank et al.*," where judgment was rendered in February 6, 1961 as follows:

"WHEREFORE, finding the averments of the complaint being supported by preponderance of evidence, the court hereby renders Judgment in favor of the plaintiff Feliza Joven de Jesus and against defendant Philippine National Bank, Del Carmen Branch, ordering the latter to pay the former the sum of P3,274.98 with legal interest thereon at the rate of 6% a year from September 15, 1956, date of the filing of the complaint, until the principal shall have been fully paid, plus the other sum of P500.00 as the attorney's fees of the said plaintiff, considering that the defendants in refusing to cancel the leasehold rights of Jacobo Lampa clearly unjustified, bordering in bad faith, with costs.

"The defendant Pampanga Sugar Mills is hereby absolved from the complaint. Meanwhile, the third party defendant Jacobo Lampa is hereby ordered to pay the defendant Philippine National Bank all sums of money it was ordered to pay the plaintiff including legal interest, and costs." (Record on Appeal, pp. 127-128.)

Of this decision the parties were furnished copies, through counsel, by registered mail.

On March 16, 1961 defendant Philippine National Bank filed its notice of appeal and a motion for extension of time to file record on appeal. On March 17, 1961, it filed its record on appeal and appeal bond. However, its appeal was dismissed on that day by the court on plaintiffs' motion as filed out of time because the registry return card showed receipt by defendant Philippine National Bank of its copy of the decision on February 13, 1961.

Defendant bank filed on March 22, 1961 a "motion for reconsideration and relief from, and/or to set aside the order of March 17, 1961". It alleged that movant's failure to appeal on time was due to "accident, mistake and/ or

excusable negligence," as supported by affidavits annexed to the motion. The court denied the motion on May 18, 1961. Defendant bank has appealed from the orders of March 17, 1961 and May 18, 1961.

The record will show that copy of the decision sent to appellant's counsel in its legal department was received on February 13, 1961. In its motion of March 22, 1961 filed before the court a quo, appellant stated that the registered mail containing said copy was received from Me Post office on February 13, 1961 by Eugenio Magpoc. Although the latter is postal mail and delivery clerk of appellant's cashier department, his affidavit states that "as such, one of my duties is to get and receive from the Post Office all registered mail matters addressed to the Philippine National Bank, its personnel and different departments" (Rec. on App., 151, Italics supplied).

Defendant bank admitted having filed its notice of appeal, record on appeal and appeal bond beyond the 30-day period, but contended in its motion of March 22, 1961, that the delay was due to "accident, mistake and/or excusable negligence." In support of such contention, it is alleged that on February 13, 1961 the registered letter was given by the bank's postal mail clerk Eugenio Magpoc to Feliciano Jimenez, Jr., registered mail clerk of appellant's cashier department. Due to volume of work, Feliciano Jimenez, Jr. delivered it to the receiving clerk of appellant's legal department only on February 15, 1961 and failed to inform the latter that it was received two days before.

Thereupon, it was stamped by said receiving clerk as received on February 15, 1961. On the basis of this date, appellant's counsel computed the period to appeal.

The lower court did not find excusable the negligence recited above. We see no compelling reason to disturb this finding. Appellant's counsel carelessly took for granted that the date of receipt stamped on the letter by the legal department's receiving clerk was the date of receipt from the post office. It was known or at least should have been known to him, that letters addressed to appellant's legal department were taken from the post office by Eugenio Magpoc and sorted out by Feliciano Jimenez, Jr. Thus, from appellant's system of handling and receiving correspondence for its legal and all other departments, it was clear that the date of receipt by the receiving clerks of its several departments could not be relied upon as the very same date of receipt from the post office. Counsel for appellant could have easily found out the latter date had he inquired from Eugenio Magpoc or Feliciano Jimenez, Jr. and in the circumstances, we find no excuse for his having failed to do so.

It should also be stated here that important steps required of litigants by the Rules cannot be left «* ht minute action without assuming the risk of losing the right to take such steps if, through the fault of the party concerned, the period for doing so is miscalculated. Such fatal consequence has often resulted as what happened to appellant's right to appeal in the case at bar. Hence, the attention and care needed on periods provided by the Rules of Court can never be overemphasized.

As we have stated in *Bellovs. Fernando*¹, L-16970, January 30, 1962:

"The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law (*Aguila vs. Navaro*, 55 Phil., 893; *Santiago vs. Valenzuela*, 78 Phil., 507). Section 3, Rule 41 of the Rules of Court requires that the notice of appeal, the appeal bond, and the record on appeal be all filed in court, and served on the adverse party, within thirty days from notice of judgment. . . . and compliance with this period for appeal is considered absolutely indispensable for the prevention of needless delays and to the orderly and speedy discharge of judicial business (*Altavas Conlu vs. C. A.*, L-14027, January 29, 1960), so that if said period is not complied with, the judgment becomes final and executory. . . . (*Layda vs. Legaspi*, 33 Phil. 83; *Pampolina vs. Suiza*, 12 Phil. 99; *Caisip vs. Cabangon*, L-14684, Aug. 26, 1960)."

While the above-stated rule may in special instances be relaxed "in the interest of justice", this exception is at

most discretionary for the Court to apply and can be invoked only when there is "lawful justification" as when circumstances of fraud, accident, mistake or excusable negligence" have intervened. (Reyes vs. Court of Appeals, 1 74 Phil. 235). As already discussed, such circumstances do not exist in this case. We may also add that appellant, while invoking the interest of justice, has not shown how it; would stand to be prejudiced from the loss of its right to appeal. From the record no such prejudice can be gathered, especially because the judgment provided for reimbursement in appellant's favor by third-party defendant Jacobo Lampa and the latter has not appealed therefrom.

Wherefore, the orders appealed from are hereby affirmed, with costs. So ordered.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ. concur.

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