

**JESUS DEL ROSARIO, PETITIONER, VS. HON. JAIME HAMOY,
PRESIDING JUDGE, RTC, BRANCH XV, REGION IX, ZAMBOANGA
CITY, AND WILEADO DE LEON, DOMINGO DE LEON, CRISTINO DE
LEON, HENCIANO...**

G.R. No. 77154. June 30, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

For want of a one-peso documentary stamp in a special power of attorney for pre-trial purposes, in lieu of the personal appearance of the plaintiff, the petitioner in this case, the respondent Judge declared him non-suited and dismissed the complaint "for failure of the plaintiff to appear for pre-trial conference." [1] We do not agree. The respondent Judge manifestly erred. He acted with indecent haste. He could have easily required the counsel for the plaintiff to buy the required one-peso documentary stamp outside the court room and affix the same to the special power of attorney and that respite would not have taken ten minutes. Had he been less technical and more sensible, the present proceedings and the consequent waste of time of this Court and of his own would have been avoided.

The respondent trial Judge had three chances to rectify his grave error but he missed all of them. He was adamant. By such rigidity he denied the petitioner substantial justice.

(1) He procrastinated when the plaintiff and his counsel immediately after the hearing on the same morning of July 25, 1986, made oral representations with him inside his chamber for the reconsideration of his order declaring the plaintiff non-suited and dismissing the complaint. The plaintiff, through his counsel, explained that he was actually inside the court room while his lawyer and the defendants' counsel, were arguing, but he (plaintiff) was too timorous to interrupt the proceedings and make known his presence to his counsel or to the court. Despite the immediacy of the representations and the plausibility of this explanation considering the plaintiff's nescience, being merely an agricultural tenant and can hardly write his name, the respondent Judge still required him to file a written motion and set it for hearing "in accordance with the Rules of Court."

(2) Complying, the plaintiff's counsel forthwith filed the written motion, [2] duly supported by an Affidavit of Merit of the plaintiff, on the same day, July 25, 1986, and set it for hearing as ordered by the respondent Judge. This motion for reconsideration was denied "for lack of merit" on August 29, 1986. The order of denial states in part: [3]

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A judicious appraisal of the facts alleged in the motion for reconsideration and in the accompanying affidavit of merit fail to convince the Court to reconsider the Order. As admitted by the plaintiff, he was inside the Court room when the case was called for pre-trial conference and when his counsel, Atty. Alejandro Saavedra and defendants' counsel Atty. Narvaro Belar Navarro were arguing about the insufficiency of the special power of attorney, but he never made known his presence to the Court or to his counsel or to the defendants. He

approached his counsel and presented himself to him when they were already outside the Courtroom and after the case was already dismissed. To the mind of the Court, the foregoing circumstances detailed by the plaintiff do not constitute excusable negligence or mistake.[4]

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(3) Undaunted, seven days later, on September 5, 1986, the petitioner filed a second motion for reconsideration[5] verified by his counsel, setting it for hearing on September 19, 1986, which was promptly denied on the same day of the hearing.

And, on October 7, 1986, as a coup de grace, an over-kill to be sure, the respondent Judge issued a curt order which reads:

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The Court having denied the second motion for reconsideration for not being allowed by Section 4 of the Interim Rules as per Order entered on September 19, 1986, the case at bar is therefore considered closed and terminated.

SO ORDERED.[6]

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The respondent Judge lost sight of the fact that even the Rules of Court themselves, fortified by jurisprudence, mandate a liberal construction of the rules and the pleadings in order to effect substantial justice.[7] After all, "[O]verriding all the foregoing technical considerations is the trend of the rulings of this Court to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, freed from the constraints of technicalities." [8]

In a recent case[9] where the trial court, as in this instance, declared the petitioner non-suited for failure to appear at the pre-trial conference, and consequently dismissed the complaint, this Court reiterated the doctrine of liberality in the construction of the rules of procedure to be followed by all courts.

While it is true under Section 1, Rule 20 of the Rules of Court, it is mandatory for the parties and their counsel to appear at the pre-trial to consider inter alia "the possibility of an amicable settlement, the simplification of the issues, the possibility of obtaining stipulations or admission of facts, totally or partially, and such other matters as may aid in the prompt disposition of the action"; and that a party who fails to appear at the pre-trial may be non-suited or considered as in default, this rule was by no means intended as an implacable bludgeon but as a tool to assist the trial courts in the orderly and expeditious conduct of trials. Time and again We have emphasized that the rule should be liberally construed in order to promote their object and assist the parties in obtaining not only speedy, but more importantly, just and inexpensive determination of every action and proceeding.[10]

Practically on all fours with this case is *Gabucan vs. Hon. Judge Luis D. Manta, et al.*, [11] in which the petition for the probate of a notarial will was dismissed on the sole ground that the will did not bear a thirty-centavo documentary stamp, and, hence, according to the respondent Judge, it was not admissible in evidence, citing section 238 of the Tax Code, now section 250 of the 1977 Tax Code, which reads:

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'SEC. 238. Effect of failure to stamp taxable document. - An instrument, document, or paper which is required by law to be stamped and which has been signed, issued, accepted, or transferred without being duly stamped, shall not be recorded nor shall it or any copy thereof or any record of transfer of the same be admitted or used in evidence in any court until the requisite stamp or stamps shall have been affixed thereto and cancelled.

'No notary public or other officer authorized to administer oaths shall add his jurat or acknowledgment to any document subject to documentary stamp tax unless the proper documentary stamps are affixed thereto and cancelled.'[12]

In reversing the interpretation of the provisions of sections 238 and 250 of the old Tax Codes above copied which are identical to those of section 214 of the National Internal Code of 1986, as amended, the law now obtaining, this Court held:

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What the probate court should have done was to require the petitioner or proponent to affix the requisite thirty-centavo documentary stamp to the notarial acknowledgment of the will which is the taxable portion of that document.

That procedure may be implied from the provision of section 238 that the non-admissibility of the document, which does not bear the requisite documentary stamp, subsists only "until the requisite stamp or stamps shall have been affixed thereto and cancelled."

Thus, it was held that the documentary stamp may be affixed at the time the taxable document is presented in evidence (*Del Castillo vs. Madrilena*, 49 Phil. 749). If the promissory note does not bear a documentary stamp, the court should have allowed plaintiff's tender of a stamp to supply the deficiency. (*Rodriguez vs. Martinez*, 5 Phil. 67, 71. Note the holding in *Azarraga vs. Rodriguez*, 9 Phil. 637, that the lack of the documentary stamp on a document does not invalidate such document. See *Cia. General de Tabacos vs. Jeanjaquet*, 12 Phil. 195, 201-2 and *Delgado and Figueroa vs. Amenabar*, 16 Phil. 403, 405-6.)[13]

This is as it should be because the quality of justice is not strained.

WHEREFORE, the orders of the trial court complained of, the first dated July 25, 1986 declaring the petitioner non-suited and dismissing his complaint, and those dated August 29, 1986 and October 7, 1986, denying the petitioner's motions for reconsideration are hereby ANNULLED and SET ASIDE. Civil Case No. 3331 is hereby remanded to the respondent trial court for further proceedings. No costs.

Let a copy of this Decision be attached to the personal record of the respondent judge.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Gancayco, JJ., concur.

[1] Rollo, 17-18.

[2] *Id.*, 15.

[3] *Id.*, 13.

[4] *Id.*, 19.

[5] *Id.*, 10-11.

[6] *Id.*, 20.

[7] *Maturan vs. Araula*, No. L-57392, January 30, 1982, 111 SCRA 615 (1982).

[8] *De Mesa Abad vs. Court of Appeals*, No. L-42225, July 9, 1985, 137 SCRA 416 (1985); citing *Rodriguez vs. Court of Appeals*, No. L-37522, November 28, 1975, 68 SCRA 262 (1975); See also, *Siguenza vs. Court of*

Appeals, No. L-44050, July 16, 1985, 137 SCRA 570 (1985).

[9] Tejero vs. Rosete, No. L-55102, June 19, 1985, 137 SCRA 69 (1985).

[10] Tejero vs. Rosete, *supra*, 74.

[11] No. L-51546, January 28, 1980, 95 SCRA 751 (1980).

[12] *Supra*, 753.

[13] *Supra*, 754.

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