

SPOUSES PEDRO AND ANGELINA TELAN, PETITIONERS, VS. COURT OF APPEALS, ROBERTO TELAN, AND SPOUSES VICENTE AND VIRGINIA TELAN, RESPONDENTS.

G.R. No. 95026. October 04, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review of the Resolution dated December 28, 1989 of the Court of Appeals[1] which considered the appeal of the herein petitioners, spouses Pedro and Angelina Telan (hereinafter PEDRO and ANGELINA), ABANDONED and DISMISSED, for their failure to file an appeal brief within the reglementary period, pursuant to Section I(f), Rule 50 of the Rules of Court.

The only issue involved in this petition for review on certiorari is:

Whether or not the representation of the petitioner by a fake lawyer amounts to a deprivation of his right to counsel and hence a lack of due process.

The circumstances under which the case arose are as follows:

The petitioner PEDRO is a retired government employee and high school graduate who settled in 1973 on a property abutting the national highway in Guibang, Gamu, Isabela.[2]

In 1977, when the government needed the land, PEDRO was compelled to transfer his residence to the other side of the national highway on a lot owned by Luciano Sia where he rented 750 square meters for P50.00 a month.[3]

Because the lot was en route to the shrine of Our Lady of Guibang which was frequented by pilgrims, PEDRO set up business enterprises such as a vulcanizing shop and an eatery. Shortly thereafter, his cousins, the herein private respondents Roberto Telan and Spouses Vicente and Virginia Telan (hereinafter ROBERTO, VICENTE, and VIRGINIA), followed suit by setting up their own eatery within the same lot.[4]

On March 27, 1984, PEDRO and his spouse ANGELINA received a Notice to Vacate from the Development Bank of the Philippines (DBP). This was followed by a letter from VIRGINIA herself, reiterating the said demand. Apparently VICENTE and VIRGINIA had executed a Deed of Sale with Assumption of Mortgage with Sia over the said lot shared by PEDRO and ANGELINA.[5]

Soon, DBP as the mortgagee of Sia's lot, foreclosed the mortgage.

On June 7, 1984, the DBP and the Spouses VICENTE and VIRGINIA TELAN filed a suit at the Regional Trial Court of Ilagan, Isabela to evict PEDRO TELAN's family from the lot. The case was dismissed.

Meanwhile, on September 22, 1986, ROBERTO TELAN was able to secure a Certificate of Title in his name over the contested lot.[6]

With the new Transfer Certificate of Title, ROBERTO and the spouses VICENTE and VIRGINIA filed a

complaint denominated as Accion Publiciana against the petitioners, Spouses PEDRO and ANGELINA.[7]

At this point, PEDRO and ANGELINA hired the services of Atty. Antonio Paguiran to defend them in the suit.[8]

On October 27, 1988, the lower court awarded the possession of the property in question to ROBERTO and Spouses VICENTE and VIRGINIA TELAN.

PEDRO and ANGELINA informed Atty. Paguiran that they wanted to appeal the case, but since Atty. Paguiran was disposed not to do so, PEDRO and ANGELINA asked another person to sign for them.[9]

In the course of their eatery business, petitioner ANGELINA TELAN became acquainted with Ernesto Palma who represented himself to be a "lawyer." Having no counsel to assist them in their appeal, Angelina asked "Atty. Palma" to handle their case. He consented and the petitioners paid his "lawyer's fees." [10]

In the meantime, on August 5, 1988, PEDRO TELAN broke his hip while he was getting off from a passenger jeepney. On September 5, 1988, unable to withstand the pain, he went to the Philippine General Hospital for treatment where he was diagnosed to have a "fractured, closed, complete, femoral neck garden type IV (R) femur." [11] On the spot, the doctors recommended an operation.

Another operation followed on September 22, 1988. All the while, from September 5, 1988 up to October 2, 1988, PEDRO was confined at the PGH. He had to go back to PGH several times for check-up even after he was released from the hospital.[12]

It was only by January 1990 that PEDRO managed to walk again although still with much difficulty.

Meanwhile, on December 28, 1989, the Court of Appeals issued a Resolution which considered the appeal interposed by petitioners as abandoned and dismissed "for failure x x x to file an appeal brief within the reglementary period, pursuant to Section 1(f), Rule 50 of the Rules of Court." [13]

The petitioners were not aware of the dismissal of their appeal. They only came to know about it on May 1990, when somebody in the Isabela Provincial Capitol at Ilagan informed PEDRO TELAN about the Court of Appeals' Resolution.[14]

PEDRO TELAN immediately verified the facts. "Atty. Palma" could no longer be found. PEDRO engaged the services of the new counsel, Peter Donnelly A. Barot, who filed a Motion for Reconsideration with Motion to Admit Attached Appellants' Brief. Atty. Barot assisted PEDRO in verifying the existence of "Atty. Palma" in the Roll of Attorneys with the Bar Confidant's Office. This was followed by the filing of Criminal Case No. 389-90 for Estafa against "Atty. Palma." [15] By now PEDRO had realized that "Atty. Palma" was a fake.

The Court of Appeals in its Resolution dated August 27, 1990 ruled as follows:

x x x x x x x x

It should be recalled that the instant appeal was dismissed only on December 28, 1989 (p. 13, rollo). Prior thereto, appellant's counsel received on July 25, 1989 this Court's letter-notice dated July 14, 1989 requiring him to file the appellants' brief within forty-five (45) days from receipt thereof. Per report dated October 18, 1989 of the brief, none has yet been filed as of said date and hence, this Court issued a Resolution dated October 20, 1989 for appellants to show cause within ten (10) days, why the appeal should not be dismissed for failure to file the appellants' brief within the reglementary period. Hence from July 25, 1989 when appellants' counsel received this Court's letter-notice to file brief until the JRD's report on December 15, 1989 that no appellants' brief has been filed, a period of about four (4) months and twenty-three (23) days have elapsed, thus giving appellants enough time to file their brief. Unfortunately, no appellants' brief was ever filed during said period. Let it be stressed that the rules prescribing the time within which certain acts must be done

or certain proceedings taken are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. (FJR Garments Industries v. CA, 130 SCRA 216, 218).[16]

On January 24, 1990, the Resolution dated December 28, 1989 became final and was entered on May 24, 1990 in the Book of Entries of Judgment.

On September 12, 1990, the presiding judge of the lower court issued the Writ of Demolition for the enforcement of the decision.[17]

The Petition for Review on Certiorari before this Court was filed on October 18, 1990 by the spouses PEDRO and ANGELINA TELAN with an Urgent Prayer for Temporary Restraining Order/ Preliminary Injunction.[18]

On October 24, 1990, after deliberating on the petition for review on certiorari, the Court without giving due course required the respondents to COMMENT within ten (10) days from notice thereof. At the same time, as prayed for, effective "immediately" and "continuing until further orders from this Court", a TEMPORARY RESTRAINING ORDER was issued enjoining the respondents from enforcing the Order dated September 12, 1990 issued in Civil Case No. 279.

In due time, after the filing of the necessary pleadings, the petition was given due course and the parties were ordered to submit simultaneously their respective memoranda. The petitioners filed their memorandum while the private respondents manifested to adopt their Comments dated November 5, 1990. However, after the filing of the petitioners' memorandum, the private respondents filed on June 10, 1991, a pleading they denominated as Addendum. Apparently, changing their minds, on July 23, 1991, the private respondents filed their memorandum.

We rule for the petitioners. We hold that they had not been accorded due process of law because they lost their right to appeal when they were deprived of the right to counsel.

Article III, Section 2 of the Constitution provides:

x x x x x x x x

No person shall be deprived of life, liberty, or property, without due process of law, nor shall any person be denied the equal protection of the laws.

The right to counsel in civil cases exists just as forcefully as in criminal cases,[19] especially so when as a consequence, life, liberty, or property is subjected to restraint or in danger of loss.

In criminal cases, the right of an accused person to be assisted by a member of the bar is immutable. Otherwise, there would be a grave denial of due process. Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.[20]

There is no reason why the rule in criminal cases has to be different from that in civil cases. The preeminent right to due process of law applies not only to life and liberty but also to property. There can be no fair hearing unless a party, who is in danger of losing his house in which he and his family live and in which he has established a modest means of livelihood, is given the right to be heard by himself and counsel.

Even the most experienced lawyers get tangled in the web of procedure. To demand as much from ordinary citizens whose only compelle intrare is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.

The right to counsel is absolute and may be invoked at all times. More so, in the case of an on-going litigation, it is a right that must be exercised at every step of the way, with the lawyer faithfully keeping his client company.

No arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal.

This is the reason why under ordinary circumstances, a lawyer can not simply refuse anyone the counsel that only the exercise of his office can impart.[21]

Curiously, the counsel of the private respondents, ROBERTO TELAN and spouses VICENTE and VIRGINIA, would still insist that the petitioners, spouses PEDRO and ANGELINA TELAN, had lost their right to appeal because of the negligence of their counsel, referring to "Atty. Palma."

A client is generally bound by the action of his counsel in the management of a litigation even by the attorney's mistake or negligence in procedural technique.[22] But how can there be negligence by the counsel in the case at bar when the "lawyer", "Atty. Palma," turned out to be fake? The Affidavit of the petitioner PEDRO TELAN, the sworn Petition, the Certifications of the Bar Confidant's Office and the Integrated Bar of the Philippines, and the submitted records of Criminal Case No. 389-90 more than sufficiently establish the existence of an Ernesto Palma who misrepresented himself as a lawyer.[23]

WHEREFORE, the Petition is GRANTED; the proceedings in CA-G.R. CV No. 20786 are hereby REINSTATED and the respondent Court of Appeals is ordered to give DUE COURSE to the appeal and to decide the same on the merits.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Telan v. Telan, CA-G.R. CV No. 20786, December 28, 1989, Hector C. Fule, ponente; Lorna S. Lombos-De la Fuente, Chairman and Regina G. Ordonez-Benitez, concurring.

[2] Rollo, 9.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Rollo, 10.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Rollo, 10.

[11] Rollo, 30.

[12] Ibid.

[13] CA-G.R. CV No. 20786, Ordonez-Benitez, concurred by Lombos-Dela Fuente and Mendoza, JJ.

[14] Rollo, 12.

[15] Id., 82-84.

[16] Rollo, 20.

[17] Roberto Telan, et. al., v. Pedro Telan, et al., Civil Case No. 279, Regional Trial Court (Branch 16, Iligan), September 12, 1990, Hon. Teodoro L. Hernando, Presiding Judge.

[18] Rollo, 6.

[19] CONST., art. III, states:

"Sec. 12(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

"Sec. 14(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of nature and cause of the accusation against him, to have a speedy trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

[20] People v. Holgado, 85 Phil. 752, 756-757 (1950), Flores v. Ruiz, No. L-35707, May 31, 1979, 90 SCRA 432-433; and Delgado v. Court of Appeals, No. L-46392, Nov. 10, 1986, 145 SCRA 360.

[21] THE CODE OF PROFESSIONAL RESPONSIBILITY, Canon 14 states:

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"Rule 14.01 — A lawyer shall not decline to represent a person solely on account of the latter's sex, race, creed or status of life, or because of his own opinion regarding the guilt of said person.

x x x x x x x x

[22] The long line of decisions include U.S. v. Umali, 15 Phil. 33 (1910); Montes v. CFI of Tayabas, 48 Phil. 640 (1926); Inocando v. Inocando, 110 Phil. 266 (1960); RCBC v. Dayrit, G.R. 63372, June 28, 1983, 123 SCRA 203; Ayllon v. Sevilla, G.R. No. 79244, December 10, 1987, 156 SCRA 257.

[23] Rollo, 43, 44.

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