

## SECOND DIVISION

[ G.R. No. 139611, October 04, 2002 ]

**NOLI ALFONSO AND ERLINDA FUNDIALAN, PETITIONERS, VS.  
SPS. HENRY AND LIWANAG ANDRES, RESPONDENTS.**

### R E S O L U T I O N

**QUISUMBING, J.:**

On appeal are two resolutions of the Court of Appeals in CA-G.R. CV No. 7450-UDK. The first, dated March 17, 1999,<sup>[1]</sup> dismissed petitioners' appeal for their failure to pay docket and other lawful fees, while the second, dated August 9, 1999,<sup>[2]</sup> denied petitioners' motion for reconsideration.

As gleaned from the records,

the following are the antecedent facts:

The original case involved a complaint for accion publiciana with a claim for damages, entitled "*Sps. Henry Andres and Natividad Liwanag-Andres vs. Noli Alfonso and Erlinda Fundialan*," docketed as Civil Case No. 1182, filed with the Regional Trial Court of San Mateo, Rizal. It was decided against herein petitioners in favor of the spouses Andres, now the respondents herein.

On July 15, 1997, a copy of the decision<sup>[3]</sup> was served upon petitioners.

On July 17, 1997, petitioners filed a Notice of Appeal, without the assistance of counsel and without payment of the docket and other lawful fees.

On July 21, 1997, the RTC granted the notice of appeal.

On August 25, 1997, respondents herein, through counsel, filed a motion to dismiss petitioners' appeal, citing Section 1(c), Rule 50 of the 1997 Rules of Civil Procedure.

On October 9, 1997, the trial court dismissed the motion and directed petitioners to pay the proper fees to cure the technical defect, stating thus:

The Motion to Dismiss Appeal dated August 25, 1997, filed by the plaintiffs, through counsel is hereby DENIED.

Defendants are directed to pay the corresponding docket fees and other required fees, within five (5) days from receipt of this Order, considering that the 1997 Rules of Civil Procedure which took effect on July 1, 1997, must at least in the meantime, be construed liberally.

SO ORDERED.<sup>[4]</sup>

On the same date, petitioners paid the subject fees, as evidenced by official receipts<sup>[5]</sup> issued by the RTC of San Mateo to petitioner Erlinda Fundialan. The

receipts, all dated October 9, 1997, showed payments for appeal and legal research fees in Civil Case No. 1182, in compliance with the trial court's order of even date, the details of which are as follows:

PARTICULARS	O.R. No.	AMOUNT
-----	-----	-----
	-	
Appeal fee	7403333	P 48.00
Appeal fee	7402555	352.00
Legal	1880282	20.00
Research		
		-----
	TOTAL	P 420.00
		=====

Respondents elevated the case to the Court of Appeals. Upon a review of the records, which included the proofs of payment of the docket and appeal fees, the appellate court nevertheless resolved to dismiss the appeal in this wise:

For failure of defendants-appellants to pay the required docket fees, as reported by the Judicial Records Division (JRD) on February 24, 1999, the appeal is hereby DISMISSED (Section 1 (c), Rule 50 in relation to Section 4, Rule 41, 1997 Rules of Civil Procedure).

SO ORDERED.<sup>[6]</sup>

On April 12, 1999, petitioners filed a Motion for Reconsideration of the foregoing resolution, which the Court of Appeals denied on August 9, 1999. Thus:

THROUGH a motion for reconsideration, defendants-appellants claim having paid the docketing fees on October 9, 1997, beyond the period for perfecting an appeal.

Any subsequent compliance with the formal requirements for filing an appeal as prescribed by the Rules will not per se warrant reconsideration of Our Resolution.

ACCORDINGLY, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.<sup>[7]</sup>

Hence, this petition.

Petitioners submit that the sole issue to be resolved is whether the Court of Appeals was correct in its strict construction of the provisions of Section 1(c), Rule 50 of the 1997 Rules of Civil Procedure. Specifically, however, we find two main issues for our resolution: (1) whether or not the payment of docket and other lawful fees within the period for perfecting an appeal is mandatory; and (2) whether or not petitioners have shown sufficient reason for the relaxation of what otherwise should be a stringent application of the rule on the payment of appellate docket and other lawful fees.

As ground for the dismissal of the appeal, the appellate court cites Section 1 (c), Rule 50, in relation to Section 4, Rule 41, of the 1997 Rules of Civil Procedure. Section 1 (c), Rule 50 provides:

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

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40 and section 4 of Rule 41;

x x x

Section 4, Rule 41 in turn provides:

SECTION 4. *Appellate court docket and other lawful fees.* - Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (Underscoring supplied.)

Petitioners argue for liberal construction of the Rules,<sup>[8]</sup> stating that its “delay”<sup>[9]</sup> in the payment of the fees, was a “trivial technical oversight” which was nonetheless cured by the order of the court *a quo* directing it to make the payment.<sup>[10]</sup> By such payment of the docket and other lawful fees, the technical deficiency was cured.<sup>[11]</sup> Petitioners also cites Section 13, Rule 41 of the 1997 Rules of Civil Procedure<sup>[12]</sup> and argues that in the case at bar, although the notice of appeal had been seasonably filed, there was the “unintentional and excusable non-payment” of the required fees.<sup>[13]</sup> In fact, albeit belatedly, petitioners did pay the required fees on the very day the trial court ordered its payment. According to petitioners, substantial justice should not be sacrificed over technicalities.<sup>[14]</sup>

On the other hand, respondents aver that under the 1997 Rules of Civil Procedure, perfection of an appeal requires the payment of the docket and other lawful fees. Since the same were not seasonably paid, such failure to pay was a fatal defect which an order from the trial court cannot cure.<sup>[15]</sup>

At the outset, it should be stressed that failure to pay the appellate docket and lawful fees is a serious matter affecting the court’s jurisdiction. Time and again, we have consistently held that “the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.”<sup>[16]</sup>

Appeal is not a right but a statutory privilege; thus, appeal must be made strictly in accordance with provisions set by law.<sup>[17]</sup> The requirement of the law under Section 4, Rule 41 is clear. The payment of appellate docket fee is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal.<sup>[18]</sup>