



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 19, 2021** which reads as follows:*

“G.R. No. 240325 – (Jennifer Andam Kato, Petitioner, v. Leny B. Andam, Respondent). – This Petition for Review¹ (petition) seeks to reverse and set aside the Decision² dated 22 September 2017 and Resolution³ dated 21 June 2018 of the Court of Appeals (CA), Cagayan de Oro Station in CA-G.R. SP No. 07695-MIN, affirming the Orders dated 03 December 2015⁴ and 08 August 2016⁵ of Branch 30, Regional Trial Court (RTC) of Surigao City in Civil Case No. 7882.

Antecedents

The present petition stems from a Complaint⁶ for reconveyance filed by Jennifer Andam Kato (petitioner) against her sibling, Leny Andam (respondent), before Branch 1, Municipal Trial Court in Cities (MTCC) of Surigao City. Petitioner alleged that sometime in 2001, she bought a 450 square meter parcel of land in Surigao City. The said parcel of land was covered by Transfer Certificate of Title No. T-2210⁷ and registered in the names of respondent (300 square meters) and Allyd Andam Yosores (150 square meters), petitioner's other sibling.

- over – seven (7) pages ...

164-B

¹ *Rollo*, pp. 06-13.

² *Id.* at 15-19; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas of the Court of Appeals, Twenty-First Division, Cagayan de Oro Station.

³ *Id.* at 21-22.

⁴ *Id.* at 47; penned by Acting Presiding Judge Cesar P. Bortalba.

⁵ *Id.* at 48.

⁶ *Id.* at 54-56.

⁷ *See Rollo*, p. 55.

Allegedly, petitioner and respondent agreed that 300 square meters would be registered in the latter's name for expediency, as the former was frequently out of the country. Petitioner claimed to be the real and absolute owner of the 300 square meter-portion (subject property) and respondent was only holding it in trust for her. When the two (2) had a falling out, petitioner asked respondent that the ownership and possession of the subject property be transferred in her name, but was met with refusal.⁸ Hence, the complaint.

For her part, respondent denied all the material allegations in the complaint and averred that she bought the subject property with her own savings.⁹

Ruling of the MTCC

In its Order¹⁰ dated 24 January 2014, the MTCC dismissed the case for failure of both petitioner and respondent, as well as their respective counsels, to appear for pre-trial, pursuant to Section 5,¹¹ Rule 18 of the Rules of Court (Rules). Petitioner consequently filed a motion for reconsideration,¹² which the MTCC denied in its Order¹³ dated 18 July 2014. Aggrieved, petitioner appealed the foregoing orders to the RTC, but failed to file an appeal memorandum.

Ruling of the RTC

In its Order¹⁴ dated 03 December 2015, the RTC dismissed the appeal for petitioner's failure to file her memorandum on appeal, pursuant to Section 7 (b), Rule 40 of the Rules. The RTC explained that, as borne by the record, both parties were notified on 27 January 2015 that the appealed case was raffled to the court and they were required to file their respective appeal memoranda but petitioner failed to do so.

Petitioner filed a motion for reconsideration,¹⁵ which the RTC denied in its Order¹⁶ dated 08 August 2016. She, thereafter, sought

- over -

164-B

⁸ *Rollo*, pp. 54-55.

⁹ *CA Rollo*, pp. 30-32.

¹⁰ *Rollo*, p. 44; penned by Acting Presiding Judge Rosalie D. Platil.

¹¹ SECTION 5. Effect of Failure to Appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

¹² *Rollo*, pp. 49-50.

¹³ *Id.* at 45-46.

¹⁴ *Id.* at 47.

¹⁵ *Id.* at 51-53.

¹⁶ *Id.* at 48.

recourse to the CA by filing a petition for *certiorari*.¹⁷

Ruling of the CA

In its Decision¹⁸ dated 22 September 2017, the CA dismissed the petition, to wit –

WHEREFORE, the petition is **DISMISSED**. The Orders dated December 3, 2015 and August 8, 2016 of the Regional Trial Court, Branch 30, Surigao City are **AFFIRMED**.

SO ORDERED.¹⁹

The CA held that it is obligatory on the part of petitioner to file her memorandum on appeal within fifteen (15) days from receipt of the notice to file the same; otherwise, her appeal will be dismissed.²⁰ In this case, the CA found that petitioner failed to file her memorandum on appeal as required by the RTC. On motion for reconsideration,²¹ the CA denied the same in its Resolution²² dated 21 June 2018. Hence, petitioner filed the instant petition before this Court.

Issue

The sole issue in this case is whether or not the dismissal of petitioner's appeal for failure to file a memorandum on appeal was proper.

Ruling of the Court

The petition is without merit.

Section 7, Rule 40 of the Rules reads:

SECTION 7. Procedure in the Regional Trial Court. —

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall

- over -

164-B

¹⁷ *Id.* at 33-43.

¹⁸ *Id.* at 15-19.

¹⁹ *Id.* at 19.

²⁰ *Id.* at 17.

²¹ *Id.* at 23-27.

²² *Id.* at 21-22.

briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

We hold that the CA did not err in dismissing the petition. The dismissal of the appeal by the RTC was based on Section 7 (b), Rule 40 of the Rules. It was obligatory on the part of petitioner to submit or file a memorandum of appeal within 15 days from receipt of the order enjoining the filing of said pleading. And failing such duty, consequently, it was incumbent upon the RTC to dismiss the appeal, as the Rules unmistakably commanded.²³ In *Enriquez v. Court of Appeals*,²⁴ it was held that:

x x x The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.

In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is mandatory. x x x {Emphasis removed}

The *raison d'être* for such necessity is that in appeals from inferior courts to the RTC, the appellant's brief is mandatory since only errors specifically assigned and properly argued in the appeal memorandum will be considered in the decision on the merits.²⁵

- over -

164-B

²³ *Gonzales v. Gonzales*, G.R. No. 151376, 22 February 2006, 518 Phil. 223 (2006) [Per J. ChicoNazario].

²⁴ G.R. No. 140473 (Resolution), 28 January 2003, 444 Phil. 419 (2003) [Per J. Quisumbing] cited in *Mejillano v. Lucillo*, G.R. No. 154717, 19 June 2009, 607 Phil. 660 (2009) [Per J. Quisumbing].

²⁵ *Mejillano v. Lucillo*, G.R. No. 154717, 19 June 2009, 607 Phil. 660 (2009) [Per J. Quisumbing].

Unperturbed, petitioner insists that she did not receive any order from the RTC directing her to file a memorandum on appeal. All she received after filing the notice of appeal were the following: a) an Order²⁶ dated 22 September 2014 issued by the MTCC directing the elevation of the record to the RTC of Surigao City for review; b) a transmittal letter of the complete record dated 03 October 2014 from the MTCC to the RTC of Surigao City;²⁷ and c) Notice of Raffle²⁸ issued by the clerk of court of the RTC of Surigao City requesting the parties to the cases enumerated therein, including the instant case, to attend the raffling of cases on 09 October 2014.

According to petitioner, the Notice of Raffle is not the notice contemplated in Section 7 (b) of the Rules and insists that she did not receive the Order dated 27 January 2015 directing her to file a memorandum on appeal. Thus, the CA erred in dismissing her petition and in affirming the orders of the RTC.

Contrary to petitioner's allegation that no notice to file the required appeal memorandum had been issued, the RTC, in fact, directed the parties on 27 January 2015 to file their respective memoranda on appeal.²⁹ It bears stressing that it was only on 03 December 2015, or more than ten (10) months from the issuance of said directive that the RTC proceeded to finally dismiss petitioner's appeal. Certainly, petitioner was given ample time to file the required memorandum on appeal, yet she failed to do so. As found by the CA, the fault for failing to file the same lies with petitioner, not with the RTC which dismissed the appeal pursuant to the Rules.

Assuming *arguendo* that petitioner did not receive the notice to file appeal memorandum, this does not excuse her from filing the same. The records show that petitioner had perfected her appeal and the MTCC had directed the elevation of the records of the case to the RTC on 22 September 2014.³⁰ Petitioner should have known that it would only be a matter of time for her to be directed to file her memorandum on appeal. Notably, even though she received both the letter of transmittal as well as the Notice of Raffle on 17 October 2014, she did not even follow up with the office of the clerk of court of the RTC of Surigao City as to which branch her case had been assigned. Neither did she make any inquiries as to the status of her

- over -

164-B

²⁶ *Rollo*, p. 28.

²⁷ *Id.* at 29.

²⁸ *Id.* at 30-31.

²⁹ *Id.* at 47.

³⁰ *Id.* at 28.

case. Considering that petitioner had an interest in the outcome of the case, she should have been more vigilant in making follow-ups on her case.

To emphasize, it is not the first time that petitioner failed to comply with the Rules. To recall, petitioner's complaint for reconveyance was dismissed by the MCTC for failure of petitioner and her counsel to appear during pre-trial.³¹ Thus, petitioner's penchant for disregarding the rules of procedure should not be countenanced. After all, procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party.³² They are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights.³³ Time and again, the Court has reiterated that rules of procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.³⁴ Moreso in this case, as earlier discussed, where the filing of the required appeal memorandum is not only mandatory but jurisdictional.³⁵ Thus, for the foregoing reasons, the dismissal of petitioner's appeal for failure to file a memorandum on appeal was proper.

WHEREFORE, the instant petition is hereby **DENIED**. Accordingly, the Decision dated 22 September 2017 and Resolution dated 21 June 2018 of the Court of Appeals, Cagayan de Oro Station, in CA-G.R. SP No. 07695-MIN are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m 4/18*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
164-B

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³¹ *Id.* at 44.

³² *Sindophil, Inc., v. Republic*, G.R. No. 204594, 07 November 2018 [Per J. Leonen].

³³ *Ti v. Dino*, G.R. No. 219260, 06 November 2017 [Per J. (now CJ) Peralta].

³⁴ *Philippine Savings Bank v. Papa*, G.R. No. 200469, 15 January 2018 [Per J. Martires].

³⁵ *See Cruz v. Spouses Christensen*, G.R. No. 205539, 04 October 2017, 819 Phil. 379 (2017) [Per J. Leonen] citing G.R. No. 140473 (Resolution), 28 January 2003, 444 Phil. 419 (2003) [Per J. Quisumbing].

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164-B

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