

LUISA ECHAUS, PETITIONER, VS. COURT OF APPEALS, EMILIO GON-ZALES AND VIVIAN GONZALES, RESPONDENTS.*G.R. No. 57343. July 23, 1990*

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-57343/>**NARVASA, J.:**

Time honored and of constant observance is the principle that no judgment, or order whether final or interlocutory, has juridical existence until and unless it is set down in writing, signed, and promulgated, i.e., delivered by the Judge to the Clerk of Court for filing, release to the parties and implementation,[1] and that indeed, even after promulgation, it does not bind the parties until and unless notice thereof is duly served on them by any of the modes prescribed by law.[2] This is so even if the order or judgment has in fact been orally pronounced in the presence of the parties, or a draft thereof drawn up and signed and/or copy thereof somehow read or acquired by any party.[3] In truth, even after promulgation (i.e., filing with the clerk of court), and even after service on the parties of notice of an order or judgment, the Court rendering it indisputably has plenary power to recall and amend or revise it in substance or form on motion of any party or even *motu proprio*, provided that in the case of a final order or judgment, the same has not attained finality.[4]

The appellate proceedings at bar originated from an action for collection of an indebtedness of P141,000.00 instituted in the then Court of First Instance of Quezon City by the Spouses Emilio Gonzalez and Vivian Gonzales against Luisa Echaus.[5] The action resulted in a judgment containing the following dispositive portion, to wit:[6]

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant for the principal amount of P97,600.00 with interest thereon at ten percent (10%) per annum from the date of the filing of the complaint on December 14, 1978 until fully paid plus the costs of the suit. The plaintiffs are directed to return the watch which the plaintiffs claim to be valued at P8,000.00 but which value is not acceptable to the defendant, upon full payment by the defendant of her obligation to the plaintiffs."

Luisa Echaus was duly served with notice of the judgment, and within the thirty-day period then prescribed for taking an appeal, filed a notice of appeal and appeal bond, as well as a motion for extension of time to file a record on appeal.[7] The respondent Judge denied the appeal it appearing, in his view, "that the decision rendered in this case ** was based strictly on the admission, agreement and waiver made by both parties at the previous pre-trial **".[8]

Echaus promptly filed a motion for reconsideration of the order dismissing her appeal. She also filed the requisite record on appeal. About a week later, however, the respondent Judge ordered the issuance of a writ of execution in favor of the plaintiffs, the Spouses Emilio Gonzales and Vivian Gonzales.[9]

Echaus hied herself off to the Court of Appeals, praying for the issuance of writs of certiorari and mandamus to annul the decision and orders of respondent Judge, and compel him to give due course to her appeal.[10] Her action was docketed as CA-G.R. No. SP-10149-R. Her plea for the writ of certiorari ("to set aside the decision * * in the stated Civil Case No. Q-26572") was denied, but her plea for the writ of mandamus was GRANTED by the

judgment dated February 18, 1980 of the Court of Appeals which accordingly ordered the Judge "to give due course to the appeal of petitioner in the same said case." [11] The Gonzales Spouses' attempt to have this Court reverse the judgment of the Court of Appeals was unsuccessful. Their petition for review on certiorari [12] was denied by Resolution dated July 11, 1980 because filed late and having, in any case, no merit.

On December 9, 1980, Echaus filed with the Trial Court an "Urgent Motion to Transmit Record on Appeal and other Pertinent Papers to the Appellate Court," which she set for hearing on December 15, 1980. [13] The Gonzales Spouses also filed on the same date but apparently at an earlier hour, [14] a "Motion for Execution Pending Appeal," which they set for hearing on December 18, 1980. [15] Echaus then presented an "Urgent Supplemental Motion to Implement ** (Judgment) of Court of Appeals dated February 18, 1980" [16] -- which judgment, as aforesaid, required respondent Judge to give due course to her appeal.

According to Echaus, at the hearing on December 15, 1980 of her aforesaid motion to transmit record on appeal and other papers to the Court of Appeals, respondent Judge verbally approved the record on appeal in open court, this allegedly being "evidenced by the calendar of Branch V ** (showing) the word 'APPROVED' written opposite the incident 'Urgent Motion to Transmit Record on Appeal, etc.,' with crossed markings." [17] What was subsequently released by the Court, however, under date of December 15, 1980, was an order signed by His Honor holding "approval of defendant's record on appeal ** in abeyance until after the consideration and resolution of plaintiffs' ** 'Motion for Execution Pending Appeal' which is set for hearing on December 18, 1980 at 8:00 o'clock in the morning." [18]

On December 19, 1980 Echaus moved for reconsideration of the Order of December 15, 1980. Without however waiting for its resolution, she filed on December 29, 1980 a motion in the Court of Appeals in CA-G.R. No. SP-10149-R praying inter alia that the Trial Judge be required to comply with the decision of February 18, 1980 and show cause why he should not be held in contempt of court for having thus far refused to do so. [19]

After appropriate proceedings, the Court of Appeals denied Echaus's motion for lack of merit, by Resolution dated March 18, 1981. [20] It observed that "there was no wilful or deliberate refusal to comply with the decision ** dated February 18, 1980;" that what respondent Judge had been commanded to do by the decision was that he "should ** proceed to give due course to the appeal by considering and acting" thereon, but immediate transmittal of said record could not be compelled in the premises "because the correctness or accuracy ** (thereof) should be first passed upon and certified by the court a quo," even if there were no opposition thereto. The Court also pointed out that deferment of approval of the record on appeal had been ordered by the Trial Judge in keeping "with the proper and orderly procedure to the end that all pending incidents ** before him be first resolved ** in order that said incidents be not rendered moot and academic by the approval of said ** record on appeal;" and that, citing *Laurilla v. Uichangco, et al.*, 104 Phil. 171 -

"A verbal order or a mere notation in the minutes of the calendar of the court a quo ** indicating approval of the ** record on appeal is, in our view, not yet the ultimate and requisite formal order of approval of said record on appeal that would divest the court a quo of its jurisdiction to act on pending incidents. Even a written order approving a record on appeal may still be subject to a motion for reconsideration of an opposing party. If a written order which has not acquired finality may still be reconsidered by the court, with more reason can respondent judge modify his verbal order that has not been implemented nor even made known to the other party in the case.

The Court of Appeals finally resolved that "as the motion for execution pending appeal is conceded to have been filed by the plaintiffs before the court below had approved (but only verbally) petitioner's record on appeal, the court a quo therefore still retained its jurisdiction to resolve the pending motion for execution pending appeal."

Echaus subsequently asked the Court of Appeals to reconsider the Resolution. The Court of Appeals refused. But in its Resolution denying reconsideration, dated June 22, 1981,[21] the Court declared that it was prompted –

“ * * to enjoin the respondent judge to act upon and set for hearing and resolve at the soonest time possible, the stated motion for execution pending appeal if this incident is still pending before that Court, so that there will remain no further reason or cause for withholding his resolution on the petitioner's record on appeal or such other pleadings and orders as may be necessary for the perfection of petitioner's appeal. Then upon the formal approval of the record on appeal the case can be transmitted to this Court, in compliance with the judgment rendered in this case that the petitioner's appeal be given due course. All these, respondent judge is strongly urged to act upon with promptness and dispatch.”

These Resolutions -- of March 18, 1981 and June 22, 1981 --- are challenged in the appellate proceeding at bar, initiated by petition for review on certiorari presented by Echaus.

In this Court, Echaus argues that it was reversible error for the Court of Appeals to have "ignored the fact that ** (her) appeal had in fact been perfected when the Trial Judge (verbally) ordered the record on appeal approved on December 15, 1980 and, in the light of the ruling of the Supreme Court in the case of Cabilao et al. v. Judge of the Court of First Instance of Zamboanga, 17 SCRA 992, any further action on the part of the Trial Judge in the case, particularly on respondent spouses' motion for execution pending appeal is null and void." [22]

The argument is patently without merit and is here given short shrift. In line with the fundamental principles set forth in the opening paragraph of this opinion, the oral order approving the record on appeal had no juridical existence; to give it that existence it had to be reduced to writing and promulgated (i.e., filed with the clerk of court). [23] But even if it had been written and promulgated, indeed even if it had already been properly served on the parties, it nonetheless was yet plainly within the power of the Judge to recall it and set it aside. For every court has the inherent power, among others, to "amend and control its process and orders so as to make them conformable to law and justice." [24] And this Court has had occasion to rule that a trial court may set aside its order approving a record on appeal prior to the transmittal of the record. [25] So, even conceding arguendo, efficacy to the oral order approving Echaus's record on appeal, the respondent Judge nevertheless had the power to recall said order, or, as he actually did, hold approval thereof in abeyance until after he had resolved other pending incidents. This Court thus perceives no error on the part of the Appellate Court in giving its imprimatur to that act of the respondent Judge in the light of the attendant circumstances.

To all intents and purposes, Echaus's record on appeal had never been approved. Now, the doctrine prevailing at the time was that prior to the approval of the record on appeal, the Trial Court retained jurisdiction to grant execution pending appeal, that approval being in fact the operative act denoting the end of the court's power to grant execution pending appeal. [26] The respondent Judge, therefore, cannot be deemed to have acted without or in excess of his jurisdiction, or to have gravely abused his discretion, in deferring action on the record on appeal so that he might first resolve the motion for execution pending appeal.

Of course, as is by now known to all, the rules for taking an appeal to the Court of Appeals, and for execution pending appeal have since been altered and simplified. Under Batas Pambansa Bilang 129, appeals from final judgments or orders of the Regional Trial Court are taken to the Court of Appeals simply by filing a notice of appeal. [27] The requirement to file an appeal bond [28] or record on appeal has been done away with, except in special proceedings or actions in which multiple appeals are allowed in which cases a record on appeal is still needed. [29] Under the same BP 129, an appeal by notice of appeal is deemed perfected upon the expiration of the last day to appeal by either party; and in the exceptional cases where a record on appeal is still required, the appeal is perfected upon approval thereof. [30] It should however be noted that a motion for execution pending appeal filed before perfection of an appeal by mere notice, may still be acted upon and granted after such

perfection but before transmittal of the record to the appellate court.[31]

WHEREFORE, the petition is DENIED for lack of merit, with costs against the petitioner. This Decision is immediately executory.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Filing with the clerk constitutes promulgation of an interlocutory or final order or judgment. SEE *Ago v. C.A.*, 6 SCRA 530 [1962] holding that it is the filing of the signed decision with the clerk of court that constitutes rendition thereof; see, also, *Araneta v. Dinglasan*, 84 Phil. 433 and *Neria v. Commissioner of Immigration*, 23 SCRA 812, cited in *Moreno*, Phil. Law Dictionary, 2d ed. The rule is the same in criminal cases, except that in the case of a final judgment, promulgation consists in "reading the same in the presence of the accused and any judge of the court in which it was rendered." Sec. 6, Rule 120; cf., *Qua v. Republic*, 122 Phil. 1083.

[2] Interlocutory orders are served either personally or by mail. Sec. 3, Rule 13. If service of an interlocutory order is not made personally, it shall be served by registered mail "if registry service exists in the locality;" otherwise service may be effected by ordinary mail. Sec. 5, Rule 13. But final orders or judgments shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party. Sec. 7, Rule 13, Rules of Court.

[3] Sec. 2, Rule 15 requires that all motions should be made in writing "except motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial." It follows that orders resolving written motions should also be in writing; and that, on the other hand, orders resolving "motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial." may properly be made orally. Sec. 1, Rule 36 of the Rules of Court provides that all judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of court. The filing with the clerk constitutes "promulgation."

[4] SEE *Marcopper Mining Corporation v. Liwanag Paras Brios, et al.*, 165 SCRA 464 (1981); *Nieva v. Manila Banking Corporation*, 124 SCRA 453 (1983)

[5] Docketed as Civil Case No. Q-26572. CFI, Rizal. Br. V, Quezon City, Hon. Eduardo C. Tutaan, presiding (Rollo, p. 157)

[6] Rollo, p. 170. The judgment was rendered on September 27, 1979.

[7] The Rules have since been amended by B.P. Blg. 129 which provides for a period of 15 days from notice of the judgment or order for taking an appeal therefrom and eliminates the requirement of filing an appeal bond, and a record on appeal. However, in special proceedings and other cases where multiple appeals are allowed, the period of appeal continues to be 30 days from notice, and a record on appeal is still required.

[8] Order, Nov. 9, 1979, Rollo, p. 31

[9] Rollo, p. 14

[10] *Id.*, pp. 14-15

[11] *Id.*, p. 37. The decision was written by Alampay, J. (later Associate Justice of the Supreme Court) with whom concurred Coquia and Borromeo, JJ.

[12] Docketed as G.R. No. 53799

[13] Rollo, pp. 38-39

[14] *Id.*, p. 50

[15] *Id.*, pp. 43-46

[16] *Id.*, pp. 47-49

[17] *Id.*, p. 52; see petitioner's brief, pp. 4-5

[18] *Id.*, p. 50

[19] *Id.*, pp. 51-55

[20] *Id.*, pp. 57-61.

[21] *Id.*, pp. 73-74

[22] *Id.*, p. 12

[23] SEE footnotes 1, 2 and 3, at pp. 1 and 2, *supra*

[24] Sec. 5 (g), Rule 135, Rules of Court

[25] *Cabungcal v. Fernandez*, L-16520, April 30, 1964, 10 SCRA 731; *Cabilao v. CFI*, L-19454, Aug. 29, 1966, 17 SCRA 992, cited in *Feria*, Civil Procedure, 1969 ed., p. 668

[26] *Moran*, Comments on the Rules of Court, 1979 ed., Vol. 2, pp. 258-259, citing *inter alia* *Vda. de Sy Quia v. Concepcion*, et al., 60 Phil., 186; *Luis B. Uvero, et al. v. Court of Appeals, et al.*, G.R. No. L-6522, May 24, 1954, 95 Phil. 11; *Aguirre v. Macadaeg*, 55 O.G. 2088; *Feria*, Civil Procedure, 1969 ed., p. 668, *supra*, citing *De la Fuente v. Jugo*, 76 Phil. 262; *Añonuevo v. Zurbano*, L-22277, May 19, 1966, 17 SCRA 157

[27] Sec. 39; Par. 18, Interim Rules promulgated by the Supreme Court, Jan. 11, 1983

[28] Par. 18, Interim Rules

[29] Sec. 39, BP 129; Par. 18, Interim Rules

[30] Par. 23, Interim Rules

[31] *Universal Far East Corporation v. C.A.*, 131 SCRA 642

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.