

**LAURA MATEO, PETITIONER, VS. THE HON. COURT OF APPEALS,
HON. EUTROPIO MIGRIÑO, PRESIDING JUDGE OF THE RTC OF PASIG,
BRANCH 151, ADELA MENDOZA AND CECILIO MENDOZA AND THE
BRANCH ...***G.R. No. 97839. April 22, 1993*

Ponente: GRIÑO-AQUINO, J.

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On April 14, 1975, the petitioner, Laura Mateo, filed an action in the Regional Trial Court of Pasig, Rizal. (1) to annul a deed of sale of a half-hectare parcel of land in Las Piñas which she had executed in favor of the spouses, Adela and Cecilia Mendoza, in 1970, and (2) to cancel the Mendozas' TCT No. 275004 with damages. The trial court, in a decision dated October 10, 1983, dismissed the complaint on the grounds that the action had prescribed and that it was "unfounded and frivolous" (p. 31, Rollo). The plaintiff filed a notice of appeal on October 28, 1983 signifying her intention to appeal the decision to the Court of Appeals.

Three (3) years later, the trial court discovered that the records had not been forwarded to the Court of Appeals, so on January 16, 1986, it ordered the clerk of court to do so.

Three (3) more years passed without the clerk of court nor the appellant having taken any steps to elevate the records to the Court of Appeals. Consequently, the defendants (Mendoza spouses) through counsel, filed in the trial court on April 10, 1989 a Motion to Disallow Appeal. The plaintiff opposed the motion. She alleged that the delay in the transmittal of the records of the case to the appellate court was "not attributable to the plaintiff." Furthermore, "if there are missing papers or documents in the records x x x plaintiff is very much ready and willing to give whatever assistance [is needed] in reconstituting said missing papers" (p. 36, Rollo).

On April 14, 1989, the Court issued an order granting the plaintiff ten (10) days "within which to furnish this Court with copies of the missing transcripts of stenographic notes so that the records of this case can be elevated to the Court of Appeals" (p. 37, Rollo).

On May 16, 1989, the defendants filed a Second Motion to Disallow Appeal which the plaintiff did not oppose despite the Court's order for her to comment thereon.

Since the plaintiff failed to live up to her undertaking "to give whatever assistance [was needed] in reconstituting said missing papers," (p. 37, Rollo) the trial court on June 19, 1989, granted the defendants' second motion to disallow the appeal.

Plaintiff's counsel filed a motion for reconsideration explaining that this failure to comply with his undertaking to reconstitute some missing records of the case was due to the fact that he had been suffering from urinary tract infection. Moreover, he was never informed what the missing records were. He argued that the court was without jurisdiction and gravely abused its discretion in disallowing his client's appeal because the appeal had already been perfected, hence, it could no longer be disallowed; what remained to be done was only the transmittal of the

records to the appellate court which was solely the duty of the clerk of court and court personnel. He further alleged that the delay in the transmittal of the records on account of some allegedly missing transcripts was due to the laxity and dereliction of the court personnel in handling said records.

On January 25, 1990, the trial court denied the motion for reconsideration. It observed that despite her promise "to give whatever assistance [was needed] in reconstituting some missing papers," the plaintiff failed to live up to her undertaking. She and her counsel also failed to show up at several conferences which the Court had scheduled, namely, on August 24, 1989, then again on September 6, 1989, September 19, 1989, October 10, 1989, October 25, 1989, November 15, 1989, December 1, 1989 and January 5, 1990. The trial court's observations are quoted hereunder:

"x x x. On several occasions, the Clerk in Charge has brought the record of this case to the Appeal Section of the Office of the Clerk of this Court for transmittal to the Court of Appeals but was refused acceptance because some transcripts of stenographic notes are missing, and the Court of Appeals does not accept record of cases on appeal that are incomplete. These facts were brought to the attention of plaintiff and she repeatedly undertook, thru counsel, to complete the records so that the same may be accepted by the Court of Appeals and her appeal duly prosecuted. To this very late date, plaintiff has failed to live up to her undertakings.

"Completing the record of a case that is being appealed should be the concern of the appellant, because if the decision appealed from is not disturbed, she stands to lose. Plaintiff's inaction and complacency in the case at bar is understandable, as she is in possession and enjoyment of the property subject of the deed of sale and torrens title sought to be nullified in the case at bar. She would naturally be contented in folding her arms and allow the record of this case to gather dust in this Court and pray that the said record may eventually get lost, thereby negating the decision adverse to her." (pp. 46-47, Rollo.)

Mateo's motion for reconsideration of this order was denied by the court on May 28, 1990.

On August 31, 1990, Mateo filed a petition for certiorari and mandamus in the Court of Appeals, CA-G.R SP No. 22679, "Laura Mateo, petitioner vs. Hon. Eutropio Migriño, Adela Mendoza, Cecilio Mendoza and the Branch Sheriff, Branch 151, RTC, Pasig, Metro Manila" praying that the respondents be restrained from enforcing the decision in Civil Case No. 21071 of Branch 151 of the RTC at Pasig, Metro Manila; that the orders dated June 19, 1989, January 25, 1990 and May 28, 1990 of respondent Judge be annulled, and that he be ordered to elevate the records of said Civil Case No. 21071 together with all the evidence, both oral and documentary, for review by the Court of Appeals.

On November 8, 1990, a decision was rendered by the Court of Appeals, Tenth Division,* dismissing the petition. The Appellate Court held:

"On the facts of this case, the petitioner may be viewed as having abandoned her appeal. She had appealed the respondent Court's decision on October 28, 1983, and had failed to prosecute her appeal until the private respondents, to protect their own interest, were compelled to file their motion to disallow appeal of April 10, 1989, a period of almost 6 years during which, the appeal had lain frozen and forgotten. The petitioner blames the Clerk of Court for this delay, but it is a hollow contention as shown in the text of the contested order above quoted. The petitioner's advertence to the lack of competence on the part of the respondent Court has an empty ring. In situations involving shorter period of time, the Highest Court of the land had unmistakably spoken and expressed condemnation of such delays. It had also made clear that the responsibility for the transmittal of records to the appellate court, in other words, the responsibility for making the appeal move, belongs to the appealing party and cannot be passed off to the Clerk of Court." (p. 77, Rollo.)

The Court of Appeals cited the following ruling of this Court in *Arcega, et al. vs. Court of Appeals, et al.*, 166 SCRA 773, 776:

"x x x. It cannot be said that the respondent Court of Appeals abused its discretion or exceeded its jurisdiction in dismissing the appeal of the petitioners for failure to prosecute, since it appears that the petitioners did nothing to effect or facilitate the transmittal of the records of the case to the appellate court for almost two (2) years from the issuance of the order to elevate said records to the appellate court. The Court has held that, while it is the duty of the clerk of the lower court to transmit the records of an appealed case to the appellate court, it is also the duty of the appellant to make the clerk of court act, and the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his, and he cannot justify his failure by saying that the fault was that of the clerk of the lower court."

The Court of Appeals recalled that in *Fagtanac, et al. vs. Court of Appeals, et al.*, 22 SCRA 1227, 1234, we similarly ruled:

"The negligence of private respondents in prosecuting their appeals in these cases is palpably clear. Their failure to assist the courts of justice to dispose of these cases with reasonable dispatch is a sufficient reason to take away from them their right to have the alleged errors in the appealed judgment corrected. They delayed the administration of justice by their delay in prosecuting their appeals. And this, in spite of the fact that the civil suit was commenced on June 5, 1951, and the land registration case, on September 14, 1951. In this situation, the spirit of the Rules of Court forbids that efficacy of the administration of justice be shackled by appellants' failure to prosecute the appeals. The rule in this respect is to be held rigid. Failure of an appellant to so prosecute must be reckoned against him. It would be a travesty in the administration of justice if we are to order now the return of the records to the lower court just to complete the records on appeal; to procure approval of the amended record still to be presented by private respondents in the land registration case; and thereafter to elevate the cases once again to the appellate court for resolution of the appeals.

"Delays in litigation have always been a bane in our judicial system. And we have observed a growing tendency of defeated suitors and their lawyers to disregard their duties under the Rules of Court, in the hope that they may stall the final day of reckoning. These are the considerations that now impel this Court to make a policy state-ment that failure to prosecute will not be countenanced."

We find no reversible error in the decision of the Court of Appeals. Indeed, while the transmittal of the records of an appealed case to the appellate court is the duty of the clerk of court of the trial court (Sec. 6, Rule 40, Rules of Court), for the simple reason that said court employee is the custodian of those records and is responsible for their safety and integrity, the speedy prosecution of the appeal is principally the responsibility of the appellant, rather than of the personnel of the trial court. It is the appellant, not the trial court, that is presumed to be interested in the review and reversal of the latter's decision. It is presumed that the appellant desires a speedy resolution of his appeal and swift rectification of the errors in the appealed decision. It behooves the appellant to be vigilant for the protection of his right. He should take it upon himself to call the attention of the trial court to any delay in the transmittal of the records of his case. As we said in *Estela vs. CA*, 185 SCRA 732, 738:

"We cannot subscribe to petitioner's gratuitous statement that 'as the rule now exists, the appellant is justified if he merely 'folds his hands' after the trial judge has ordered that the records of the case be transmitted to the appellate court.'

"Conceding to the point that is the clerk of court who is primarily responsible for seeing to it that the records of appealed cases are properly sent to the appellate court without delay (and having failed to do so subjects him to administrative liability), it behooves the litigants to be more vigilant of their rights. They should take it upon

themselves to call the attention of the trial court as to any delay in action over their cases."

Indeed, if the appellant does nothing to press his appeal, it may safely be concluded that he believes the judgment of the trial court to be correct and his appeal aims to accomplish nothing more than mere delay in the execution of the adverse judgment, certainly unfair to the appellee who is denied the enjoyment of the fruits of his victory in the case as long as the appeal is not resolved.

From the records of this case, it is perfectly clear that such was the purpose sought to be achieved by the petitioner's six-year delay in prosecuting her appeal. The trial court correctly disallowed her appeal and the Court of Appeals committed no reversible error in affirming the action of the trial court.

The general rule, that the trial court loses jurisdiction over a case after the perfection of the appeal^[1], hence, a motion to dismiss the appeal should be filed in the appellate court, not in the trial court, presupposes that the record on appeal had been transmitted to the appellate court. In this case, however, the motion to dismiss the appeal or to declare it abandoned, was not, and could not, be filed in the Court of Appeals because there was no record on appeal in the appellate court to speak of, Mateo's "appeal" was not docketed there. The records were still in the trial court. And even assuming that Mateo's appeal was perfected upon the filing of her notice of appeal, the trial court was not entirely divested of jurisdiction over the case. Under Section 9, Rule 41 Rules of Court, it retained jurisdiction "to issue orders for the protection and preservation of the rights of the parties prior to the transmittal of the record on appeal to the appellate court." The Court of Appeals' affirmance of the trial court's order declaring the appeal abandoned, cured whatever defect there might have been on the trial court's jurisdiction to act on the appellees' motion to dismiss the appeal.

WHEREFORE, the petition for review is DENIED for lack of merit. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Regalado, Davide, Jr., Romero, Nocon, Melo, and Quiason, JJ., concur.
Bellosillo, J., join J. Padilla in his dissenting opinion.

* Justice Nathaniel P. De Pano, Jr. as the ponente, with Justices Jorge S. Imperial and Jainal D. Rasul, concurring.

[1] Sec. 9, Rule 41, Rules of Court.

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DISSENTING OPINION

PADILLA, J.:

The majority opinion has denied the petition for review in this case, which seeks to annul the decision of the Court of Appeals, thus, upholding the dismissal by the Regional Trial Court Branch 151 Pasig of herein petitioner's appeal from the decision in Civil Case No. 21071.

The denial is based on a finding that there was no reversible error committed by the Court of Appeals in applying the cases of *Arcega v. The Honorable Court of Appeals*^[1] and *Fagnatac, et. al. v. Court Of Appeals*^[2] and holding that there was failure to prosecute the appeal and that the appeal "aims to accomplish nothing more than mere delay."

I regret I cannot join the majority notwithstanding my being the ponente in the Arcega case, for reasons to be stated and discussed hereafter.

In Arcega, it will be recalled, the appeal was dismissed by the appellate court not by the trial court. The same is true in Fagnatac where the Court of Appeals was directed by this Court to dismiss the appeals taken upon a finding that there was failure to prosecute.

In the case of Aguirre v. CFI of Leyte, Branch III[3] this Court ruled in language that can well apply to the case at bar, thus:

"Respondent trial court acted without juris-diction when it ordered the dismissal of the appeal for failure to prosecute, the proper court to order the dismissal of the appeal for failure to prosecute, after the perfection of said appeal, being the Court of Appeals, before which the appeal is taken."

In Heirs of Gavino Sabanal v. Gorospe, et al.,[4] the Court pointedly held "that it is not within the province of the lower court to determine at that stage of the proceedings whether an appeal is frivolous or not. Such duty devolves upon the appellate courts."

In the case at bar, it is my considered view that the admitted filing of the notice of appeal and the expiration of the reglementary period of fifteen (15) days for filing the same, perfected the appeal from the trial court. The trial court therefore lost jurisdiction over the case "except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal x x x." [5] In Aguirre,[6] this Court held that:

"The order granting private respondent's motion to dismiss appeal for failure of petition-ers to prosecute their appeal is not merely an order for the protection of the rights of the parties but is an order which disposes of the case."

It is thus clear that whether the dismissal is based on a finding that the appeal is frivolous and dilatory or on failure to prosecute the appeal, the court with jurisdiction to dismiss the appeal is the appellate court and not the trial court as, in my opinion, erroneously held by the majority. To stress the point further, the venerable Mr. Justice J.B.L. Reyes in the case of Republic v. Rodriguez[7] had occasion to emphasize that:

"Sections 13 and 14 of Rule 41 of the Revised Rules of Court clearly establish that, unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond or record on appeal."

Section 39 of Batas Pambansa Blg. 129 and its Implementing Rules and Guidelines modified this by requiring a record on appeal only in certain cases and eliminating the appeal bond. Thus, applying the rule in Dosalla v. Caluag,[8] the appeal having been perfected by the filing of the notice of appeal and the expiration of the fifteen (15) day period to appeal it became the duty of the trial court to give due course to the appeal. The soundness of this rule is supported by Section 1 paragraph (c), Rule 50 of the Revised Rules of Court which provides for the following as one of the grounds for dismissal of an appeal by the Court of Appeals, *motu proprio* or upon motion of the appellee, namely: appellant's failure to prosecute his appeal under Section 3 of Rule 46.

Since the trial court in the case at bar acted without jurisdiction in granting the motion to dismiss (disallow) the appeal, such order is plainly null and void and can have no force or effect whatsoever.

We now examine whether there was failure to prosecute the appeal on the part of the defendant (herein petitioner).

It cannot be denied that it was only on 16 January 1986, or more than two (2) years from the filing of the notice of

appeal that the trial court ordered the Clerk of Court to forward the records of the case to the Intermediate Appellate Court, now Court of Appeals.[9] Absent any showing that petitioner refused to supply the supposedly missing documents or papers to complete the record, there cannot be a finding of failure to prosecute. The case of *Estela v. CA*, cited by the majority,[10] should be distinguished from the case at bar for in the former not only was it the Court of Appeals which dismissed the appeal but more importantly there was a finding of "gross inaction for a period which exceeded one year" on the part of the appellant. Certainly such gross inaction cannot be attributed to herein petitioner who had undertaken, through counsel, to complete the records of the case.[11] The inability to complete the records of the case should not deprive the appellant of his chance and statutory right to appeal, specially in the case at bar where the missing documents are transcripts of stenographic notes which are under the care and custody of court personnel and the ultimate control of the trial court. Otherwise, not only will there arise occasions for trial courts to delay or prevent review or reversal of their decisions by appellate courts but the conditions would be ripe for unscrupulous and/or corrupt court personnel to frustrate the ends of justice by preventing the completion of the case records (like stenographic notes) and, in the process making it appear that there is failure to prosecute on the part of appellant.

I, therefore, vote to GRANT the petition. Petitioner's appeal should be REINSTATED.

[1] G.R. No. 79043, 28 October 1988, 166 SCRA 773

[2] G.R. Nos. L-26922 and L-26923, 21 March 1989, 22 SCRA 1227

[3] G.R. No. 53556, 20 December 1990, 192 SCRA 454

[4] G.R. No. L-50168, 30 September 1988, 166 SCRA 145

[5] Sec. 9, Rule 41, Revised Rules of Court

[6] *Supra*

[7] G.R. No. L-26056, 29 March 1969, 28 SCRA 378

[8] G.R. No. L-18765, 31 July 1963, 8 SCRA 644

[9] *Rollo*, p. 34

[10] G.R. No. 76884, 28 May 1990, 195 SCRA 732

[11] *CA decision*, pp. 5-7; *Rollo*, pp. 73-74

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