

**HEIRS OF FELICIANO NANTES, REPRESENTED BY LORENZA NANTES,
APPELLANTS-PETITIONERS, VS. HON. COURT OF APPEALS, HON.
ANGEL A. DAQUIGAN, PRESIDING JUDGE OF THE COURT OF FIRST
INSTAN...**

G.R. No. 63531. July 25, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a resolution of the defunct Court of Appeals in CA-G.R. No. SP-126891, which denied a petition for certiorari for lack of merit. Obviously the petitioners in the Court of Appeals are also the petitioners in this Court.

The issue is simple: whether or not the respondent judge committed a grave abuse of discretion when he denied a motion for extension of time to file a record on appeal and granted a motion to strike out the record on appeal and to issue a writ of execution.

The Court of Appeals held that there was no grave abuse of discretion. This Court holds otherwise.

The relevant portions of the resolution sought to be reviewed are as follows:

"This is a petition for certiorari with preliminary prohibitory injunction and preliminary mandatory injunction, wherein the petitioners, heirs of Feliciano Nantes, seek the annulment of the following orders of the respondent court:

(1) The order of January 21, 1981 (Annex J), denying the petitioners' motion dated December 22, 1980, praying for extension of time to file record on appeal; and

(2) The Order of February 5, 1981 (Annex K), striking out the petitioners' record on appeal which was filed on January 2, 1981, and issuing a writ of execution,

and praying this Court to order Respondent Judge to allow the COMELEC LAO (Legal Assistance Office) to appear as counsel for the petitioners, and to approve their record on appeal.

"The allegations and annexes of the petition show that the Republic of the Philippines (Bureau of Forestry) filed an action for revocation and cancellation of Free Patent No. V-13684 and O.C.T. No. P-137 of the defendant Feliciano Nantes, et al, (Civil Case No. 2494 of the Court of First Instance of La Union, Branch I).

"The issues having been joined, the case was tried. The defendants were represented by Attorney Felimon Asperin. During the pendency of the case, he was appointed regional director of the COMELEC in La Union. However, with the permission of the COMELEC, he continued to appear as counsel for the defendants in the case.

"On September 23, 1980, a decision was rendered in favor of the Republic of the Philippines.

"The defendants, petitioners herein, received a copy of the decision on November 3, 1980. On the same date

(November 3, 1980), Atty. Asperin filed a notice of appeal, and on November 11, 1980 filed a cash appeal bond (Annex A, petition).

"On December 3, 1980, the last day of the reglementary period to appeal, Atty. Perfecto Gaona of the COMELEC Legal Assistance Office, on behalf of that office, filed an appearance as counsel for the defendants and a motion for extension of time, up to December 15, 1980, within which to submit a record on appeal because 'due to pressured of work in attending seminars and conferences . . . he needs further time to finish the record on appeal' (Annex B, Petition).

"On December 5, 1980, the Republic of the Philippines, through its counsel, Assistant Provincial Fiscal Francisco Tejano, opposed the appearance of the COMELEC Legal Assistance Office as counsel for the defendants because it was improper for the COMELEC Legal Assistance Office to engage in the practice of law as counsel for a private party in a case against the Republic.

"In an order dated December 15, 1980, respondent Judge disapproved the appearance of Atty. Gaona, as counsel for the defendants as well as his motion for extension of time to file a record on appeal (Annex D, Petition). On December 22, 1980, defendants received a copy of the court's order.

"On the same date, Atty. Felimon Asperin (who had not withdrawn as counsel for the defendants), reappeared as their counsel, and forthwith filed a motion for a 15-day extension of time to file the defendants' record on appeal.

"The fiscal again opposed the motion. He alleged that the period to appeal had allegedly expired and that the judgment had therefore become final and executory.

"On January 2, 1981, within the 15-day extension sought by him and before the court could act on his motion, Atty. Asperin filed the record on appeal (Annex F).

"On January 14, 1981, Fiscal Tejano filed 'a motion to strike out the record on appeal and a motion for the issuance of a writ of execution' (Annex H, Petition).

"On January 21, 1981, the Court denied defendants' motion for extension of time to file record on appeal, which had already been filed (Annex J).

"On February 5, 1981, it issued another order granting the plaintiffs' motion to strike off the defendants' record on appeal and to issue a writ of execution (Annex K, Petition).

"The defendants elevated the matter to this Court on certiorari alleging that respondent Judge gravely abused his discretion in issuing the orders complained of and that they have no appeal nor any other plain, speedy, and adequate remedy in the ordinary course of the law.

"Without necessarily giving due course to the petition, this Court directed the respondents to comment thereon. No comment was filed by the respondents. The petitioners were given a period of 20 days, plus two extensions, within which to submit a memorandum in support of their petition, but they did not submit any. Consequently, the petition was submitted for resolution without memoranda.

"The issue raised in the petition is whether the respondent court committed a grave abuse of discretion in denying the petitioners' motion for extension of time to file their record on appeal.

"The petition is devoid of merit. A motion for extension of time to perfect an appeal is addressed to the sound discretion of the court, for as was held by the Supreme Court in *Bello v. Fernando*, 114 Phil. 101, 'the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law' (*Aguila vs. Navarro*, 55 Phil. 898; *Santiago vs.*

Valenzuela, 78 Phil. 397)." (Rollo, pp. 85-87.)

While it is true that a motion for extension of time to do something is addressed to the sound discretion of the court and appeal is a mere statutory privilege, the trial court gravely abused its discretion in connection with the acts complained against. The ends of justice will best be served if the petitioners' appeal be given due course.

The record of this case reveals that the root cause of the petitioners' problem is their poverty. To be sure, they cannot be categorized as paupers but they are indigent. They manifested their indigency to the trial court and to this Court. Because of their economic status they cannot afford the services of hired counsel. They have had to settle for the services of the COMELEC Legal Assistance Office (LAO).

The COMELEC is to be commended for setting up the LAO. It complements the Citizens' Legal Assistance Office (CLAO) of the Ministry of Justice. But while CLAO lawyers work full time on free legal work for deserving clients, those of the LAO do so in addition to their regular work.

In the case at bar, the petitioners were represented by Atty. Felimon Asperin of LAO. After he received a copy of the adverse decision against his clients, he did everything that had to be done to perfect an appeal except the submission of a record on appeal.

The last day for submitting the record on appeal was December 3, 1980. On that day, Atty. Perfecto Gaona of the LAO appeared as counsel for the petitioners and asked for an extension up to December 15, 1980, within which to submit the record on appeal "due to pressure of work in attending seminars and conferences . . . he needs further time to finish the record on appeal." It is to be noted that the record of the case is voluminous; it consists of about 800 pages.

The trial court not only disauthorized the appearance of Atty. Gaona because of the objection of Fiscal Francisco Tejano, it also denied the request for extension of time. Subsequently it struck out the record on appeal which had been filed by Atty. Asperin and issued a writ of execution.

Did the trial court commit a grave abuse of discretion? In the light of the factual setting, We hold that it did. It should not have disapproved the appearance of Atty. Gaona considering that the LAO had been representing the petitioners since the litigation began. It should have granted Atty. Gaona's motion considering that the pro bono activities of COMELEC lawyers is an added burden to them. All in all, the petitioners appear to have been denied justice by reason of their poverty.

WHEREFORE, the petition is hereby granted; the resolution of the Court of Appeals is reversed and the orders of the trial court mentioned above are set aside. The trial court shall give due course to the appeal by elevating to the appellate court the original record of the case pursuant to B.P. Blg. 129 and the Interim Rules of Court promulgated pursuant thereto. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero and Escolin, JJ., concur.

Aquino, J., no part.

De Castro, J., on sick leave.

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