

**EMETERIO M. MOZAR, PETITIONER, VS. THE COURT OF APPEALS,
HON. ERNESTO MADAMBA, (OR THE PRESIDING JUDGE OF THE
METROPOLITAN TRIAL COURT OF MANILA, BRANCH XVII), CITY
SHERIFF OF M...**

G.R. No. 79403. November 13, 1989

Ponente: PARAS, J.

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PARAS, J.:

In its Motion for Reconsideration dated January 30, 1989, counsel for Spouses Risma and Mozar stated the following:

"Evidently, this Honorable Court decided on the merits of the case based solely on the Appellant's Brief of Guballa. The Spouses Risma respectfully submit that this is grave error and in violation of their rights to due process since they have all along been arguing before this Court not on the correctness of the decision of the trial court but on the propriety of the dismissal of Guballa's appeal by the respondent appellate court.

It was premature for this Court to decide the case on the merits without according private respondents the opportunity to answer the alleged errors committed by the trial court. x x x"

(p. 22, Motion for Reconsideration; p. 276, Rollo)

There is merit in the above contention for actually no discussion on the merits have been made by the Spouses Risma and Mozar. We believe that they should have been given an opportunity to file their appellee's brief in the Court of Appeals if only to emphasize the necessity of due process.

Be it noted that while it is true that instead of remanding the case to the appellate court, the Supreme Court can already decide on the merits from the facts that have been presented to it, still a re-study of this issue yields the conclusion that the facts already before Us are not yet complete, considering that the decision of the trial court and the appellant's brief have not yet been presented to this Court. This is in addition to the fact that no Appellee's Brief has as yet been presented by the appellee to the Court of Appeals. Be it noted further that the records of the Court of Appeals on these two cases have not as yet been elevated to the Supreme Court.

PREMISES CONSIDERED, the Motion for Reconsideration is GRANTED in the sense that these cases are hereby remanded to the Court of Appeals for further proceedings, that is, to enable the Spouses Risma and Mozar to file their appellee's brief in the Court of Appeals.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

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