

## SIXTH DIVISION[\*]

[ CA-G.R. SP NO. 118956, February 12, 2015 ]

**KEY RURAL BANK, INC., (FORMERLY, KEY RURAL BANK (SAN PEDRO, LAGUNA, INC.)), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) 2ND DIV. AND JOSEPHINE F. LOMIO-TARNATE, RESPONDENTS.**

### D E C I S I O N

**PERALTA, JR., E. B., J.:**

Via the extraordinary Writ of Certiorari<sup>[1]</sup> under *Rule 65 of the 1997 Rules of Civil Procedure*, petitioner implored the Court to evaluate the Resolutions dated October 9, 2009<sup>[2]</sup> and February 23, 2011<sup>[3]</sup> of public respondent National Labor Relations Commission, which denied its Motion for Reduction of Appeal bond relative to its appeal from the Labor Arbiter's Decision<sup>[4]</sup> dated December 10, 2004 in favor of private respondent.

We traced the root of the *casus belli* on October 8, 1996 when petitioner Key Rural Bank, Inc., (hereinafter referred to as petitioner) hired private respondent Josephine L. Tarnate (hereinafter referred to as private respondent) as Accounting Clerk.

After nine months, petitioner promoted private respondent as Bookkeeper. However, for reasons only known to petitioner, the salaries and allowances due to its employees for December, 2000 and January, 2001 were withheld from them but private respondent continued to work at petitioner's bank in San Pedro, Laguna. After several follow-ups, private respondent received her salary for December, 2000, but petitioner refused to pay private respondent's allowance and salaries from December 16 to February, 2001. By reason thereof, private respondent decided to tender her resignation in March, 2001.

On May 12, 2002, private respondent filed a Complaint<sup>[5]</sup> for constructive dismissal with claims for unpaid salaries, living allowances, 13<sup>th</sup> month pay, separation pay, retirement benefits, moral damages, exemplary damages and attorney's fees against petitioner.

Petitioner filed its Reply<sup>[6]</sup> and averred that private respondent was not constructively dismissed but voluntarily resigned from her job, as evidenced by the Resignation Letter dated February 28, 2001.

On December 10, 2004, Labor Arbiter Danna M. Castillon rendered a Decision and agreed with private respondent's theory of constructive dismissal.<sup>[7]</sup>

Dissatisfied with the Decision, petitioner presented a Notice of Appeal on February 17, 2005<sup>[8]</sup> with the attached Motion for Reduction of Surety/Appeal/Supersedeas

Bond<sup>[9]</sup> to the effect that, upon approval of its Motion for reduction of the bond, it shall post a surety/appeal bond to be issued by Summit Guaranty and Insurance Company, Inc.

On February 23, 2005, petitioner filed a Supplemental Motion for Reduction of Bond and Manifestation of Submission of Supersedeas Bond<sup>[10]</sup> in the amount of P150,000.00 issued by Premiere Insurance and Surety Corporation.<sup>[11]</sup>

On March 10, 2006, the NLRC issued an Order,<sup>[12]</sup> which dismissed the appeal filed by petitioner for non-perfection.

Petitioner's Motion for Reconsideration<sup>[13]</sup> on March 30, 2006 was also denied by the NLRC in a Resolution<sup>[14]</sup> dated June 15, 2006 and the Resolution became final and executory on July 13, 2006, as evidenced by the Entry of Judgment issued by the Executive Clerk of the Second Division of the NLRC.

After the denial of its Motion for Reconsideration, petitioner filed a Petition for Certiorari<sup>[15]</sup> before this Court on August 15, 2006, docketed as CA-G.R. SP No. 95687, which imputed grave abuse of discretion amounting to lack or excess of jurisdiction upon the NLRC for dismissing its appeal without resolving the Motion for Reduction of Surety/Appeal/Supersedeas Bond.

In a Decision<sup>[16]</sup> dated April 29, 2008, the Fifth Division of this Court remanded the case to the NLRC. It ruled that the public respondent should have acted upon, and resolved, the Motion to reduce bond before dismissing the appeal. Thus, it ordered the NLRC to first resolve petitioner's Motion to Reduce Bond dated February 17, 2005, inclusive of its Supplemental Motion dated February 23, 2005, viz:

*"WHEREFORE, the petition is GRANTED.*

*Accordingly, the March 10, 2006 Order of the National Labor Relations Commission (NLRC) which dismissed petitioner's appeal for non-perfection thereof is hereby REVERSED and SET ASIDE.*

*The public respondent is hereby ordered to resolve first petitioner Key Rural Bank, Inc.'s Motion to Reduce Bond, dated February 17, 2005 and its Supplemental Motion, dated February 23, 2005, before deciding whether or not to give due course to the appeal.*

*SO ORDERED.*"<sup>[17]</sup>

On October 9, 2009, the NLRC issued the first assailed Resolution, which denied petitioner's Motion for Reduction of Surety/Appeal/Supersedeas Bond and Manifestation of Submission of Respondents-Appellants Supersedeas Bond,<sup>[18]</sup> thusly:

*"Although the motion to reduce bond was timely filed, the filing of the same does not, however, stop the running of the prescriptive period of perfecting an appeal as provided by Section 6 of Rule VI of the 2005 Revised Rules of Procedure of the National Labor Relations Commission (NLRC).*

Clearly, an appeal bond should have been posted within the ten (10) day reglementary period.

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Considering that not only did respondents-appellants fail to post the required appeal bond but also posted the unapproved bond on February 23, 2005 or beyond the ten (10) day reglementary period to perfect an appeal, the period within which to perfect their appeal had already lapse.”  
[19]

On December 2, 2009, petitioner sought reconsideration<sup>[20]</sup> of the Resolution dated October 9, 2009.

On March 12, 2010, the NLRC issued a Resolution,<sup>[21]</sup> which denied petitioner's Motion for Reduction of Bond and the subsequent Supplemental Motion for Reduction of Bond, the dispositive portion of which reads, as follows:

***"ALL TOLD,** the Motion for Reduction of Surety/Appeal/Supersedeas Bond without bond, and the subsequent Supplemental Motion for Reduction of Surety/Appeal/Supersedeas Bond and Manifestation of Submission of Respondents-Appellants Supersedeas Bond of Respondents-Appellants are hereby **DENIED**. Consequently, the appeal is hereby declared not perfected.*

**SO ORDERED.**"<sup>[22]</sup>

On July 1, 2010, petitioner filed a Motion to Resolve its (Motion for Reconsideration dated December 2, 2009 of the Resolution dated October 9, 2009) with Motion to Quash and Set-Aside Entry of Judgment.<sup>[23]</sup>

On February 23, 2001, the NLRC issued the second assailed Resolution,<sup>[24]</sup> which denied the Motion for Reconsideration dated December 2, 2009 and it likewise set aside the Entry of Judgment dated June 11, 2011:

***"WHEREFORE,** premises considered, the instant Motion for Reconsideration is hereby denied; the Entry of Judgment dated June 11, 2010 is set aside.*

**SO ORDERED.**"<sup>[25]</sup>

Unfazed, petitioner filed a Petition for Certiorari<sup>[26]</sup> anchored on these ascriptions:

"I

...THE HON. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN EFFECTIVELY DISMISSING PETITIONER'S APPEAL IN NLRC CA NO. 044978-05 (NLRC-RAB IV Case No. 0315263-02-L) BASED ON ALLEGED NON-PERFECTION OF APPEAL, AND IN DENYING PETITIONER'S MOTION TO REDUCE BOND AND SUPPLEMENTAL MOTION, COMPLETELY

IGNORING THE COURT OF APPEAL'S DECISION DATED APRIL 29, 2008 IN CA-G.R. SP NO. 95687, WHICH FOUND THAT PETITIONER SUBSTANTIALLY COMPLIED WITH THE RULES AND THE APPEAL PRESENTED CRUCIAL ISSUES.

## II

... THE HON. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT FINDING THAT THERE WAS NO CONSTRUCTIVE DISMISSAL IN THIS CASE CONSIDERING THAT THERE WAS A LETTER OF RESIGNATION HANDED IN; AND THAT THERE WAS NO FACTUAL AND LEGAL BASIS FOR THE GRANT OF THE JUDGMENT AWARD.”<sup>[27]</sup>

From the foregoing backdrop, what loomed as the pervasive issue is the legal feasibility of public respondent’s dismissal of petitioner's appeal in NLRC Case No. 044978-05 for non-perfection thereof.

At the outset, it must be underscored that the submission of the Motion to Reduce Bond, appended to the Notice of Appeal, was in the nick of time. Yet, it may be asked: can a sheer Motion to reduce the appeal bond lead to a perfection of an appeal in a labor case?

It may be recalled that on March 10, 2006, the NLRC dismissed the appeal, without resolving the Urgent Motion to Reduce Bond filed by petitioner, for failure to post a bond. It was opined by the NLRC that the appeal bond must *first* be posted before the Commission could act on the motion to reduce. Along this line, the Fifth Division of this Court entertained a different view with a declaration that the NLRC should have acted upon, and resolved, the Motion to reduce bond before dismissing the appeal, thusly:<sup>[28]</sup>

*"Petitioner bank substantially complied with the rules considering that it seasonably filed on February 17, 2005 or within seven (7) days from receipt of the Labor Arbiter's decision a notice of appeal, appeal memorandum with motion for reduction of surety/appeal/supersedeas bond.*

*On February 23, 2005, despite the fact that the first motion for reduction had not yet been acted upon, in good faith, petitioner bank immediately filed a supplemental motion for reduction of surety/appeal/supersedeas bond and manifestation of private respondent's supersedeas bond, wherein it manifested that it was submitting a supersedeas bond in the amount of P150,000.00. Said amount constitutes a reasonable amount in relation to the judgment award of P420,284.85.*

*Under the circumstances, the public respondent should have acted upon, and resolved, the motion to reduce bond before dismissing the appeal. A liberal interpretation of the bond requirement in this case would best serve the interest of justice considering the crucial issues to be resolved in this case which are: 1) whether or not there was constructive dismissal considering that there was a letter of resignation handed in and 2)*

*whether or not there was factual and legal basis for the judgment award.*

[29]

Thereafter, the NLRC heeded this Court per the October 9, 2008 disposition of petitioner's Motion to Reduce Bond:[30]

*"Guided by the April 29, 2008 decision of the Court of Appeals which ordered "to resolve first" the "Motion to Reduce Bond dated February 17, 2005", "before deciding whether or not to give due course to the appeal" (unnumbered page before p/412, Records), this Commission (Second Division) in our October 9, 2009 Resolution denied the motion to reduce bond, and thereafter declared the appeal not perfected contained in our March 10, 2006 Order and June 15, 2006 Resolution.*

*This is after it was found again that the appeal filed by Respondent-Appellants on February 17, 2006 was without an appeal bond. As manifested by Respondents-Appellants in their Appeal, they received the appealed decision on February 10, 2005, and "the appeal shall be perfected on or before February 21, 2005, no bond was filed by them.*

*During the period of appeal, therefore, there was no reduced bond to approve. Hence, the motion to reduce bond had to be denied. And because the appeal was not perfected for having been filed without a bond, the appeal has to be declared not perfected.*

*The appeal bond was filed by Respondents-Appellants on February 23, 2005 after the period to appeal or perfect an appeal lapsed."*[31]

Petitioner now imputes grave abuse of discretion on the part of the NLRC when it issued the Resolutions dated October 9, 2009 and February 23, 2011.

**We were far from convinced that grave abuse of discretion had attended the dismissal of petitioner's appeal.**

Well-settled is the doctrine that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[32]

*Article 223 of the Labor Code,[33] as amended, explicitly provides that if the decision involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC "in the amount equivalent to the money award in the judgment appealed from."*

In the 2002 NLRC *New Rules of Procedure*, another qualification to the reduction of an appeal bond was added in *Section 6*:

*"SECTION 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to*