

## SECOND DIVISION

[ G.R. No. 128646, March 14, 2003 ]

**CRISELDA F. JOSE, PETITIONER, VS. HON. COURT OF APPEALS  
AND DANILO OMEGA, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition erroneously entitled as a "Petition for Review on Certiorari" which should be a petition for certiorari under Rule 65 of the Rules of Court.

The factual background of the case is as follows:

On November 14, 1994, the Regional Trial Court of Cebu City (Branch 22) rendered a decision in Civil Case No. CEO-15709, entitled "Danilo Omega, Plaintiff, versus, Criselda F. Jose, Defendant.", the dispositive portion of which reads as follows:

"WHEREFORE, based on the evidence thus presented, this Court finds for the plaintiff. Judgment is hereby rendered declaring the March 3, 1981 marriage between plaintiff Danilo Omega and Criselda F. Jose, ***null and void ab initio***. Custody over the three children Joselyn, Danilo, Jr. and Jordan, all surnamed Omega shall be entrusted to plaintiff Danilo Omega.

"Furnish the Local Civil Registrar of Manila with a copy of this judgment.  
No costs.

"SO ORDERED."<sup>[1]</sup>

The ground for declaring the marriage null and void is psychological incapacity on the part of defendant Criselda under Article 36 of the Family Code of the Philippines. During the trial, the counsel on record of defendant Criselda was Atty. Margarito D. Yap of the Cebu City District Office of the Public Attorney's Office (PAO). However, defendant Criselda filed a Notice of Appeal, dated December 7, 1994, on her own, without the assistance of Atty. Yap.<sup>[2]</sup>

The Judicial Records Division (JRD) of the Court of Appeals sent a notice to pay docket fee, dated August 3, 1995 to Atty. Yap which was received by him.<sup>[3]</sup> On October 24, 1995, the appellate court, through the Former Sixteenth Division,<sup>[4]</sup> promulgated a Resolution which reads as follows:

"For failure of the defendant-appellant to pay the docketing fee in this case within the reglementary period which expired on August 25, 1995, despite receipt by his counsel on August 10, 1995 of this Court's notice dated August 3, 1995, this appeal is hereby DISMISSED pursuant to Section 1(d), Rule 50 of the Rules of Court.

SO ORDERED.”<sup>[5]</sup>

On May 9, 1996, the Division Clerk of Court issued the Entry of Judgment certifying that the above-quoted Resolution had become final and executory as of December 1, 1995.<sup>[6]</sup> It is indicated at the bottom of said Entry of Judgment that Atty. Yap and the Special and Appealed Cases Division of the PAO were sent copies of the Entry of Judgment.

On May 13, 1996, the appellate court received a letter of even date from defendant-appellant Criselda addressed to the Clerk of Court of the Court of Appeals inquiring about the status of her appeal and claiming that she has not received any notice from the appellate court.<sup>[7]</sup>

The appellate court noted the explanation of the clerk in the Civil Cases Section of the Judicial Records Division (JRD) of said court that Atty. Yap was sent the notice to pay docket fee because Criselda had sent a copy of her Notice of Appeal to Atty. Yap and that per the records of the case, Atty. Yap was earlier sent a copy of the formal offer of exhibits and duly received in his behalf, he filed the comments and objections to the exhibits for the plaintiff; he appeared at the hearings conducted by the trial court.<sup>[8]</sup>

On October 28, 1996, Criselda through counsel filed a Motion for Leave of Court to File Omnibus Motions/Motion to Reinstate Appeal.<sup>[9]</sup> On December 16, 1996, the Court of Appeals issued the following Resolution:

“Considering that the Resolution dismissing this appeal has become final on December 1, 1995 and an Entry of Judgment has in fact been made on May 9, 1996, the Motion for Leave of Court to File Omnibus Motions/Motion to Reinstate Appeal and the Omnibus Motions/Motion to Reinstate Appeal are hereby denied.

SO ORDERED.”<sup>[10]</sup>

Criselda’s motion for reconsideration was denied by the Court of Appeals.

Hence, the present petition on the following ground:

“The public respondent Honorable Court of Appeals committed grave error in denying the petitioner’s Motion for Leave of Court to file Omnibus Motions/Motion to Reinstate Appeal and the Omnibus Motions/Motion to Reinstate Appeal which if not corrected, would deprive petitioner of her constitutional right to due process and injustice would be done to her.”  
<sup>[11]</sup>

on which basis, petitioner Criselda raises the following issues:

“I.

“WHETHER OR NOT THE PETITIONER WHO APPEALED HER CASE BY HERSELF WITHOUT COUNSEL WAS VALIDLY SERVED WITH NOTICE TO PAY THE DOCKETING FEE AND NOTICE OF THE RESOLUTION

DISMISSING HER APPEAL FOR FAILURE TO PAY THE DOCKETING FEE.

“II.

“WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE PETITIONER’S MOTION FOR LEAVE OF COURT TO FILE OMNIBUS MOTIONS/MOTION TO REINSTATE APPEAL AND THE OMNIBUS MOTIONS/MOTION TO REINSTATE APPEAL.”<sup>[12]</sup>

After private respondent filed his Comment, parties filed their respective Memoranda in compliance with the Resolution of the Court dated December 14, 1998.

We find the petition devoid of merit.

Based on the records, it appears that the PAO, through Atty. Victor C. Laborte and Atty. Yap, represented petitioner during the trial of the case. Although petitioner herself personally filed the Notice of Appeal, the fact remains that Atty. Yap or the PAO has not filed any formal notice of withdrawal of appearance in the trial court. Therefore, insofar as the appellate court is concerned, Atty. Yap is the counsel of record. As such, the appellate court did not commit any grave abuse of discretion in denying petitioner’s motion for leave of court to file omnibus motions or motion to reinstate appeal.

Section 22, Rule 138 of the Rules of Court, provides:

*“Section 22. Attorney who appears in lower court presumed to represent client on appeal. – An attorney who appears de parte in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.”*

Payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional, and failure of the appellant to conform with the rules on appeal renders the judgment final and executory.<sup>[13]</sup>

Indeed, the Court, in some instances, had allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals on equitable consideration.<sup>[14]</sup> In *Buenaflor vs. Court of Appeals*, the Court has enunciated the following:

“The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: First, the failure to pay appellate court docket fee within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal; Second, such power should be used in the exercise of the Courts’ sound discretion ‘in accordance with the tenets of justice and fair “play and with great deal of circumspection considering all attendant circumstances.

“Admittedly, this Court has allowed the filing of an appeal in some cases where a stringent application of the rules would have denied it, only when to do so would serve the demands of justice and in the exercise of