

## THIRD DIVISION

**[ G. R. No. 140894, November 27, 2000 ]**

**ROSARIO YAMBAO AND REBECCA YAMBAO, PETITIONERS, VS.  
COURT OF APPEALS AND GUILLERMO LIGON, RESPONDENTS.**

### DECISION

**GONZAGA-REYES, J.:**

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the 18 May 1999 and 17 November 1999 Resolutions issued by the Court of Appeals<sup>[1]</sup> in CA - G.R. CV No. 61761.

On 26 August 1994, private respondent Guillermo Ligon filed a petition for the cancellation of the name of his alleged spouse, petitioner Rebecca Yambao, in Transfer Certificate of Title V-10458. The petition was docketed as LR Case No. 5941 (AD) 1075-V-94 and assigned to Branch 75 of the Regional Trial Court (RTC) of Valenzuela. Since petitioner Rebecca Yambao failed to file her answer and to appear on the scheduled date of hearing, the trial court permitted private respondent to present his evidence *ex-parte*. On 29 September 1994, the trial court granted the petition for cancellation. Petitioner Rebecca Yambao then filed a motion for new trial and/or petition for relief from judgment, which was granted by the trial court on 4 October 1995.

During the pendency of LR Case No. 5941 (AD) Case No. 1075-V-94, petitioner Rosario Yambao, the sister of petitioner Rebecca Yambao, filed an action for specific performance against private respondent and her sister, praying for the execution of a deed of sale in her favor over 149 square meters of land covered by Transfer Certificate of Title No. V-10458. This action was docketed as Civil Case No. 4558-V-95 and assigned to Branch 172 of the RTC of Valenzuela. On 23 November 1995, Judge Floro P. Alejo of Branch 172 ordered the consolidation of Civil Case No. 4558-V-95 with LR Case No. 5941 (AD) 1075-V-94 for joint trial in Branch 75.

Judge Jaime F. Bautista of Branch 75 rendered a decision on 15 April 1998, dismissing petitioner Rosario Yambao's complaint in Civil Case No. 4558-V-95 and granting private respondent's petition in LR Case No. 5941 (AD) 1075-V-94. On 27 April 1998, petitioners filed a notice of appeal with the trial court, paying P820.00 in docket fees. However, the Court of Appeals dismissed petitioners' appeal in its 18 May 1999 resolution which stated that -

Considering the report, dated May 3, 1999, of the Judicial Records Division (page 1 of the Rollo) to the effect that the appellant failed to pay the full amount of the required docket fee within the period set, let the appeal be DISMISSED, pursuant to Section 1 (c), Rule 50 of the 1997 Rules of Civil Procedure.<sup>[2]</sup>

Petitioners received a copy of the abovequoted resolution on 9 June 1999. Two days

later, on 11 June 1999, petitioners' counsel, Ricardo M. Perez, learned from the Judicial Records Division of the Court of Appeals that P20.00 for the legal research fund fee was still lacking.<sup>[3]</sup> On 17 June 1999, petitioners filed a motion for reconsideration with the appellate court. Pending resolution of their motion, petitioners paid the P20.00 deficiency on 26 October 1999, as evidenced by Official Receipt Nos. 11456105 and 11456106. Yet, despite the payment, their motion for reconsideration was denied by the Court of Appeals in its assailed resolution<sup>[4]</sup> issued on 17 November 1999.<sup>[5]</sup>

Thus, the instant petition.

Petitioners explained that they had initially paid P820.00 as docket fees because this was the amount assessed by the Clerk of Court of the RTC of Valenzuela. However, as it turned out, the docket fees paid by petitioners were insufficient by P20.00 because the Clerk of Court of the RTC of Valenzuela had erroneously fixed the legal research fund fee for each of the cases at P10.00, instead of P20.00. The Office of the Clerk of Court made an admission to this effect in a certification dated 10 December 1999.<sup>[6]</sup> Therefore, petitioners assert that they should not be faulted for the incomplete payment of docket fees as the same was attributable, not to them, but to the erroneous assessment of the Clerk of Court.<sup>[7]</sup>

The right to appeal is not a natural right. It is a statutory privilege, and must be exercised only in the manner and in accordance with the provisions of the law.<sup>[8]</sup> Rule 41 of the Rules of Civil Procedure provides that an appeal to the Court of Appeals from cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken within fifteen (15) days from notice of the judgment or final order appealed from by filing a notice of appeal with the court which rendered such judgment or final order and serving a copy thereof upon the adverse party. Furthermore, within this same period, 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.<sup>[9]</sup> The Court has 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>[10]</sup>

However, considering the importance and purpose of the remedy of appeal, an essential part of our judicial system, courts are well-advised to proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has "the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities."<sup>[11]</sup> In line with this policy, we have held that, in appealed cases, the failure to pay the appellate court docket fee does not automatically result in the dismissal of the appeal or affect the court's jurisdiction, the dismissal being discretionary on the part of the appellate court. This was our ruling in *Santos v. Court of Appeals*,<sup>[12]</sup> wherein the Court held that -

Case after case, this Court stressed the rule that failure to pay the appellate court docket fee within the reglementary period confers a