

**MARIO MAGAT, SR., MARIO S. MAGAT, JR. MARIO S. MAGAT, III, MA.
MARGARITA M. ESTAVILLA, MA. MARJORIE S. MAGAT, ALL
SUBSTITUTE PARTIES AND HEIRS OF THE DECEASED PARTY,
JULIANA S. ...**

G.R. No. 205483. August 23, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

Petitioners in this case substituted as heirs for a deceased party. They crossed islands to file their appeal before the Court of Appeals. They had to contend with their financial difficulties. Yet, they were able to meet the periods required under Rule 42 for their motions for extension to file their petition for review. It was reversible error, if not callousness, on the part of the Court of Appeals to have summarily dismissed their appeal. Justice and the letter of the law demand that this case be reinstated and remanded.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed May 31, 2011[2] and January 15, 2013[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 05929 be reversed and set aside.

The assailed May 31, 2011 Resolution denied the Urgent Motion for Extension of Time to File Petition for Review under Rule 42[4] filed by Mario Magat, Sr., Mario S. Magat, Jr., Mario S. Magat III, Ma. Margarita M. Estavilla, and Ma. Marjorie S. Magat (petitioners). It likewise ordered that petitioners' appeal be dismissed.[5] The assailed January 15, 2013 Resolution denied petitioners' Motion for Reconsideration.[6]

On December 15, 2006,[7] respondent Tantrade Corporation (Tantrade) filed a Complaint for Collection of a Sum of Money with Damages praying that the original defendant, now deceased Juliana S. Magat (Juliana), be ordered to pay P266,481.50 plus interest, attorney's fees, litigation expenses,

and exemplary damages, for unpaid purchases of construction materials.[8]

Juliana denied making any such purchases for herself. She claimed that it was her contractor, respondent Pablo S. Borja, Jr. (Borja), who purchased such supplies from Tantrade, pursuant to their Owner-Contractor Agreement. Thus, she impleaded respondent Borja as a third-party defendant.[9]

In its April 8, 2010 Decision,[10] the Municipal Trial Court in Cities, Branch 2, Tagbilaran City found Juliana liable to pay Tantrade P305,833.10 plus interest.[11] It ruled that purchase orders signed by Juliana indicated that she bound herself to pay Tantrade for the purchased materials.[12] However, it added that under the Owner-Contractor Agreement, Borja bound himself to furnish all labor, materials, tools, and equipment for the construction of Juliana's building. Thus, it ordered Borja to reimburse Juliana the amount which she was ordered to pay Tantrade.[13]

Juliana appealed before the Regional Trial Court but passed away while her appeal was pending. Hence, she was

substituted by her heirs, now petitioners in this case.[14]

In its January 27, 2011 Decision,[15] the Regional Trial Court, Branch 47, Tagbilaran City affirmed in toto the Municipal Trial Court in Cities Decision. In its April 18, 2011 Order,[16] it denied petitioners' Motion for Reconsideration. Petitioners' counsel received a copy of the Regional Trial Court April 18, 2011 Order on May 9, 2011.[17]

On May 23, 2011, one (1) day before the lapse of the 15-day period to file a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure, petitioners filed their Urgent Motion for Extension of Time to File Petition for Review under Rule 42 (First Motion for Extension).[18] They asked for an additional 15 days from May 24, 2011, or until June 8, 2011, to file their appeal.[19] They justified their First Motion for Extension by citing financial constraints. They explained that they were still reeling from expenses due to the long hospitalization and death of Juliana, and thus, could not immediately finance their appeal. Petitioners' counsel further stated that petitioners' inability to finance their appeal had also prevented him from timely preparing the Petition for Review.[20]

Despite their declared financial difficulties, petitioners managed to pay the docket and other fees and to make a deposit for costs, as required for a Petition for Review under Rule 42. These were done alongside the filing of their First Motion for Extension.[21]

In its assailed May 31, 2011 Resolution,[22] the Court of Appeals denied the First Motion for Extension. It faulted petitioners for "procrastination"[23] as they filed a motion for extension a day before the end of the reglementary period. It further bewailed that "the Court could not be expected to have acted on such very limited time especially so when the Rollo was received by the office of the ponente only after its raffle on May 24, 2011." [24]

On June 6, 2011, or two (2) days before the expiration of the 15-day extension that petitioners originally prayed for in the First Motion for Extension, petitioners filed their Second Urgent Motion for Extension of Time (Second Motion for Extension). They had not yet received a copy of the assailed Court of Appeals May 31, 2011 Resolution by this time. They sought another 15 day extension, or until June 23, 2011, to file their Petition for Review. Petitioners' counsel explained that petitioners remained hard--pressed with their finances.[25]

On June 22, 2011, a day before the end of the second 15-day extension they prayed for, petitioners filed with the Court of Appeals their Petition for Review under Rule 42.[26]

It was only on June 29, 2011 that petitioners received a copy of the assailed Court of Appeals May 31, 2011 Resolution.[27] On July 11, 2011, they filed a Motion for Reconsideration.[28] They explained that the "[d]istance between Tagbilaran City and Cebu City, the length of time to prepare the main petition and the certified copies of pleadings and other court records, and the lack of money to finance the filing of a Petition for Review"[29] hindered them from immediately filing their appeal.

Not impressed with petitioners' reasons, the Court of Appeals issued its assailed January 15, 2013[30] Resolution, denying petitioners' Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the issue of whether or not the Court of Appeals committed a reversible error in denying the extensions sought by petitioners and in dismissing their appeal.

Rule 42 of the 1997 Rules of Civil Procedure governs appeals taken to the Court of Appeals from decisions of Regional Trial Courts rendered in the exercise of their appellate jurisdiction. Its Section 1 specifies the period for filing petitions for review:

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, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. 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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied)

It is evident from the last two (2) sentences of Section 1 that motions for extension to file Rule 42 petitions are permissible.

Rule 44 takes a particularly liberal stance with regard to the period for filing petitions. It explicitly enables extensions, while other modes of appeal do not. In contrast with Rule 42, Rule 40, or the rules on appeals to the Regional Trial Courts from the Municipal Trial Courts, and Rule 41, or the rules on appeals to the Court of Appeals of decisions of the Regional Trial Courts rendered in the exercise of their original jurisdiction, make no similar reference to any extension to file such appeals. They even proscribe motions for extension to file motions for new trial or reconsideration.[31]

Rule 42 enables not just one (1) but two (2) extensions of 15 days each. An initial extension may be given, provided that it is sought through a proper motion, docket and lawful fees are paid, and a deposit for costs is made before the expiration of the reglementary period. After this initial extension, Rule 42 permits a second extension of another 15 days. This second extension shall, however, only be "for the most compelling reason."

The grants of both first and second extensions are addressed to the sound discretion of the Court of Appeals. Mere compliance with the requirements of timely filing a proper motion, tendering payment and making a deposit, and averring compelling reasons does not guarantee the Court of Appeals' solicitude. The general rule remains to be the filing of a verified petition "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." Extensions are proper only under exceptional circumstances. Rule 42's indulgence is not a license for interruptions born by caprice or indolence:

As a rule, periods prescribed to do certain acts must be followed with fealty as they are designed primarily to speed up the final disposition of the case. Such reglementary periods are indispensable interdictions against needless delays and for an orderly discharge of judicial business. Deviations from the rules cannot be tolerated. More importantly, its observance cannot be left to the whims and caprices of the parties. What is worrisome is that parties who fail to file their pleading within the periods provided for by the Rules of Court, through their counsel's inexcusable neglect, resort to beseeching the Court to bend the rules in the guise of a plea for a liberal interpretation thereof, thus, sacrificing efficiency and order. As we emphasized in *Sublay v. NLRC*, we cannot respond with alacrity to every claim of injustice and bend the rules to placate vociferous protestors crying and claiming to be victims of a wrong.[32]

The need to comply with reglementary periods to file appeals is an adjunct of the basic principle that the right to appeal is merely vested by statute. Thus, anyone who appeals must diligently comply with the governing rules. The non admission of belatedly filed appeals amounts to decision on the merits:

There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules . . . [T]he perfection of an appeal

in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.

These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.[33] (Citations omitted)

By the very nature of pleading exceptions as justifications for liberality, it devolves upon the party seeking an extension to file an appeal to establish the merits of his or her plea:

[E]xceptional circumstances or compelling reasons may have existed in the past when we either suspended the operation of the Rules or exempted a particular case from their application. But, these instances were the exceptions rather than the rule, and we invariably took this course of action only upon a meritorious plea for the liberal construction of the Rules of Court based on attendant exceptional circumstances. These uncommon exceptions allowed us to maintain the stability of our rulings, while allowing for the unusual cases when the dictates of justice demand a correspondingly different treatment.

Under this unique nature of the exceptions, a party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction.[34]

This Court finds petitioners here to have effectively pleaded grounds that warrant the extensions prayed for. More basic, however, this Court finds it to be a serious error for the Court of Appeals to decry petitioners' supposed "procrastination" when, to begin with, petitioners acted well within the periods sanctioned by Rule 42. Petitioners did not ask the Court of Appeals to sanction an aberrant situation beyond Rule 42, Section 1's contemplation. Thus, this case is not even about suspending, relaxing, or extraordinarily applying Rule 42, Section 1.

The Court of Appeals made much of how petitioners filed their First Motion for Extension a day before the end of the reglementary period. It ruled how "[it] could not be expected to have acted on such very limited time especially so when the Rollo was received by the office of the ponente only after its raffle on May 24, 2011." [35]

This Court is baffled by the Court of Appeals' bemoaning.

Rule 42 allows 15 days to file petitions for review. Within the same period, appellants are expressly permitted by the penultimate sentence of Rule 42, Section 1 to file motions for extension. It is true that in seeking an extension, rather than immediately filing a petition, appellants wager on the Court of Appeals' favorable action. Still, it remains that they have 15 days to seek an extension. They should not be faulted for maximizing the period that Rule 42 allows. In doing so, they are not "procrastinating" but are merely exercising a legitimate option. If the Court of Appeals takes issue with the filing of motions for extension a day before the end of the proper period, it should advocate a revision of Rule 42 instead of faulting parties which act within the bounds of this rule.

Petitioners can neither be faulted for the receipt by the ponente's office of the Rollo on May 24, 2011. Party-litigants have no control over the internal processes of courts, including the time it takes for justices to receive the records. They simply have nothing to do with that. Party--litigants need not, could not, and should not intrude into a court's internal dynamics. They only need to comply with what the rules require. They have done their part once they timely file their submissions.

To legitimately seek an initial extension, petitioners had to file a proper motion and to ensure that docket and lawful fees were paid and deposit for costs was made before the expiration of the reglementary period. Save for the Court of Appeals' assertion of procrastination, there is no intimation that petitioners failed in any of these

requirements. No other technical defect has been attributed to petitioners' First Motion for Extension. They also timely paid the docket and other fees, and deposited for costs. They did these alongside the filing of their First Motion for Extension before the lapse of 15 days following their receipt of a copy of the Regional Trial Court April 18, 2011 Order on May 9, 2011.[36]

Petitioners did not abuse court processes when they sought a second extension. Their Second Motion for Extension was filed two (2) days before the end of the first 15-day extension. It was filed, not only within, but in advance of the lapse of the period for seeking the second extension sanctioned by the final sentence of Rule 42, Section 1. It is true that by the time the Second Motion for Extension was filed on June 6, 2011, the Court of Appeals had already denied petitioners' First Motion for Extension in its assailed May 31, 2011 Resolution. Petitioners, however, would not be notified of that denial until June 29, 2011. The most that petitioners can be charged with is optimism that, barring timely notification to the contrary, their First Motion for Extension was granted. They may have been guileless, but they were not malicious.

Petitioners did not exhaust the additional 15 days they sought and filed their Petition for Review a day ahead of what would have been their deadline. When they did this on June 22, 2011, they had yet to learn that the Court of Appeals had declined their initial plea for an extension. Their lack of knowledge belies intent to disrespect the Court of Appeals or to run afoul of the Rules of Court. Moreover, their filing of subsequent submissions in advance of their deadlines demonstrates sincerity in preventing undue delay.

Ultimately, this Court considers it to be in the better interest of justice had the Court of Appeals been more perceptive of petitioners' plight and granted them the extension sought, in order that they could have fully litigated their cause.

Their pleaded justifications were hardly frivolous. Petitioners stepped into the shoes of a defendant who passed away. Certainly, substituting for a deceased party is not forced upon heirs[37] and petitioners' inclusion in litigation was due to their free volition. Still, petitioners' predicament of grappling with the potentially stained name of a deceased wife and mother, who could no longer defend herself against allegations of unpaid debts, and whose estate faced possible diminution or dissipation likely made it pressing for them to pursue her case. Doing so, however, meant shouldering costs that were not initially theirs to bear. By the unfortunate fortuity of Juliana's passing, petitioners found themselves defending a case that was not their own and bearing all the costs-financial or otherwise-that it entailed.

By the time they had been compelled to litigate, Juliana's case was already in its advanced stages. By then, pursuing an appeal literally entailed crossing the sea to another island. The Court of Appeals should have considered that the required docket fees and deposit for costs under Rule 42 were not all that petitioners had to shoulder. There, too, was the need for proper legal representation in the advanced stages of litigation and having to bear the adversity of having twice lost in lower courts.

Petitioners were simultaneously afflicted with the tragedy of death and constrained by their means. These were compelling reasons warranting a solicitous stance towards them. Justice is better served by extending consideration to them and enabling an exhaustive resolution of the parties' claims. This is especially so as petitioners' utmost good faith was demonstrated; they having seen to it that, even as they were imploring the Court of Appeals' understanding, each of the technical requirements of Rule 42 was satisfied.

WHEREFORE, the Petition is GRANTED. The Court of Appeals' assailed May 31, 2011 and January 15, 2013 Resolutions in CA-G.R. SP No. 05929 are REVERSED and SET ASIDE. The Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure filed by petitioners before the Court of Appeals is REINSTATED and the Court of Appeals is directed to resolve its merits with dispatch.

SO ORDERED.

Velasco, Jr.,(Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

November 29, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on August 23, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 29, 2017 at 2:20 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 3-51.

[2] Id. at 205-206. The Resolution was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles of the Nineteenth Division, Court of Appeals, Cebu City.

[3] Id. at 243-245. The Resolution was penned by Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino of the Special former Eighteenth Division, Court of Appeals, Cebu City.

[4] Id. at 155-163.

[5] Id. at 206.

[6] Id. at 243-245.

[7] Id. at 52.

[8] Id. at 11-12.

[9] Id. at 12.

[10] Id. at 131-143. The Decision, docketed as Civil Case No. 5590, was penned by Judge Emma Eronico-Supremo.

[11] Id. at 142.

[12] Id. at 139-140.

[13] Id. at 142.

[14] Id. at 145.

[15] Id. at 144-147. The Decision, docketed as Civil Case No. 7776, was penned by Presiding Judge Suceso A. Arcamo.

[16] Id. at 157.

[17] Id.

[18] Id. at 155-163.

[19] Id. at 157. The rollo erroneously cited June 8, 2009.

[20] Id.

[21] Id. at 6.

[22] Id. at 205-206.

[23] Id. at 206.

[24] Id.

[25] Id. at 6-7.

[26] Id. at 169-204.

[27] Id. at 7.

[28] Id.

[29] Id. at 244.

[30] Id. at 243-245.

[31] RULES OF COURT, Rule 40, sec. 2 provides:

Section 2. When to appeal. - An appeal may be taken within fifteen (15) days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file notice of appeal and a record on appeal within thirty (30) days after notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

RULES OF COURT, Rule 41, sec. 3 provides:

Section 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

[32] LTS Philippines Corp. v. Maliwat, 489 Phil. 230, 234-235 (2005). [Per J. Callejo, Sr., Second Division] citing Sublay v. NLRC, 381 Phil. 198 (2000) [Per J. Bellosillo, Second Division].

[33] Videogram Regulatory Board v. Court of Appeals, 332 Phil. 820, 828-829 (1996), [Per J. Panganiban, Third

Division].

[34] *Pates v. COMELEC*, 609 Phil. 260, 266 (2009), [Per J. Brion, En Banc] citing *Prudential Guarantee and Assurance, Inc. v. Court of Appeals*, 480 Phil. 134 (2004) [Per J. Carpio-Morales, Third Division].

[35] *Rollo*, p. 206.

[36] *Id.* at 157.

[37] RULES OF COURT, Rule 3, Section 16:

Section 16. Death of Party; Duty of Counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

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