CERTIFIED TRUE COPY

MisAel DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

DEC 07 2020

Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
DEC 10 2020
BY: R. SANTIAGO
TIME: 2:00

THIRD DIVISION

FILIPINA D. ABUTIN,
Petitioner,

-versus-

JOSEPHINE SAN JUAN,
Respondent.

G.R. No. 247345

Present:

LEONEN, *J., Chairperson,*
GESMUNDO*,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:
July 6, 2020
MisAel DC Batt

x----------x

DECISION

LEONEN, *J.:*

Obstinate disregard of basic and established rule of law or procedure is not mere error of judgment. It amounts to evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. It is grave abuse of discretion correctible by certiorari.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Decision[2] and Resolution[3] of the Court of Appeals be reversed and set aside.

---

* On official leave.

1 *Rollo*, p. 8–43.

2 Id. at 243–258. The February 6, 2019 Decision was penned by Associate Justice Jhosep Y. Lopez and was concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante of the First Division, Court of Appeals, Manila.

3 Id. at 281–282. The May 15, 2019 Resolution was penned by Associate Justice Jhosep Y. Lopez and

The assailed Decision found no grave abuse of discretion on the part of Regional Trial Court Judge Teresa Patrimonio-Soriaso (Judge Patrimonio-Soriaso) in issuing the November 25, 2016[4] and August 7, 2017[5] orders in Spec. Pro. No. 08-119593. Her November 25, 2016 Order set aside her prior December 28, 2015 Order and denied probate to two (2) holographic wills ostensibly executed by Corazon M. San Juan (Corazon)—the same wills that her original December 28, 2015 Order admitted to probate.[6] Her August 7, 2017 Order denied petitioner Filipina D. Abutin's (Filipina) Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.[7] The assailed Resolution denied Filipina's Motion for Reconsideration.[8]

Corazon, who, as a matter of public knowledge, had been in a same-sex relationship with Purita Dayao (Purita),[9] passed away on March 23, 2008.[10] She died without any surviving ascendants or descendants. She left behind a 108 square-meter lot in Tondo, Manila, on which a residential house was constructed. Corazon and Purita lived on this house for 48 years, along with Purita's daughter, Filipina.[11]

On July 7, 2008, Purita and Filipina filed before the Regional Trial Court of Manila, a Petition for the probate of three (3) holographic wills ostensibly executed and left by Corazon. The first will was dated December 23, 2007; the second, March 10, 2008; and the third was not dated. Albeit phrased differently, each of the wills bequeathed to Purita and Filipina all of Corazon's properties which she referred to as "lote, bahay at lahat ng aking maiiwan," (House, lot, and all I will leave behind).[12]

On September 2, 2008, Corazon's sister, Julita San Juan (Julita), and Corazon's niece, respondent Josephine San Juan (Josephine), filed an Opposition to Purita and Filipina's Petition for Probate.[13]

During trial, three (3) witnesses authenticated Corazon's handwriting and signature: Cecilia San Juan, who testified that she was familiar with Corazon's signature and handwriting; Norma Manabat who testified on personally witnessing Corazon write and sign a will; and a document expert from the National Bureau of Investigation's Questioned Documents Section,

---

was concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante of the First Division, Court of Appeals, Manila.

4 Id. at 121–134.
5 Id. at. 163–167.
6 Id. at 134.
7 Id. at 167.
8 Id. at 282.
9 Id. at 177, Petition for Certiorari to the Court of Appeals.
10 Id. at 244.
11 Id. at 177.
12 Id. at 245.
13 Id. at 246.

Romero Magcuro (Magcuro). Magcuro testified on his findings that the handwriting and signatures on the purported wills were made by one and the same person as those who made the handwriting and signatures on the documents presented as containing Corazon's authentic signature and handwriting.[14]

In an Order dated December 28, 2015,[15] the Regional Trial Court, through Judge Patrimonio-Soriaso, admitted to probate the wills dated December 23, 2006 and March 10, 2008. Both parties, through their respective counsels—Atty. Raul A. Mora for Purita and Filipina, and Atty. Adorlito B. Ginete (Atty. Ginete) for Julita and Josephine —were served copies of this Order by registered mail.[16]

Sometime in March 2016, Purita and Filipina, realizing that the Order should have attained finality as there was no Motion for Reconsideration filed in the interim, inquired, through a representative, with the Regional Trial Court on when Atty. Ginete received a copy of the December 28, 2015 Order. Their representative was told to come back on another day. On another inquiry, their representative was given information on how inquiry could be made with the Post Office concerning Atty. Ginete's receipt.[17] Subsequently, Purita and Filipina obtained a Certification[18] from the Office of the Postmaster that the copy for Julita and Josephine were received on behalf of Atty. Ginete by a certain Rodnelito Capuno (Capuno) on February 9, 2016.

On April 6, 2016, Atty. Ginete filed a Manifestation with Motion to withdraw appearance.[19] He disavowed receiving a copy of the December 28, 2015 Order and explained that he only found out about it when informed by Josephine.[20] He explained that he was withdrawing his appearance because he was running as mayor of Sta. Teresita, Batangas.[21]

Convinced that the December 28, 2015 Order had attained finality, Purita and Filipina filed a Motion for Entry of Judgment and Writ of Execution[22] on April 7, 2016. Even as this Motion was pending, on April 12, 2016, Julita and Josephine, through their new counsel, Atty. Melchor V. Mibolos (Atty. Mibolos) filed a Motion for Reconsideration[23] of the December 28, 2015 Order.

---

14 Id. at 247. *See also*, *rollo*, p. 58–60, NBI Handwriting Examination Report.
15 Id. at 61–72.
16 Id. at 73.
17 Id. at 17.
18 Id. at 86.
19 Id. at 87–88
20 Id. at 87.
21 Id. at 249.
22 Id. at 89–91.
23 Id. at 92–102.

On April 19, 2016, Purita and Filipina filed a Motion to Stricken-Out (sic) the Motion for Reconsideration.[24] They insisted that the December 28, 2015 Order had attained finality. On May 2, 2016, they filed their Opposition to the Motion for Reconsideration.[25] Attached to this Opposition were "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno], his driver."[26]

At around this point, Julita passed away.[27]

On May 20, 2016, Josephine filed a Reply[28] to Purita and Filipina's Opposition. Attached to this was Atty. Ginete's Affidavit[29] insisting that Capuno was not authorized to receive mail for him and that he himself "used to get mail matters from the mail box."[30]

On June 9, 2016, Purita and Filipina filed their Rejoinder.[31] Sometime after this, Purita passed away.[32]

On November 25, 2016, the Regional Trial Court issued an Order[33] setting aside its December 28, 2015 Order and denying probate to the wills dated December 23, 2006 and March 10, 2008.

On January 11, 2017, Filipina filed her Notice of Appeal.[34] On February 20, 2017, Josephine filed a Manifestation with Motion[35] asking that Filipina's Notice of Appeal be dismissed as it was unaccompanied by the record on appeal.

On February 25, 2017, Filipina filed her Opposition[36] to Josephine's Manifestation with Motion explaining that she was unable to furnish the record on appeal because the Clerk of Court of the Regional Trial Court, who had already received from her ₱2,000.00 for the photocopying of the relevant documents, told her that the completion of the records was "stopped" because Josephine opposed it.[37] This Opposition was accompanied by Filipina's Motion to Admit Record on Appeal.

---

24 Id. at 103–104.
25 Id. at 107–110.
26 Id. at 250.
27 Id.
28 Id. at 113–115.
29 Id. at 116–117.
30 Id.
31 Id. at 119–120.
32 Id. at 250.
33 Id. at 121–134.
34 Id. at 135–136.
35 Id. at 137–139.
36 Id. at 141–143.
37 Id. at 251.

In an Order[38] dated August 7, 2017, the Regional Trial Court denied Filipina's Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.

Following the denial of her Motion for Reconsideration, Filipina filed a Petition for Certiorari[39] before the Court of Appeals.

In its assailed February 6, 2019 Decision,[40] the Court of Appeals dismissed Filipina's Rule 65 Petition. In its assailed May 15, 2019 Resolution, [41] the Court of Appeals denied Filipina's Motion for Reconsideration.

Aggrieved, Filipina filed the present Petition.[42]

For resolution are the issues of:

First, whether or not Regional Trial Court Judge Patrimonio-Soriaso committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing her own December 28, 2015 Order allowing probate of the holographic wills dated December 23, 2006 and March 10, 2008; and

Second, whether or not Judge Patrimonio-Soriaso committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner Filipina D. Abutin's appeal for failing to include the record on appeal.

I

The standards for issuing a writ of certiorari are settled. "[A] petition for certiorari is a remedy directed not only to correct errors of jurisdiction, 'but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government[.]'"[43]

Grave abuse of discretion is the "evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."[44] It is a "capricious and whimsical exercise

---

38 Id. at. 163–167.
39 Id. at 176–204.
40 Id. at 243–258.
41 Id. at 281–282.
42 Id. at 8–39.
43 *Lim v. Lim*, G.R. No. 214163, July 1, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65389> [Per J. Leonen, Third Division].
44 *Veloso v. Commission on Audit,* 672 Phil. 419, 432 (2011) [Per J. Peralta, En Banc] citing *Yap v.*

of judgment as is equivalent to lack of jurisdiction."[45] To qualify, "[m]ere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty[.]"[46]

It was serious error for the Court of Appeals to not issue the writ of certiorari sought by petitioner. Judge Patrimonio-Soriaso so recklessly disregarded long-settled standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal. In so doing, she acted in manifest disregard of what is contemplated and impelled by law, effectively evading her positive, solemn duty as a judge. She gravely abused her discretion.

II (A)

It is settled that the Regional Trial Court sent to respondent's counsel, Atty. Ginete, a copy of its December 28, 2015 Order. This was sent through registered mail to an address which is equally settled to have been Atty. Ginete's mailing address. All that remains in dispute is whether receipt of that Order by Capuno, amounts to valid service upon Atty. Ginete and, ultimately, upon respondent and her mother.

It has been respondent's consistent claim that receipt by Capuno does not amount to valid service, as Capuno was supposedly never authorized to receive mail matter for Atty. Ginete.[47]

Respondent's contention fails to impress.

Rule 13, Section 2 of the 1997 Rules of Civil Procedure defines service as "the act of providing a party with a copy of the pleading or paper concerned." It further stipulates that, unless otherwise ordered, service upon a party's counsel effectively works as service upon the actual party:

> SECTION 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.
>
> Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for

---

Commission on Audit, 633 Phil. 174 (2010) [Per J. Leonardo-de Castro, En Banc]. *See also Villanueva v. Commission on Audit*, 493 Phil. 887 (2005) [Per J. Chico-Nazario, En Banc].

45 *Development Bank of the Philippines v. Commission on Audit*, 530 Phil. 271, 278 (2007) [Per J. Puno, En Banc], *citing Tañada v. Angara*, 338 Phil. 546, 604 (1997) [Per J. Panganiban, En Banc].

46 Id.

47 *Rollo*, pp. 116–117.

> several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

When a party is represented by counsel, "notices of all kinds, including motions, pleadings, and orders must be served on said counsel and notice to him is notice to client."[48] *Delos Santos v. Elizalde*[49] explained the rationale for this:

> To reiterate, service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers. The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself ifs/he does not intend to hire a lawyer.[50]

Under Rule 13, Section 5, service may either be personal or by mail.[51] However, should personal service or service by mail be unavailable, service may be made through substituted service.[52]

Rule 13, Section 9 specifically governs service of judgments, final orders, or resolutions, such as Judge Patrimonio-Soriaso's December 28, 2015 Order:

> SECTION 9. *Service of judgments, final orders, or resolutions.* — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Rule 13, Section 11 expresses a preference for personal service: "[w]henever practicable, the service and filing of pleadings and other papers shall be done personally." Rule 13, Section 6 specifies how personal service

---

48 *People v. Gabriel*, 539 Phil. 252, 256–257 (2006) [Per J. Sandoval-Guttierez, Second Division] *citing GCP-Manny Transport Services, Inc. v. Principe*, 511 Phil. 176 (2005) [Per J. Austria-Martinez, Second Division].

49 543 Phil. 12 (2007) [Per J. Velasco, Second Division].

50 Id. at 26.

51 RULES OF COURT, Rule 13, sec. 5 provides:
SECTION 5. *Modes of service.* — Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

52 RULES OF COURT, Rule 13, Section 8:
SECTION 8. *Substituted service.* — If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

is done:

> SECTION 6. *Personal service.* — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

When resorted to, service by mail or substituted service "must be accompanied by a written explanation why the service or filing was not done personally."[53] This requirement applies "[e]xcept with respect to papers emanating from the court."[54]

Service by mail is preferably done through registered mail. Service through registered mail is done "by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered."[55] Service by ordinary mail may be resorted to only "[i]f no registry service is available in the locality of either the sender or the addressee."[56]

Rule 13, Section 10 provides standards for determining when personal service and service by mail, whether by registered mail or ordinary mail. Are deemed complete:

> SECTION 10. *Completeness of service.* — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. *Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.* (Emphasis supplied)

Registered mail is then complete upon actual receipt or five (5) days after the postmaster's initial notice. An addressee is given only a limited period to act on a notice as "[t]he purpose is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure."[57]

---

53 RULES OF COURT, Rule 13, sec. 11.
54 RULES OF COURT, Rule 13, sec. 11.
55 RULES OF COURT, Rule 13, sec. 7.
56 RULES OF COURT, Rule 13, sec. 7.
57 *Niaconsult, Inc. v. National Labor Relations Commission*, 334 Phil. 16, 21 (1997) [Per J. Mendoza, Second Division].

Land Bank of the Philippines v. Heirs of Fernando Alsua[58] clarified what amounts to completed service by registered mail when actual delivery is made. Citing *Laza v. Court of Appeals*,[59] it ruled that delivery "to [any] person of sufficient discretion to receive"[60] was sufficient.

In *Land Bank*, petitioner Land Bank of Philippines (Land Bank) contended that service of a regional trial court's order of dismissal, which had been effected through registered mail, could only have been completed upon receipt of its actual counsel. Thus, it claimed that initial receipt by a security guard was ineffectual to start the 15-day period for filing a motion for reconsideration. This Court rejected Land Bank's contention and noted that, in several prior decisions, delivery to persons who were not expressly authorized to receive mail matter on behalf of the addressee was deemed sufficient. It added that prior instances when delivery of mail had been made to that security guard further weakened Land Bank's claims. It also noted that it is the responsibility of those receiving mail matter "to devise a system for the receipt of mail intended for them."[61] Failing in this, intended recipients would only have themselves to blame if mail matter otherwise duly delivered "to a person of sufficient discretion to receive [it]" still fails to find the specific addressee at such a time as would allow him or her to opportunely act on it:[62]

> All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a person of sufficient discretion to receive the same.
>
> Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of "a person of sufficient discretion to receive the registered mail." The paramount consideration is that the registered mail is delivered to the recipient's address and *received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney.*
>
> In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well.
>
> Petitioner's *admission that there were instances in the past when the security guard received notices for petitioner [Land Bank] only underscores the fact that the security guard who received the order of dismissal fully realized his responsibility to deliver the mails to the intended recipient.* Noteworthy also is the fact that the security guard did not delay in handing over the order of dismissal and immediately forwarded the same to petitioner's counsel the following day. Petitioner has only itself to blame if the security guard took it upon himself to

---

58 548 Phil 680 (2007) [Per J. Tinga, Second Division].

59 336 Phil. 631 (1997) [Per J. Heromosisima, Jr., First Division].

60 *Land Bank of the Philippines v. Heirs of Fernando Alsua*, 548 Phil 680, 685 (2007) [Per J. Tinga, Second Division].

61 Id. at 684.

62 Id. at 684–685.

> receive notices in behalf of petitioner and its counsel despite lack of proper guidelines, as alleged by petitioner. In *NIA Consult, Inc. v. NLRC*, the Court pointed out that it was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them. *The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party.*[63] (Emphasis supplied)

The incidents of this case are acutely similar with those in *Land Bank*. Capuno was certified by the Office of the Postmaster to have actually received a copy of Judge Patrimonio-Soriaso's December 28, 2015 Order on February 9, 2016.[64] Petitioner and her mother attached "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno]"[65] to the Opposition they filed to respondent and her mother's Motion for Reconsideration.[66] The Court of Appeals itself noted that, while Atty. Ginete disclaimed Capuno's authority to receive mail matter for him, "he did not refute the evidence presented by [petitioner] that several registry return receipts. . . bore Capuno's name and signature."[67] The Court of Appeals was even constrained to concede that this "indicat[ed] that [Capuno] has been customarily receiving decisions or orders from the courts."[68]

How the Court of Appeals could make the observations that it did—on top of the evidence adduced by petitioner and her mother, against which Atty. Ginete could offer nothing but bare denials—and yet proceed to deny petitioner's Rule 65 Petition, is perplexing. From all indications, Capuno had long been authorized by Atty. Ginete to receive papers and processes on his behalf. Consistent with this, Capuno effectively and validly received a copy of Judge Patrimonio-Soriaso December 28, 2015 Order on Atty. Ginete's behalf. Rule 13's standards on what amounts to completed service by registered mail were satisfied the moment Capuno received the Order on February 9, 2016.

II (B)

To reiterate *Land Bank*, "[t]he finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party."[69] The 15-day period for respondent and her mother to file a motion for reconsideration should be reckoned from February 9, 2016, when

---

63 Id. at 685–686 *citing Laza v. Court of Appeals*, 336 Phil. 631 (1997) [Per J. Heromosisima, Jr., First Division]; *Pabon v. National Labor Relations Commission*, 357 Phil. 7 (1998) [Per J. Martinez, Second Division]; *G and G Trading Corporation v. Court of Appeals*, 242 Phil. 195 (1988) [Per J. Gancayco, First Division]; and *Niaconsult, Inc. v. National Labor Relations Commission*, 334 Phil. 16 (1997) [Per J. Mendoza, Second Division].

64 *Rollo*, p. 86.

65 Id. at 250.

66 Id. at 107–110.

67 Id. at 256.

68 Id.

69 *Land Bank of the Philippines v. Heirs of Fernando Ulsua*, 548 Phil 680, 686 (2007) [Per J. Tinga, Second Division].

respondent's counsel, Atty. Ginete, received a copy of the Order through his representative, Capuno. As no motion for reconsideration was filed on respondent and her mother's behalf until April 12, 2016, the December 28, 2015 Order had lapsed into finality.

Gatmaytan v. Dolor[70] extensively discussed finality of judgments and final orders in relation to the timely filing of motions for reconsideration:

> [A] judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "nothing is more settled in law." Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Accordingly,
>
> > [a final judgment] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.
>
> Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void.
>
> This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case.
>
> In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final:
>
> > Section 2. Entry of Judgments and Final Orders. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.
>
> In turn, Rule 37, Section 1, in relation to Rule 41, Section 3 of the 1997 Rules of Civil Procedure, allows for 15 days from notice of a judgment or final order within which a Motion for Reconsideration may be filed.
>
> Rule 37, Section 1 reads:

---

70 806 Phil. 1 (2017) [Per J. Leonen, Second Division].

> Section 1. Grounds of and Period for Filing Motion for New Trial or Reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (Emphasis supplied)
>
> For its part, Rule 41, Section 3 reads:
>
> Section 3. Period of Ordinary Appeal. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[71]

Respondent and Atty. Ginete only offered excuses, the credibility of which are diminished by undisputed facts.

It is damaging enough for respondent's case that the Motion for Reconsideration was long-delayed and not filed until April 12, 2016. To make matters worse, it was only filed after petitioner and her mother filed a Motion for Entry of Judgment and Writ of Execution[72] on April 7, 2016. This raises doubts on whether respondent and Atty. Ginete's replacement

---

71 Id. at 8–10 *citing Industrial Timber Corp. v. Ababon*, 515 Phil. 805, 816 (2006) [Per J. Ynares-Santiago, First Division]; *Filipro, Inc. v. Permanent Savings and Loan Bank*, 534 Phil. 551, 560 (2006) [Per J. Ynares-Santiago, First Division]; *Siy v. National Labor Relations Commission*, 505 Phil. 265, 273 (2005) [Per J. Corona, Third Division]; and *Equatorial Realty Development v. Mayfair Theater, Inc.*, 387 Phil. 885, 895 (2000) [Per J. Pardo, First Division].

72 *Rollo*, p. 89–91.

acted out of bona fide intent to file a motion for reconsideration at the soonest time possible, or were merely impelled to act by the Motion for Entry of Judgment and Writ of Execution. In any case, even if this doubt were to be resolved in their favor, it remains that a long time had passed before February 9, 2016, enough for the December 28, 2015 Order to attain finality. This is precisely why petitioner and her mother sought the execution of the Order.

Even the timing of Atty. Ginete's appraisal of the Regional Trial Court of his withdrawal as counsel is dubious. Though avowedly withdrawing to pursue his candidacy for mayor of Sta. Teresita, Batangas,[73] he did not register his withdrawal until April 6, 2016—practically just a month from the May 9, 2016 elections, and far too delayed from the period for filing candidacy. Atty. Ginete's utmost good faith could have been demonstrated had he promptly informed the Regional Trial Court of his candidacy and ensuing withdrawal. That he only did so months after the period for filing certificates of candidacy, so close to the May 9, 2016 election, and only after petitioner and her mother had made queries about the finality of the Order and obtained a Certification[74] from the Office of the Postmaster that such Order had been mailed to and received for Atty. Ginete, makes it more likely that his withdrawal was part of a belated attempt to cure his failure to discharge his duties as counsel. His withdrawal, his affidavit and disavowal of Capuno's authority, and his replacement's filing of a Motion for Reconsideration only after petitioner and her mother moved for execution appear to have all been orchestrated to undo the consequences of Atty. Ginete's negligence.

Unfortunately for respondent, Atty. Ginete's withdrawal and disavowal, and the subsequent Motion for Reconsideration were too late. She had already become bound by her counsel's negligence and all its consequences. It is not only improper, but outright unethical—a grave abuse of discretion—for courts to facilitate remedies that have been foregone by a counsel's negligence. As this Court has explained:

> The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."
>
> The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of

---

[73] Id. at 249.
[74] Id. at 86.

> the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.
>
> It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.
>
> The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.
>
> Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.
>
> This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.[75]

Respondent would have this Court believe that judgment was void and could not have lapsed into finality. As basis, she points to the Order's supposedly misplaced reliance on National Bureau of Investigation document expert Romero Magcuro's testimony.[76] Further, she cites *Heirs of Borres v. Abela*,[77] which stated that "[a] void judgment never acquires finality."[78]

Respondent's reference to *Heirs of Borres* conveniently omits its discussion which reveals that a decision was found to be void, not because of an error in that decision—which is respondent's basis in this case—but because it was penned by a retired judge. The relevant portions of *Heirs of Borres*' discussion reads:

> The January 30, 1995 Decision could never attain finality for being void. It was penned by Judge Alovera after his retirement when he no longer had the authority to decide cases. We take judicial notice of this Court's Decision in Administrative Case No. 4748 dated August 4, 2000, where the Court en banc disbarred Judge Alovera for gross misconduct, violation of the lawyer's oath and the Code of Professional Responsibility, thus:
>
> . . . .

---

75 *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 23–24 (2015) [Per J. Leonen, Second Division].
76 *Rollo*, p. 295–296.
77 554 Phil. 502 (2007) [Per J, Ynares-Santiago, Third Division].
78 Id. at 518.

From the foregoing, it is clear that the proceedings in Civil Case No. V-6186 were attended with irregularities. The hearing on December 10, 1993 was simulated; the January 30, 1995 Decision was penned by Judge Alovera after he retired; and the decision was never entered in the book of judgments as mandated in the rules. Thus, petitioners' contention that the decision has become final and executory lacks merit.

Under the circumstances, the Borres heirs cannot claim rights under the decision nor can they insist on its binding character. In *Nazareno v. Court of Appeals*, we held:

> [A] decision penned by a judge after his retirement cannot be validly promulgated; it cannot acquire a binding effect as it is null and void. Qoud ab initio non valet, in tractu temporis non convalescit.
>
> In like manner, a decision penned by a judge during his incumbency cannot be validly promulgated after his retirement. When a judge retired all his authority to decide any case, i.e., to write, sign and promulgate the decision thereon also "retired" with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement. . .
>
> A void judgment never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed nonexistent. Thus, there was no effective or operative judgment to appeal from. In *Metropolitan Waterworks & Sewerage System vs. Sison*, this Court held that:
>
> > ". . . [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid, In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial."
>
> Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All

> acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: ". . . it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."
>
> The above ruling was reiterated in *Hilado v. Chavez* where we also held that no rights can be obtained or divested from a void judgment. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void.[79]

The material incidents in this case, as well as the supposed error adverted to by respondent in the December 28, 2015 Order are not at all similar to the factual bases that led to the determination in *Heirs of Borres*, or any of its cited cases. This Court takes exception to respondent counsel's selective quotation of *Heirs of Borres* which borders on misrepresentation, tending to mislead a reader into believing that mere error in judgment attributed to the December 28, 2015 Order makes it void, even if such error has nothing to do with the legitimacy of Judge Patrimonio-Soriaso's and/or the Regional Trial Court's authority in rendering that Order.

II (C)

The preceding discussion suffices to put an end to this case. The finality of the December 28, 2015 Order renders moot the need for petitioner's further appeal. Nevertheless, it is worth considering that Judge Patrimonio-Soriaso also gravely abused her discretion in dismissing petitioner's appeal in the face of, not only the branch clerk of court's nonfeasance, but what appears to be the clerk of court's bad faith.

Rule 41, Section 10 of the 1997 Rules of Civil Procedure spells out the duties of a lower courts' clerk of court after the perfection of an appeal:

> SECTION 10. *Duty of clerk of court of the lower court upon perfection of appeal.* — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:
>
> (a) To verify the correctness of the original record or the record on appeal, as the case may be aid to make certification of its correctness;
>
> (b) To verify the completeness of the records that will be, transmitted to the appellate court;

---

[79] Id. at 514–519.

> (c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and
>
> (d) To transmit the records to the appellate court.
>
> If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.
>
> The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court.

The 1997 Rules of Civil Procedure makes clerks of court indispensable in enabling parties to perfect appeals by record on appeal. So crucial are they that, in those cases where records are found to be incomplete, they are tasked "to take such measures as may be required to complete the records."

As petitioner noted, her inability to complete and attach the record on appeal was not her fault, but that of the Regional Trial Court's Clerk of Court, who, even after receiving money as payment for photocopying, desisted on completing it on account of respondent's opposition.[80] Granting that it was imperative and licit for the Clerk of Court to personally receive money to defray the costs of photocopying, doing so nevertheless placed the Clerk of Court in a position that only heightened the duties imposed by Rule 41, Section 10. It is only more damning that the Clerk of Court would renege on the undertaking at respondent's mere instance and without respondent even making a proper submission to the Regional Trial Court.

It was then serious error for Judge Patrimonio-Soriaso to look the other way and ignore her branch clerk of court's impropriety. It was grave abuse of discretion for her to rule that petitioner's Appeal must be dismissed for failing to include a record on appeal when such failure was attributable to the fault of her own subordinate. In so doing, she enabled a violation of Rule 41, Section 10, and ultimately enabled an injustice by preventing petitioner's recourse to further remedy

II (D)

The standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal are clear. They are long-settled and countlessly repeated in jurisprudence. All that was left for Judge Patrimonio-Soriaso to

---

80 *Rollo*, p. 251.

do was to apply them. That she did not proceed to plainly apply these unmistakable standards is mind-boggling.

Judge Patrimonio-Soriaso uncaringly bypassed basic rules of procedure in reversing her own final Order and in dismissing petitioner's Appeal. A judge who obstinately disregards established rules of procedure does not merely err in judgment but commits grave abuse of discretion:[81]

> [M]anifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.
>
> In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law," or in essence, grave abuse of discretion amounting to lack of jurisdiction.
>
> Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[82]

Judges should be heedful of procedural rules and ensure that no undue advantage is extended to litigants. Thus, Judge Patrimonio-Soriaso should have been circumspect in performing her functions.

What was at stake here was not a palatial estate bequeathed to a privileged heir. Rather, it was a modest dwelling on a 108 square-meter Tondo lot. These were all that Corazon could pass on to the one person she intimately loved and with whom she spent 48 years making that house a home. Purita could have lived to, even if only briefly, occupy as her own the meager bequest that Corazon could extend. Yet, by vacillating on her own ruling, Judge Patrimonio-Soriaso saw to it that Purita would never know that dwelling as her own even as she breathed her last.

The exercise of judicial functions does not merely involve a cold, mechanical application of the law, or a routinary resolution of issues. Rather, it ultimately calls for the dispensation of justice. It is a human affair with very real, palpable, and potentially damaging consequences for those who stand to be affected. Judge Teresa Patrimonio-Soriaso woefully failed

---

[81] *Crisologo v. JEWM Agro-Industrial Corporation*, 728 Phil. 315 (2014) [Per J. Mendoza, Third Division].

[82] Id. at 328 *citing State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, 689 Phil. 134 (2012), [Per Curiam, En Banc]; *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, 580 Phil. 135, 140 (2008) [Per J. Quisumbing, Second Division]; *Enriquez v. Judge Caminade*, 519 Phil. 781 (2006) [Per C.J. Panganiban, First Division], and *Abbariao v. Beltran*, 505 Phil. 510 (2005) [Per J. Panganiban, Third Division.

to carry out her basic, solemn duty as a judge. She callously disregarded settled norms and ultimately facilitated an injustice. It is equally woeful that the Court of Appeals never corrected her abuse of discretion.

WHEREFORE, the assailed Court of Appeals' February 6, 2019 Decision and May 15, 2019 Resolution in CA-G.R. S.P. No. 153795 are **REVERSED** and **SET ASIDE**. The Regional Trial Court's December 28, 2015 Order in Sp. Proc. No. 08-119593 is **REINSTATED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

DEC 07 2020