

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**REPUBLIC OF THE PHILIPPINES,
*Petitioner,***

-versus-

**G.R. No. L-48241
June 11, 1987**

**HON. JOSE P. ARRO, in his capacity as
Presiding Judge, Br. III, Court of First
Instance of Davao, ISABELO I.
PACQUING,
*Respondents.***

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DECISION

GANCAYCO, J.:

This is a Petition for *Certiorari*, Mandamus, Prohibition and Injunction, seeking the nullification of the Orders of March 9, 1978 and April 21, 1978 of the Court of First Instance of Davao in Civil Case No. 6509, the resolution of which revolves on whether the negligence of counsel who went abroad and practically abandoned a case can bind his client.

On May 16, 1969, the petitioner filed a complaint entitled "Republic of the Philippines vs. Isabelo I. Pacquing and Carmen B. Pacquing," for the collection of deficiency taxes^[1] based on the income tax

returns filed by the respondents spouses, for the years of 1956, 1957 and 1958. After private respondents filed their answer to the original complaint through the assistance of their counsel, Atty. Vicente Garcia, petitioner filed, with leave of court^[2] an amended complaint,^[3] increasing the income tax deficiency sought.^[4] Private respondents moved to dismiss the amended complaint.^[5] On June 7, 1973, respondent court denied the motion to dismiss. Private respondents' Answer to the original complaint was adopted as their Answer to the amended complaint.

After trial on the merits and the submission of the memorandum of the parties a decision was rendered on October 10, 1977, the dispositive portion of which reads:

“IN VIEW OF ALL THE FOREGOING judgment is hereby rendered ordering the defendants to pay to the plaintiff:

UNDER THE FIRST CAUSE OF ACTION

1. The sum of P26,819.90 as sales and percentage taxes from 1954 to 1957;

UNDER THE SECOND CAUSE OF ACTION

2. The sum of P260,071.22 as deficiency income taxes for 1956, 1957 and 1958, plus 5% surcharge and 1% monthly interest from August 6, 1962 Until fully paid, pursuant to Section 5(a) of the National Internal Revenue Code, as amended by Republic Act No. 2343.

COMMON TO BOTH CAUSES OF ACTION

The sum of P25,000.00 is hereby directed to be deducted from the total liability ordered to be paid to the plaintiff under the above first and second causes of actions, defendants' unauthorized payments under the tax amnesty.

Without special pronouncement as to costs.

SO ORDERED.’“^[6]

On December 19, 1977, notice and a copy of the decision was delivered at the office of Atty. Vicente Garcia, which was received by his clerk. On January 19, 1978, there being no appeal taken,^[7] petitioner filed a motion for execution of the judgment.^[8] Meanwhile, on January 23, 1978, private respondents, thru another counsel, Atty. Alberto Lumakang, filed a Notice of Appeal with a motion for extension of time^[9] to submit record on appeal. Petitioner filed an opposition on the ground that the copy of the decision was duly received by Atty. Garcia’s clerk and that from the date of said receipt thereof,^[10] the thirty (30) day period for appeal^[11] had already lapsed. In the Order of March 9, 1978,^[12] the trial court gave due course to the appeal and granted the motion for extension of time of twenty (20) days to file the record on appeal. A motion for reconsideration was filed by petitioner. On April 21, 1978, the respondent court issued an Order^[13] denying petitioner’s motion for reconsideration^[14] as well as the motion for Writ of Execution.

Hence, the present petition.

The pertinent rules on appeal is found in Rule 41 of the Revised Rules of Court as follows:

SEC. 3. How appeal is taken. — Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

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SEC. 5. Appeal bond. — The appeal bond shall answer for the payment of costs. It shall be in the amount of one hundred and twenty pesos (P120) unless the court shall fix a different amount. If the appeal bond is not in cash it must be approved by the court before the transmittal of the record on appeal to the appellate court.

SEC. 9. When appeal deemed perfected; effect thereof. — If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its 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, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals.

It is a requirement under the aforequoted provisions that a notice of appeal, appeal bond and record on appeal should be filed in court and served upon the adverse party within thirty (30) days from notice of judgment.^[15] This is mandatory and jurisdictional.^[16]

When a party appears by attorney in an action or proceeding in court, all notices required to be given therein must be given to the attorney and not to the client. Hence a notice given to the client and not to his attorney is not a notice in law.^[17]

The rule in this jurisdiction is that the client is bound by the negligence or failings of counsel.^[18] It is the duty of an attorney to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record.^[19] The attorney must so arrange matters that communications sent by mail, addressed to his office or residence, may reach him promptly.^[20] The negligence of a counsel's secretary in failing to note down the trial date on his desk calendar is negligence and failings of counsel in having a negligent secretary — said circumstances not constituting excusable negligence.^[21]

This rule, however, is not without exception. In the case of an irresponsible lawyer who totally forgot about the case and failed to inform his client of the decision, this Court held that the client should not be bound by the negligence of the counsel.^[22]

Under the peculiar circumstances of the instant case the negligence of the counsel is far from excusable. Atty. Vicente Garcia who was the counsel of private respondents went to the United States of America but had a clerk in-charge of his office. The copy of the decision was received on December 19, 1977 by said clerk. He did not do anything about the same so the reglementary period of appeal lapsed. It can be assumed that said clerk received appropriate instructions from Atty. Garcia as to what to do with any processes, orders or notices that maybe received or otherwise that no such instruction were given. In either case there is inexcusable negligence. Private respondents have no one to blame except their lawyer. They are bound by the negligence and failings of their lawyer. And the appeal not having been interposed within the reglementary period, the decision has now become final and executory.

WHEREFORE, the Petition is hereby **GRANTED**. The Orders of March 9, 1978 and April 21, 1978 of the Court of First Instance of Davao in Civil Case No. 6509 are hereby set aside for being null and void, and the decision of the trial court in said case of October 10, 1977 is hereby declared final and executory with costs against private respondents.

SO ORDERED.

Yap, Narvasa, Melencio-Herrera, Cruz, Feliciano and Sarmiento, JJ., concur.

[1] Inclusively for P260,070.72.

[2] June 27, 1970.

[3] Dated June 9, 1970.

[4] Sales tax for 1954, 1956 & 1957	—	P 26,819.90
Deficiency income tax for 1956 to 1958	—	<u>260,071.22</u>
Total:		P286,891.12

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[5] Invoking P.D. 23 in relation to P.D. 67 and the unfinished reinvestigation conducted by the plaintiff at the request of the defendants.

Petitioner vehemently opposed the motion to dismiss on the ground that the motion involves a very delicate question of law in that there is yet no clear

jurisprudence on the matter, it being of a first impression in our jurisdiction.

- [6] Page 3, Petition.
- [7] Counting from December 19, 1977, the thirty (30) day period of appeal expired on January 18, 1978.
- [8] Annex A, Petition, pages 27-29, Rollo.
- [9] Dated January 21, 1978, Saturday.
- [10] Supra.
- [11] Now reduced to 15 days, Sec. 39, B.P. 129, Judiciary Reorganization Act of 1980.
- [12] Annex D, Petition, pages 36-38, Rollo.
- [13] Annex E, Petition, page 39, Rollo.
- [14] Annex D, Petition, pages 36-38, Rollo.
- [15] *Exporters vs. Ladaw*, G.R. No. L-5181, February 24, 1953, 49 Official Gaz. 1439.
- [16] *Remorin vs. Valles*, 92 Phil. 989.
- [17] *Palad vs. Cui*, 28 Phil. 44, *Notor vs. Daza*, 76 Phil. 850, *Santiago vs. CA, et al.*, 105 Phil. 1260. Section 2, Rule 13, Rules of Court.
- [18] *Macavinta, Jr. vs. People*, 54 SCRA 420; *Malipol vs. Tan*, 55 SCRA 202; *Gutierrez & Sons vs. Court of Appeals*, 61 SCRA 87; *Cason Vda. de Carretero vs. Tarca*, 87 Phil. 689.
- [19] *Enriquez vs. Bautista*, 79 Phil. 220.
- [20] *Islas vs. Platon*, 47 Phil. 662; *Yanyee vs. Millan*, 57 Phil. 761; *Enriquez vs. Bautista*, supra.
- [21] *Antonio vs. Ramos*, 2 SCRA 731.
- [22] *PHHC vs. Tiongco*, November 28, 1964, 12 SCRA 471.