

FIRST DIVISION

[G.R. No. 142021, November 29, 2000]

**SPOUSES TEODORA AND WILFREDO BUENAFLO, PETITIONERS,
VS. HONORABLE COURT OF APPEALS, UNITED RURAL BANK OF
PANAY ISLAND, INC., REPRESENTED BY ITS MANAGER RAUL
BALANDRA, AND THE HONORABLE DANILO P. GALVEZ, ACTING
PRESIDING JUDGE OF THE AKLAB REGIONAL TRIAL COURT,
BRANCH 8, KALIBO, AKLAN, RESPONDENTS.**

R E S O L U T I O N

KAPUNAN, J.:

The principal issue before this Court is whether or not the appellate docket fees were duly paid within the period of appeal. The appellate docket fees in this case in the form of two postal money orders were seasonably received by the Clerk of Court of the Regional Trial Court which rendered the judgment appealed from, but one was addressed to the Clerk of Court of the Court of Appeals and the other to the Clerk of Court of the Supreme Court; by reason of which, the Regional Trial Court dismissed the complaint for failure to pay the docket fees pursuant to Section 4, Rule 41 of the Rules of Court.

This case has for its genesis an action for recovery of ownership and possession of realty filed with the RTC of Kalibo, Aklan by petitioners against respondent United Rural Bank of Panay Island, Inc. (respondent bank). After hearing, the trial court rendered its decision, which was received by petitioners on January 17, 1998, in favor of the respondent bank. On January 30, 1998, petitioners filed with the trial court a notice of appeal^[1] with postal money orders attached thereto as payment of the appellate docket fees. Postal Money Order No. J 0374905 in the amount of P352.00 was written as payable to the Clerk of Court of the Supreme Court, while Postal Money Order No J 0374096 in the amount of P68.00 was payable to the Clerk of Court of the Court of Appeals.

On February 26, 1998, counsel for petitioners filed with the trial court a Motion for Issuance of Formal Order, alleging therein that the Clerk of Court of the trial court returned petitioner's postal money orders to said counsel without mentioning the reasons for the return except to quote Section 4 of the Rule 41 of the 1997 Rules of Civil Procedure. Counsel, therefore, prayed for the trial court's formal ruling on the legality of the Clerk of Court's rejection of the payment. On March 4, 1998, the trial court issued an order denying petitioner's motion ruling that the appellate docket fee was allegedly not paid in accordance with Section 4, Rule 41 of the 1997 Rules of Civil procedure. The trial court declared that since the postal money orders were made payable to the Supreme Court and the Court of Appeals and not the Clerk of Court of the trial court, such omission shall be considered as failure of the petitioners to pay the appellate docket fee within the period for taking an appeal. The trial court likewise denied the motion for reconsideration filed by the petitioners.

Petitioners then sought relief with the Court of Appeals. Unfortunately for the petitioners, their resort to the Court of Appeals was futile. The Court of Appeals in its Resolution dated March 29, 1999 declared the petition as abandoned. Upon motion for reconsideration, the Court of Appeals denied the same on the ground that, *inter alia*, the payment of the appellate docket fees were not made in accordance with the requirement that appellate docket fee shall be "paid to the Clerk of Court of the court which rendered the judgment or final order appealed from, xxx." Perforce, the payment is ineffectual and does not toll the period of appeal. On February 10, 2000, the Court of Appeals denied petitioners' motion for reconsideration. Hence, this petition for *certiorari* wherein petitioners contend that the Court of Appeals committed grave abuse of discretion in dismissing their appeal considering that the required docket fees were actually paid within the prescribed period, except that there was a minor error as to the payee thereof.

Section 4 of Rule 41 of the 1997 Rules of Civil Procedure, provides:

Sec. 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.

In essence, the petitioners pray for the liberal construction of the Rules and consider the actual delivery of the postal money orders to the Clerk of Court of the Regional Trial Court as a valid and proper payment of the appellate docket fees.

In its Comment, respondent bank argues that the fact that the appellate docket fees were addressed to the clerks of court of the Court of Appeals and the Supreme Court, respectively, is a procedural lapse which constitutes a clear case of negligence of counsel the effects of which binds the client. The respondent bank argues that the defect prevented the perfection of the appeal; consequently, the appellate court acquired no jurisdiction to entertain the appeal.

The petition is meritorious.

The established rule is that the payment in full of the docket fees within the prescribed period is mandatory.^[2] Nevertheless, this rule must be qualified, to wit: First, the failure to pay appellate court docket fee within the reglementary period allows only descretionary dismissal, not automatic dismissal, of the appeal;^[3] Second, such power should be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances."^[4]

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 the Court's equity jurisdiction.^[5] This is based on the rule of liberality in the interpretation of the Rules to achieve substantial justice. It may be recalled that the general rule is that the Rules of