

**GREGORIO LABITAD, REYMUNDO GERONA, LEOPOLDO SEGARA,
ILUMINADO BORRES, EDGARDO PEPITO, SOFRONIO BORRES,
VERGILIO GABATO, PORFERIO MARAASIN, FRANCO BARCELONA,
JOEL BACLAY, EDUARDO...**

G.R. No. 53877. July 17, 1995

Ponente: QUIASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-53877/>

QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision dated January 15, 1980 of the Court of Appeals in CA-G.R. No. SP 07812 and the Resolution dated April 17, 1980 denying reconsideration of the decision.

I

This petition originated from a complaint filed in 1976 by respondent Carruf Agricultural Corporation against petitioners before the then Court of First Instance of Bukidnon, Branch VI (Civil Case No. 797). The complaint sought to recover the possession of a portion of the 510-hectare land located at Balanakan, Valencia, Bukidnon which private respondent was leasing from the government. Private respondent alleged that petitioners, in flagrant disregard of its right as lessee, unlawfully entered and cultivated approximately 78 hectares of the property.

On August 15, 1977, the trial court rendered a decision in favor of private respondent and ordered petitioners to vacate the land in question and to jointly and severally pay the latter P10,000.00 as damages and P5,000.00 as attorney's fees.

Petitioners received a copy of the decision on August 17, 1977. On September 14, 1977, they moved for reconsideration thereof. A copy of the order denying the motion was received by petitioners on October 25, 1977. On October 27, 1977, they filed a notice of appeal, a motion to appeal as paupers, and a motion for extension of time to file the record on appeal. The following day, October 28, 1977, petitioners deposited the amount of P120.00 as appeal bond.

On the same day, private respondent filed a motion for execution of the decision alleging that the same had become final for failure of petitioners to perfect a timely appeal.

On December 12, 1977, the trial court issued an order dismissing petitioners' appeal for having been filed out of time and simultaneously directing the clerk of court to issue the corresponding writ of execution. Petitioners moved for reconsideration. On March 6, 1978, the trial court denied the motion and reiterated its order for the issuance of a writ of execution.

Petitioners thereafter filed a petition for certiorari and mandamus before the Court of Appeals alleging that the trial court acted without or in excess of jurisdiction and with grave abuse of discretion in dismissing their appeal (CA-G.R. No. SP 07812). On January 15, 1980, the Court of Appeals dismissed the petition and affirmed the

order of the trial court.

Hence, this petition. As prayed for, this Court issued on May 28, 1980 a temporary restraining order enjoining respondents from enforcing the decision of the trial court.

II

Petitioners contend that when they filed their motion for reconsideration, they still had three more days of the appeal period of 30 days under Section 3, Rule 41 of the Rules of Court. According to them, the 30-day period expired on October 28, 1977, not October 27, 1977 as the trial court erroneously held. Since petitioners were able to file their notice of appeal and motion to extend time to file the record on appeal on October 27, 1977 and deposit their cash appeal bond on October 28, they were deemed to have perfected their appeal within the reglementary period.

The operative provision when petitioners filed their notice of appeal was Section 3 of Rule 41 of the Rules of Court, which reads as follows:

"How appeal is taken.— Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion" (Underscoring supplied).

Under this provision, an appeal is deemed perfected when the aggrieved party files with the trial court a notice of appeal, an appeal bond, and a record on appeal and serves copies thereof on the adverse party within 30 days from receipt of the judgment appealed from. The 30-day period commences to run from the time the aggrieved party receives notice of the judgment. It is however suspended if a motion for reconsideration or one for new trial is filed, which, if denied, continues to run upon receipt of the order denying the same as if no interruption has occurred. The time during which a motion for reconsideration or one for new trial has been pending shall be counted from the date the motion is duly filed to the date when the movant is duly notified of the denial thereof (*De las Alas v. Court of Appeals*, 83 SCRA 200 [1978]; *Recto v. Bardos*, 15 SCRA 123 [1965]; *Secretary of Agriculture and Natural Resources v. Hon. Judge, CFI of Manila*, 97 Phil. 125 [1955]). The period during which the motion is pending with the trial court includes the day the same is filed because the motion shall have been already placed under the court's consideration during the remaining hours of the day (*De las Alas v. Court of Appeals*, *supra*).

In the case at bench, petitioners received a copy of the decision on August 17. They filed their motion for reconsideration on September 14. This day should be excluded from the appeal period; hence, petitioners had used only 27 days thereof and had three days left. Since the motion was already pending with the trial court from September 14 and remained so until October 25, the day petitioners received the order denying their motion, the appeal period continued on October 26 and ended on October 28, as petitioners correctly stated.

It was error for the trial court to dismiss petitioner's appeal on the ground that the appeal bond was filed one day late and then declared it unnecessary to rule on the motion for extension of time to file record on appeal. The appeal bond was in fact filed on time. Where a motion for extension of time to file the record on appeal was made within the original 30-day period, the record on appeal subsequently submitted is considered seasonably filed (*Commercial Union Assurance Company, Ltd. v. Lepanto Consolidated Mining Company*, 86 SCRA 79 [1978]).

WHEREFORE, the petition is GRANTED. The Decision dated January 15, 1980 and the Resolution dated April 17, 1980 of the Court of Appeals in CA-G.R. No. SP 07812 are REVERSED. The Court of Appeals is DIRECTED to decide petitioners' appeal with dispatch.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.