

**CORNELIO, VALERIA, CARLOS, MANUELA, PANTO, DOMINADOR
AND BESALUZ, ALL SURNAMED RUIZ, PETITIONERS, VS. HON.
NUMERIANO G. ESTENZO, IN HIS CAPACITY AS PRESIDING JUDGE OF
THE COURT...**

G.R. No. 50082. June 04, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Seeking to recover a 4,000-square-meter parcel of land which was allegedly fraudulently and illegally claimed by private respondents, petitioners filed on June 8, 1978 a complaint for quieting of title and declaration of nullity of tax declarations with damages in the Court of First Instance of Leyte at Ormoc City (Civil Case No. 1714-0).

Private respondents Guillerma Vda. de Viacrusis, Fe Viacrusis and Winston Cury thereafter filed their answer to the complaint alleging, among other things, that the late Juan Viacrusis (Guillerma's husband) had no heirs by the names of Edgardo Viacrusis and Benjamin Viacrusis who had been named defendants in the complaint. They instead identified the other heirs of Juan Viacrusis as Venancio L. Viacrusis and Edgar L. Viacrusis and indicated in their answer said heirs' respective addresses. Private respondents Rosario Valenzona and Eriberta Arlos also filed their respective answers.

On July 14, 1978, petitioners filed a reply to the answers of the Heirs of Juan Viacrusis and Winston Cury, and that of Eriberta Arlos. On July 17, 1978, petitioners' counsel received a notification dated July 13, 1978 of the deputy sheriff stating that summonses had been served on the defendants except for three of them, namely, Edgardo Viacrusis, whom the sheriff failed to contact as he was allegedly in Manila; Benjamin Viacrusis, who was not a resident of Palompon, Leyte; and Corazon Buhi-on, who was in the United States.[1] On July 21, 1978, petitioners also filed a reply to the answer of Rosario Valenzona, and thereafter notified the court of the new address of respondent Corazon Buhi-on.[2]

Thereafter, Civil Case No. 1714-0 became dormant.

Around four months later or on November 27, 1978, the lower court issued an order dismissing Civil Case No. 1714-0. The order states:

"For failure on the part of the plaintiffs to prosecute this case within a reasonable period of time, it appearing that as early as July 17, 1978 plaintiffs' counsel received a copy of the notification of this Court informing him that some defendants were not contacted as they were no longer in the addresses given and that up to the present time, this Court was not furnished the new addresses of the said defendants, particularly defendants Edgardo Villacrusis (sic) and Benjamin Viacrusis, let this case be, as it is hereby DISMISSED.

"SO ORDERED." [3]

Petitioners moved for reconsideration of said order alleging that the court had already been notified of the correct names and addresses of defendants Edgardo and Benjamin Viacrusis through the answer of their mother,

Guillerma Vda. de Viacrucis; that in all probability, said defendants would adopt as their own their mother's answer; that they intended to amend their complaint to reflect the real names of Edgardo and Benjamin; that they had not lost interest in prosecuting the case; that if there had been some delay in its prosecution, it was due to pressure of work on the part of their counsel and their own preoccupation with the other case which had been set for hearing for four times already, and that their alleged failure to prosecute was only with respect to Edgardo and Benjamin and not with regards to the other defendants who had filed their answers and whose lots subjects of the case were different from the ones claimed by Edgardo and Benjamin. Petitioners accordingly filed their amended complaint reflecting the correct names and addresses of the defendants.

Defendants Winston Cury, Guillermo Vda. de Viacrucis, Guia Viacrucis and Fe Viacrucis opposed the motion for reconsideration alleging that inasmuch as petitioners had been officially notified of the names of the other heirs of Juan Viacrucis, they should have amended the complaint within a reasonable period of time and made proper steps for the issuance of alias summonses so that trial of the case could proceed, and that the motion, which was filed on January 3, 1979, had been filed after the lapse of the 30-day period mandated by Section 2, Rule 36 of the Rules of Court.

In her separate opposition, Rosario Valenzona averred that the motion for reconsideration had been filed out of time and that pursuant to Section 3, Rule 17 of the Rules of Court, the dismissal of the case had the effect of an adjudication on the merits.

In its order dated January 19, 1979, the lower court denied the motion for reconsideration and the admission of the amended complaint.

Alleging that the lower court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the orders dismissing the case for failure to prosecute, petitioners interposed the instant special civil action of certiorari, prohibition and mandamus praying for the annulment of the orders of the lower court and the reinstatement of Civil Case No. 1714-0.

The dismissal of Civil Case No. 1714-0 is based on the following provision of Rule 17 of the Rules of Court:

"SEC. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

The particular reasons cited by the lower court for dismissing the case are the alleged failure of the plaintiffs to prosecute the case for an unreasonable length of time and their failure to comply with the "notification" informing them that some defendants had not been contacted because the court had not been furnished their correct addresses.

Dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court. That discretion, however, must not be abused. Thus, courts may not enter a dismissal which is not warranted by the circumstances of the case.[4]

What is an unreasonable length of time under Section 3, Rule 17 also rests in the sound discretion of the trial court but its determination also depends upon the circumstances of each particular case.[5] Considering the peculiar circumstances in this case, we hold that the four-month interregnum between the filing of plaintiffs' reply to the answer of the defendants and the issuance of the dismissal order, is not an unreasonable length of time within the purview of Section 3, Rule 17.

The addresses of the defendants who did not file their answers are all on record. A thorough reading of the

pleadings would have avoided the delay in the proceedings. While it is true that the plaintiffs erred in giving the correct names and addresses of the three defendants, the correct names of two of them were furnished by the co-defendants themselves. The plaintiffs also informed the court of the new address of defendant Corazon Buhi-on. Hence, the plaintiffs are not solely to blame for the dormancy of Civil Case No. 1714-0. The court and its officials, particularly the clerk of court who is charged, under Section 1, Rule 14 of the Rules of Court, with the task of issuing summonses, also appear to have failed to perform their tasks properly.

The lower court also gravely abused its discretion in considering the notice of the sheriff as its order which plaintiffs failed to heed. There is nothing in the notice which indicates that the plaintiffs should furnish the addresses of the three defendants who had not filed their answer. All that is indicated in the notice is the fact that summonses have been served on the defendants except for three of them who were "not contacted".[6] Said notification is therefore no better than a notice of case status which cannot be equated to a court order.[7]

In issuing the order of dismissal, the trial court might have been impelled by the idea of a speedy disposition of the case. But speed is not the end-all and be-all of the resolution of court cases. The lower court should be mindful of the observation on this matter of Justice Jose B. L. Reyes, who, in *Macasa vs. Herrera* (101 Phil. 44), said:

"Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court."

In view of the foregoing, we see no reason to discuss private respondents' contention that the motion for reconsideration of the dismissal order had been filed out of time. Suffice it to say that in this case, to give priority to procedural issues in the face of the fact that the dismissal order has the effect of an adjudication on the merits would result in injustice.

WHEREFORE, the assailed orders of the respondent court are hereby declared NULL and VOID. The lower court is ordered to admit the amended complaint in Civil Case No. 1714-0 and accordingly proceed with its disposition.

This decision is immediately executory. No costs.

SO ORDERED.

Gutierrez, Jr. and Bidin, JJ., concur.

Feliciano and Cortes, JJ., on leave.

[1] Rollo, p. 49.

[2] Rollo, p. 55.

[3] Rollo, p. 57.

[4] *Municipality of Dingras vs. Bonoan*, 85 Phil. 457; *Venus-Sanciangco vs. Sanciangco*, L-16219, April 28, 1962, 4 SCRA 1207.

[5] *Racimo v. Dino*, L-17804, February 27, 1976, 69 SCRA 421.

[6] Rollo, p. 49.

[7] *Koh vs. Intermediate Appellate Court*, G.R. No. 71388, September 23, 1986, 144 SCRA 259.

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