

## SECOND DIVISION

[ G.R. No. 232120, September 30, 2020 ]

**NATIONAL GRID CORPORATION OF THE PHILIPPINES,  
PETITIONER, VS. CLARA C. BAUTISTA, MARRIED TO REY R.  
BAUTISTA, RESPONDENT.**

### DECISION

**INTING, J.:**

For resolution of the Court is the Petition<sup>[1]</sup> for Review on *Certiorari* filed by National Grid Corporation of the Philippines (petitioner) seeking to reverse and set aside the Resolutions dated July 26, 2016<sup>[2]</sup> and May 16, 2017<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 04229-MIN. The assailed Resolutions dismissed the appeal of petitioner for failure to file an Appellant's Brief within the reglementary period.

#### *The Antecedents*

In its bid to improve the capacity of its transmission system and meet the increasing demand for electricity, petitioner entered into the Kirahon-Maramag 230 KV Transmission Line Project which required the acquisition of Clara C. Bautista's (respondent) 1,314-square meter (sq. m.) property located in Brgy. North Poblacion, Maramag, Bukidnon registered under Transfer Certificate of Title No. T-76986.<sup>[4]</sup> Pursuant to Section 4 of Republic Act No. 9511, petitioner filed a Complaint<sup>[5]</sup> for Expropriation against respondent. It alleged that the Bureau of Internal Revenue (BIR) zonal valuation for the property is P10.00 per sq. m. or P13,140.00, while the cost of the improvement stands at P40,679.36 for a total price of P53,819.36.<sup>[6]</sup>

Respondent opposed the petition and countered that the BIR zonal valuation is less than the property's fair market value.<sup>[7]</sup> She further asserted that although the property is classified as agricultural, its actual use is residential and the lots adjacent thereto are already industrial in character.<sup>[8]</sup>

After the requisite provisional deposit of the valuation of the property, Branch 8, Regional Trial Court (RTC), City of Malaybalay issued a Writ of Possession<sup>[9]</sup> to petitioner. The RTC then appointed Commissioners to determine the fair market value of the property: (1) Evelyn A. Lantong (Commissioner Lantong), Municipal Assessor of Maramag, Bukidnon as Chairperson; (2) Francisco Y. Cipriano, Jr. (Commissioner Cipriano), Chief of the Municipal Planning and Development Office of Maramag, Bukidnon, as Member; and (3) Engr. Gilbert Polloso (Commissioner Polloso) from petitioner's office in Iligan City, also as Member.<sup>[10]</sup>

Based on the Court Commissioner's Report<sup>[11]</sup> prepared by Commissioner Lantong and Commissioner Cipriano, the fair market of the property is at P3,000.00 per sq. m. on the basis of the current average sales for commercial and industrial land, including the highest and best use of the land and the valuation of sales and direct comparison, the unit base market value computation, and the deed of sale and conformity involving, the property. They likewise explained that the actual ocular inspection of the property indicated that its use is industrial or built-up.<sup>[12]</sup>

However, Commissioner Polloso submitted his own Commissioner's Report<sup>[13]</sup> wherein he recommended that the just compensation for the property is only at P25.00 per sq. m. upon considering its extent and character, zoning value, current land classification in the locality, its assessment value, and highest and best use. He further indicated that the property is classified as an agricultural land based on its tax declaration and zoned as "agricultural protection" per Municipal Zoning Ordinance No. 04, Series of 2008. But he also noted that in another certification, the property identified as Lot No. 653-A-2-A, Psd-10-028431 with an area of 3,365 sq. m. is classified as "built-up".

### *Ruling of the RTC*

On August 20, 2015, the RTC rendered a Judgment,<sup>[14]</sup> the dispositive portion of which reads:

ACCORDINGLY, in view of all the foregoing, judgment is hereby rendered ordering plaintiff NGCP to pay defendants the following:

1. Just compensation in the amount of P600.00 per square meter or a total of P788,400.00, for the area expropriated, which shall bear six percent (6%) interest per annum from the time of taking until fully paid.
2. Commissioners' fees to Evelyn A. Lantong, chairperson of the panel of commissioners, and Francisco Y. Cipriano, Jr., member of the panel of commissioners, in the amount of P1,500.00 each as part of the costs, pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure and Section 16, A.M. No. 04-2-04-SC.
3. Cost of the suit.

SO ORDERED.

The RTC found that the valuation of the property at P25.00 per sq. m. is too low, impractical, and unreasonable;<sup>[15]</sup> that, in the same manner, the P10.00 per sq. m. valuation of the BIR for taxation purposes is long overdue for revision;<sup>[16]</sup> that, on the other hand, respondent's P3,000.00 per sq. m. valuation is too high and speculative as it is based only on one deed of sale and the proposed Comprehensive

Land Use Plan of the Municipality of Maramag, Bukidnon.<sup>[17]</sup> Thus, the RTC took judicial notice of the other expropriation cases pending therein that involved properties similarly located in Brgy. North Poblacion, Maramag, Bukidnon classified as agricultural land and yet, upon ocular inspection, were industrial and/or zoned as "built-up" wherein the recommended amounts for just compensation were P220.00 and P600.00 per sq. m.<sup>[18]</sup>

Upon petitioner's Motion for Reconsideration,<sup>[19]</sup> the RTC only deleted the award for cost of suit in an Order<sup>[20]</sup> dated October 30, 2015.

Dissatisfied, petitioner appealed to the Court of Appeals.<sup>[21]</sup>

#### *Ruling of the CA*

The CA declared that despite the receipt of the Notice to File Brief addressed to the counsel of petitioner, the latter failed to file an Appellant's Brief. Thus, pursuant to Section 7, Rule 44 of the Rules of Court, the CA, in a Resolution<sup>[22]</sup> dated July 26, 2016, ruled that petitioner's failure to file an Appellant's Brief was an abandonment of its appeal which caused its dismissal.<sup>[23]</sup>

Petitioner filed an Urgent Omnibus Motion for Reconsideration Cum Clarification,<sup>[24]</sup> but the CA denied it in a Resolution<sup>[25]</sup> dated May 16, 2017. It found petitioner's explanation of not having been properly notified regarding the Appellant's Brief as insufficient considering the Letter Tracer dated June 1, 2016 that the Notice to File Brief sent to petitioner's counsel was duly received by one Grepah Crisen Ilogon on April 6, 2016.<sup>[26]</sup>

Hence, the petition.

#### *Issues Before the Court*

Petitioner questions the CA's automatic dismissal of the appeal based on a mere failure to file an Appellant's Brief within the reglementary period which the rules only made discretionary. It also alleges the existence of overriding public interest which requires that the discretion to dismiss of the CA be exercised with liberality. Furthermore, petitioner posits that the CA failed to recognize that the RTC overvalued the expropriated property as an industrial land despite the zoning ordinance which classified the property as agricultural.

#### *Our Ruling*

The petition must fail.

Preliminarily, records of the case reveal that respondent failed to comply with the Court's Resolutions dated July 9, 2018<sup>[27]</sup> and December 5, 2018<sup>[28]</sup> that required her to submit a soft copy in compact disc, USB, or e-mail containing the PDF file of the signed Comment within the period which expired on April 9, 2019.<sup>[29]</sup>

Nevertheless, petitioner filed its Reply (To the Comment on Petition for *Certiorari*) [30] to respondent's Comment in compliance with the Court Resolution dated July 9, 2018.

Section 7, Rule 44 of the Rules of Court provides:

SEC. 7. *Appellant's brief* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

The CA has the discretion to dismiss or not to dismiss an appeal for non-filing of an Appellant's Brief under Section 1(e), Rule 50 of the Rules of Court:

Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it. [31] The usage of the word may in the aforementioned provision indicates that the dismissal of the appeal upon failure to file the Appellant's Brief is only discretionary and not mandatory. [32] Failure to serve and file the required number of copies of the Appellant's Brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal. [33] When the circumstances so warrant its liberality, the CA is bound to exercise its sound discretion and allow the appeal to proceed despite the late filing of the Appellant's Brief upon taking all the pertinent circumstances into due consideration. [34] With that affirmation comes the caution that such discretion must be a sound one exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case. [35]

The Court finds no reason to disturb the CA's exercise of discretion in dismissing the appeal. The explanation proffered by petitioner is not compelling as to convince the Court to reverse the CA.

In *Beatingo v. Bu Gasis*, [36] the Court clarified the CA's discretionary power of dismissal of an appeal for failure to file Appellant's Brief in this wise:

The question of whether or not to sustain the dismissal of an appeal due to petitioner's failure to file the Appellant's Brief had been raised before this Court in a number of cases. In some of these cases, we relaxed the Rules and allowed the belated filing of the Appellant's Brief. In other cases, however, we applied the Rules strictly and considered the appeal abandoned, which thus resulted in its eventual dismissal. In *Government of the Kingdom of Belgium v. Court of Appeals*, we revisited the cases which we previously decided and laid down the following guidelines in confronting the issue of non-filing of the Appellant's Brief:

(1) The general rule is for the Court of Appeals-to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribes by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[,] it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellee's cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.<sup>[37]</sup>

In the present case, there is no showing that petitioner filed an Appellant's Brief