

THIRD DIVISION

[A.M. NO. P-04-1911, October 25, 2005]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
ASTER A. MADELA, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

On September 6, 2002, the Metropolitan Trial Court (MeTC) of Manila, Branch 22, promulgated a decision in consolidated Case Nos. 170353-CV and 170416-CV, both entitled "*Angelica Magdato, plaintiff versus Peter N. Abrera, defendant,*" in favor of the plaintiff.

The defendant Peter Abrera thereupon filed a Notice of Appeal which was given due course and eventually raffled to Branch 17 of the Regional Trial Court (RTC) of Manila.

Soon after the record of the appealed case was elevated to the RTC, herein respondent Aster A. Madela, Legal Researcher and then Officer-in-Charge of Branch 17, issued a "Notice of Docketing of Case under Appeal" dated November 27, 2002 addressed to the counsel for the plaintiff-appellee and counsel for the defendant-appellant reading:

The above-entitled case under appeal from the Metropolitan Trial Court, this City is entered in the Docket Book of this Court on November 26, 2002, by this Court on even date.

WITNESS the HON. EDUARDO B. PERALTA, JR., Presiding Judge of this Court, this 27th day of November 2002 at Manila, Philippines.

(Sgd.) ASTER A. MADELA
Officer-in-Charge^[1]

Allegedly realizing that the above-quoted notice "was incorrect," respondent immediately retrieved the record of the case and corrected the original copy on file and on duplicate copies thereof by deleting the phrase in the first paragraph "by this Court on even date" and placing, in its stead, the phrase "and the original records and exhibits were received by this Court on even date." (Underscoring supplied)

It turned out that a copy of the original notice had already been sent to the counsel for defendant-appellant and no copy of the corrected notice was sent.

In view of the tenor of the original notice, defendant-appellant took no action on his appeal until he received an Order dated February 24, 2003 issued by Branch 17 of the RTC dismissing his appeal on the ground that he failed to file an appeal

memorandum within the prescribed period pursuant to Section 7 of Rule 40 of the Revised Rules of Civil Procedure, the pertinent section of which reads:

SEC. 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 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 re filed. (Underscoring supplied)

Defendant-appellant lost no time in filing a Motion for Reconsideration of the February 24, 2003 of the RTC anchored on excusable neglect, contending that the notice sent to him was a mere notice of docketing of case and not a notice that the complete records of the case had already been received by the court.

The plaintiff's Motion for Reconsideration was, by Order of April 25, 2003, denied by the RTC.

Defendant-appellant subsequently filed a Motion to Set Aside (*Ad Cautelam*) the Orders dated 24 February 2003 and 25 April 2003 and to investigate the alleged irregularity arising from the discrepancy of the notice he received and the notice on file with the record of the case. By Order of May 16, 2003, the RTC denied defendant-appellant's motion, drawing him to file a Petition for Certiorari and Mandamus with the Court of Appeals.

By decision of March 10, 2004, the appellate court held that the Notice of Docketing of Case under Appeal sent to defendant-appellant-therein petitioner is not the kind of notice required by the Rules.

Under the aforecited Rule, the notice to be sent to the appellant must contain a statement that the records of the case are already with the court. This notice will set in motion the appellate procedure before the Regional Trial Court and, more importantly, the running of the 15-day period within which the appellant must file his appeal memorandum. Corollarily, if there is no such notice sent to petitioner or if the notice does not contain a statement that the *court a quo* has already received the records of the case, the appellate procedure, as well as the reglementary period, does not commence to run. This mandatory requirement as to the form of the notice is underscored itself by the law when it states tat "upon receipt of the complete record of the record on appeal, the clerk of court of the Regional Trial Court **shall notify the**

parties of such fact." The use of the word "shall" alone, applying to the rule on statutory construction, already underscores the mandatory nature of the rule and, therefore, strict adherence to the required form. As held in *Pimentel, Jr. v. Aguirre*, 336 SCRA 201 [2000], the term "shall" is a word of command that must be given a compulsory meaning. Moreover, the importance of such a notice cannot be downplayed as a mere formality for the same notice sets the running of the prescriptive period within which the appellant must file his appeal memorandum. With a defective notice, which the originating court may deem a substantial compliance of the requirement of the Rules, the appellant stands to lose his right to seek a judicial review of his case.^[2] (Emphasis, underscoring and italics in the original)

The appellate court went on to express its alarm over the discrepancy of the notice sent to petitioner *vis a vis* the notice on file with the record of the case, it expressing its belief that the notice "appears to have been tampered to comply with the requirement of the rules," adding that "[t]his is the kind of incident that erodes the people's confidence [in] our judicial system and makes a mockery of the impartial nature of our function."

The appellate court furthermore stated that the RTC judge should have ordered an investigation of the incident "to clear the air of any notion of prejudice" which the defendant-appellant-therein petitioner may have entertained on account of the discovery of the discrepancy.

The appellate court accordingly annulled and set aside the RTC's assailed Orders and directed it to take cognizance of the appeal and to investigate "the incident of tampering of records."

A copy of the appellate court's decision was furnished the Office of the Court Administrator (OCA) which, by 1st Indorsement of May 12, 2004, referred it to Judge Eduardo Peralta, Jr., Presiding Judge of the RTC Branch 17, Manila for appropriate action.

Judge Peralta immediately directed respondent, by Order of April 12, 2004,

. . . to furnish the parties' counsel by registered mail, and submit to this Court, her **Comment** within five (5) days from receipt hereof, in regard to counsel for defendant-appellant's aspersions as to the **discrepancy** between said notice (paragraph 6, Motion to Set Aside Orders dated 24 February 2003 and 25 April 2003 [Ad Cautelam] and Motion to Investigate dated May 6, 2003; Annex "A" thereof).^[3] (Emphasis in the original)

And the judge set for investigation the alleged tampering case on April 27, 2004.

Respondent complied with the judge's directive by filing on April 20, 2004 her Comment stating the following:

x x x

3. That as soon as the undersigned realized that the above notice she