

**CEBU STEVEDORING COMPANY, INC., PETITIONER, VS. THE
HONORABLE JUDGE JOSE R. RAMOLETE OF THE COURT OF FIRST
IN-STANCE OF CEBU, MULTIFARMS AGRO--INDUSTRIAL
DEVELOPMENT CORPORATION...**

G.R. No. 56627. August 17, 1981

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

The Court sets aside the order of respondent judge dated March 16, 1981, denying the appeal of herein petitioner in Civil Case No. R-17440 of that court, and instead ordering the issuance of a writ of execution, on the alleged ground that at the time lawyer Francisco M. Malilong, Jr. filed on behalf of petitioner (therein defendant) the record on appeal, notice of appeal and appeal bond and perfected petitioner's appeal (admittedly five days before the lapse of the 30-day reglementary period), he "had no authority yet from the defendant to appear as its collaborating counsel," said lawyer having filed his formal notice of appearance as such counsel only nine days afterwards. The petition for mandamus is therefore granted and the court is hereby ordered to give due course to the appeal. The entry of appearance of an attorney under section 21 of Rule 138 of the Rules of Court is merely to enable the officers concerned to effectively serve processes on the attorney of record. The lack of such formal notice or entry of appearance does not render pleadings filed by a new collaborating counsel to be of no legal effect.

On October 11, 1978, herein private respondent Multifarms Agro-Industrial Development Corporation filed a complaint (as plaintiff) for consignment against herein petitioner (as defendant) in the Court of First Instance of Cebu, presided by respondent judge.

After issues had been joined, wherein only a question of law was involved - the proper interpretation of Customs Administrative Order No. 8, series 1974, dated May 27, 1973 - so that respondent court simply required the parties to submit affidavit and counter-affidavit together with their documentary evidence in support thereof, judgment was rendered in favor of herein respondent, to wit: "1. Declaring (a) the liability of the plaintiff to the defendant to be in the sum of P9,783.33; (b) defendant's Invoice No. 4917 dated July 14, 1978 as CANCELLED; (c) the amount of P4,743.33 as validly consigned with the office of the Clerk of Court to be added to the advance payment of P5,000.00 and applied as full payment of plaintiff's liability to the defendant under par. (c) above; 2. Ordering the defendant to pay plaintiff damages by way of attorney's fees in the sum of P1,000.00; and dismissing defendant's counterclaim for lack of merit.

On December 10, 1980, well within the reglementary period to perfect the appeal, petitioner, thru counsel Malilong, filed with the trial court a notice of appeal, stating its intention to elevate the case to the Supreme Court on questions of law. The petitioner thru same counsel also filed on the same date the record on appeal and paid the appeal bond, thereby seasonably perfecting the appeal.

On December 13, 1980, respondent filed its opposition to the appeal alleging that the notice of appeal as well as

the record on appeal were not signed by Atty. Valentin Zozobrado, the counsel of record and that there was no showing that the appeal bond had been paid.

To show that the appeal bond had in fact been paid timely on December 10, 1980, petitioner, on December 19, 1980 filed its notice of filing cash appeal bond, attaching thereto the confirmatory receipt^[1] dated December 10, 1980 as issued by the Clerk of Court of the Court of First Instance of Cebu in lieu of Official Receipt No. 3677371 for P120.00 issued by the Provincial Treasurer's Office to whom the appeal bond was paid, as said official receipt had to be retained by the Clerk of Court. On the same day, lawyer Francisco Malilong, Jr. filed a formal notice of appearance as counsel for the defendant in collaboration with Atty. Valentin A. Zozobrado, the first counsel of record.

After a period of more than two months, or on February 26, 1981, respondent Multifarms filed a motion for execution alleging that judgment had already become final and executory on the alleged ground that "the defendant was not able to file a notice of appeal and record on appeal within the 30-day reglementary period to perfect the appeal." On March 3, 1981, herein petitioner filed an Opposition to the motion for execution contending, as above stated, that it had timely perfected the appeal on December 10, 1980, well within the prescribed period.

On March 16, 1981, respondent judge issued his challenged or-order denying the appeal and ordering the issuance of a writ of execution on the ground that "while indeed the notice of appeal and the record on appeal were filed on time and the appeal bond was also paid on time, the same were of no force and effect since the lawyer who signed the same was not the attorney of record."

Failing in his motion for the reconsideration of said order, petitioner instituted this action of mandamus, praying that respondent judge be ordered to immediately reinstate the appeal, approve the re-cord on appeal and thence forward the records of the case to this Court for review and for the payment of costs by private respondent. As ur-gently prayed for, a temporary restraining order against enforcement of the challenged order was issued on April 14, 1981 by this Court, and upon receipt of the required comment of respondents, the Court declared the case submitted for decision.

The question for determination is whether the lack of a formal written notice of appearance by the collaborating lawyer for herein pe-titioner, Atty. Malilong, Jr., would affect adversely the validity of the appeal timely perfected by such counsel.

Section 2 of Rule 13 provides:

"SEC. 2. Papers to be filed and served. -Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side."

While the context of the above-quoted provision of the Rules that the formal appearance of an attorney shall be filed with the court and served upon the parties affected thereby clearly indicate that the appearance of such an attorney shall be in writing, the underlying reason for such requirement is that to enable the officers concerned to effectively serve processes on the attorney of record.^[2] Accord-ingly, the fact that no formal written entry of appearance has been filed by a new collaborating counsel or that the same was filed only after he had filed certain pleadings could not seriously affect, much less nullify, the validity of the acts and the pleadings filed by the

appearing attorney as wrongly held by respondent judge. (At most, the judge could compel the attorney to file a formal written notice of appearance, in addition to his appearance through the pleadings filed by him.)

It has thus been categorically ruled in *Ong Ching vs. Ramolete, etc., et al.*[3] that "while it may be desirable in the interest of an orderly conduct of judicial proceedings that a counsel for a party should file with the court his formal written appearance in the case, before filing a pleading therein, or mention in said pleading that he is submitting the same in collaboration with the counsel of record, the mere circumstance that such acts were not done does not warrant the conclusion that the pleading filed by such counsel has no legal effect whatsoever."

As to Atty. Malilong's authority to appear as collaborating counsel, the following provision of section 21 of Rule 138 reads:

"Section 21. Authority of attorney to appear. -An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. x x x."

It has been held that as a logical corollary of the presumption that a lawyer is authorized to appear for the party he represents, it is also presumed that the lawyer is authorized by, and has conferred with, his client regarding the case before he files an important responsive pleading for and on behalf of the latter.

If respondent judge entertained any serious doubt on the authority of Atty. Malilong even after the latter had formally entered his appearance in writing as collaborating counsel for the therein petitioner, nine days after the perfection of the appeal, respondent judge should have required the said attorney to produce or prove his authority, in accordance with the above-quoted Rule.

Respondent judge in ruling that the appeal seasonably perfected by Atty. Malilong on behalf of petitioner was "of no force and effect" notwithstanding that petitioner indubitably proved at the reconsideration hearing that Atty. Malilong had been duly employed as petitioner's legal counsel since February 16, 1980 at P2,500.00 per month, and in dismissing the appeal, manifestly erred and acted with grave abuse of discretion.

Respondent judge clearly ignored the oft-repeated principles laid down by the Court that "(A) rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction."[4]

The Court does not look with favor on such disregard of basic rules and principles by the lower courts which needlessly compel the aggrieved parties to resort to the higher courts for redress and take up the time which they could well devote to more meritorious cases, and it will administratively call judges to account therefor in appropriate cases which manifest gross ignorance of the law or incompetence. While the Court has held that it would not hold judges administratively liable for honest errors of judgment, this case can hardly be said to fall within such a category.

The Court has noted a common error of trial courts and lawyers in cases of appeals from the Courts of First

Instance to the Supreme Court on pure questions of law, of the appellant still filing a record on appeal which is in due course approved and elevated to the Supreme Court, as in this case. Such mode of appeal of filing a Record on Appeal together with the appeal bond and notice of appeal in the Court of First Instance is good only for regular appeals from the Court of First Instance to the Court of Appeals, and is governed by Rule 41 of the Rules of Court. Appeals directly from the Court of First Instance to the Supreme Court as in this case have been governed since September 9, 1968 by Republic Act No. 5440 whereunder the appellant is required to file a petition for review on certiorari (as in appeals from the Court of Appeals to the Supreme Court under Rule 45 of the Rules of Court, specifically sections 1, 2 and 3 thereof[5]) with payment of the docketing fees and service of copy of the petition on the Court of First Instance - which petition the Supreme Court may forthwith dismiss as "without merit" or "prosecuted manifestly for delay" or raising questions "too unsubstantial to require consideration." [6]

Following this Court's established practice where the trial court has nevertheless forwarded to this Court the appellant's Record on Appeal (which is not necessary in direct appeals from the Court of First Instance to this Court on questions of law) and so as to expedite the matter, the Court instead of waiting for the Record on Appeal to be elevated upon respondent judge's giving of due course to the appeal as herein required, will now require petitioner to file directly with this Court the corresponding petition for review on certiorari of respondent court's judgment of October 27, 1980, and pay the docket and legal re-search fund fees in the total amount of P53.00 within fifteen (15) days from notice hereof, as hereinabove indicated.

ACCORDINGLY, the order complained of is set aside and the respondent court is hereby order-ed to give due course to the appeal. As stated in the preceding paragraph, petitioner is granted a period of fifteen (15) days from notice hereof within which to file directly with this Court the correspond-ing petition for review on certiorari of respondent court's judgment of October 27, 1980 and pay the docket and legal research fund fees. With costs against private respondent. SO ORDERED.

Makasiar, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

[1] No. 3161627 dated December 10, 1980.

[2] Luzon Rubber & Manufacturing Co. v. Estaris, L-31339, August 31, 1973.

[3] G.R. No. L-35356, May 18, 1973.

[4] Maqui vs. Court of Appeals, 69 SCRA 368, 374.

[5] Sections 1, 2 and 3 of Rule 45, Rules of Court read:

"SECTION 1. Filing of petition with Supreme Court. - A party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fif-teen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying at the same time to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of ser-vice of a copy thereof to the Court of Appeals.

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"SECTION 2. Contents of petition. - The peti-tion shall contain a concise statement of the matters involved, the assignment of errors made in the court below, and the reasons relied on for the allowance of the petition, and it should be accompanied with a true copy of the judgment sought to be reviewed, together with twelve (12) copies of the record on appeal, if any, and of the petitioner's brief as filed in the Court of Appeals. A verified statement

of the date when notice of judgment and denial of the motion for reconsideration, if any, were received shall accompany the petition.

"Only questions of law may be raised in the petition and must be distinctly set forth. If no record on appeal has been filed in the Court of Appeals, the clerk of the Supreme Court, upon admission of the petition, shall demand from the Court of Appeals the elevation of the whole record of the case.

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"SECTION 3. Dismissal. - Upon petition of the respondent filed within five (5) days from service of the petition, or upon its own motion, the Supreme Court may dismiss the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised there-in are too unsubstantial to require consideration."

[6] See Rule 45, section 3, as quoted above.

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