

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**HEIRS OF ELIAS LORILLA, Namely:
FE, ELIAS, JR. and SERVANDO, ALL
SURNAMED LORILLA,**
Petitioners,

-versus-

**G.R. No. 118655
April 12, 2000**

**COURT OF APPEALS, COMMERCIAL
CREDIT CORPORATION, HON.
FRANCISCO VILLANUEVA and
SHERIFF HONORIO P. SANTOS,**
Respondents.

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D E C I S I O N

QUISUMBING, J.:

This Petition for Review assails the Decision^[1] of the Court of Appeals promulgated on November 29, 1994 which dismissed the petition for annulment of the judgment rendered on April 5, 1989, by the Regional Trial Court, Branch 58, of Makati in Civil Case No. 5262.^[2] The motion to reconsider the decision of the Court of Appeals was denied by said Court in a Resolution promulgated on January 11, 1995.^[3]

The antecedent facts of this case as found by the Court of Appeals are as follows:

- “(1) On September 10, 1983, private respondent Commercial Credit Corporation (now known as Pentacapital Finance Corporation and hereinafter referred to as PENCAPITAL) filed a complaint with the Regional Trial Court of Makati, Metro Manila, (hereinafter referred to as the Makati Court) for a sum of money against Sanyu Machineries Agencies, Inc., Sanyu Chemical Corporation, and several other defendants, among whom was Elias Lorilla, (now deceased) who had acted as sureties for the two corporate debtors. The complaint was docketed as Civil Case No 5262 and was assigned by raffle to Branch 58 of said court.
- (2) PENCAPITAL sought for, and obtained from the Makati Court, a writ of attachment on the real property of defendant Elias L. Lorilla covered by Transfer Certificate of Title No. 298986, and which levy was duly annotated on the certificate of title concerned.
- (3) Defendant Elias Lorilla, together with four other individual defendants, was initially represented by one Atty. Danny Tablizo, but who later on withdrew his appearance and was substituted by another lawyer, Atty. Alfredo Concepcion.
- (4) During the pendency of Civil Case No. 5262, Elias L. Lorilla executed a dacion en pago over the property attached in favor of the Joint Resources Management Development Corporation (hereinafter referred to as JRMDC) by reason of which Transfer Certificate of Title No. 298986 in the name of Elias L Lorilla was cancelled and replaced by Transfer Certificate of Title No 114067 in the name of JRMDC. But the levy caused to be made by PENCAPITAL over the property was carried over to the new certificate of title.
- (5) On June 9. 1986, JRMDC filed suit against PENCAPITAL for the cancellation of the latter’s levy on the property in question with the Regional Trial Court of Pasig, Metro

Manila (hereinafter referred to as the Pasig Court), which was docketed therein as Civil Case No. 63757 and assigned by raffle to its Branch 153.

- (6) On April 25, 1989, the Makati Court, after due hearing, rendered judgment in Civil Case No 5262 in favor of PENCAPITAL and against the defendants therein, including Elias L. Lorilla. The dispositive portion of said judgment reads:

“WHEREFORE, premises considered, judgment is rendered in favor of plaintiff and against defendants who are hereby ordered to pay to plaintiff, jointly and severally, and solidarily the total principal amount of P421,596.28 plus interest at 12% per annum and a penalty of 3% per month of default from the time it became due on July 1, 1981 until fully paid, and 20% of the entire amount due as attorney’s fees plus costs.

SO ORDERED.”

- (7) Despite receipt of a copy of the aforesaid decision by Alfredo Concepcion, then counsel of record of defendant Elias L. Lorilla, no appeal whatsoever was interposed from said judgment by said lawyer in behalf of defendant Lorilla.
- (8) On March 3, 1993, upon motion of PENCAPITAL, the Makati Court issued a writ of execution in Civil Case No. 5262 and PENCAPITAL thereafter proceeded against the property covered by TCT No. 298986 in the name of defendant Lorilla.
- (9) On May 26, 1993 the Pasig Court rendered decision in its Civil Case No. 53757 dismissing JRMDC’s complaint for the cancellation of the levy on attachment on the Lorilla property, ruling that the dacion en pago executed by defendant Lorilla in favor of JRMDC cannot prevail over the prior writ of attachment duly annotated on the property in favor of PENCAPITAL. No appeal from the decision in Civil Case No. 53757 having been made by JRMDC, the

same became final and executory (Annex “15”, Reply Memorandum of PENCAPITAL).

- (10) On September 15, 1993, petitioners herein as heirs of Elias L. Lorilla, filed a motion in Civil Case No. 5262 to quash the writ of execution issued by the Makati Court, arguing that since defendant Elias L Lorilla passed away on January 15, 1988, or one year and three months before the Makati Court rendered decision in Civil Case No. 5262 on April 5 1989, the case should have been dismissed insofar as Elias L. Lorilla is concerned, in keeping with Section 21, Rule 3 of the Rules of Court which provides:

‘SECTION 21. Where claim does not survive. — When the action is for recovery of money, debt, or interest therein, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be presented in the manner especially provided in these rules.’

- (11) On February 8, 1994, the Makati Court, through its Acting Presiding Judge, the Honorable Francisco Donato Villanueva, denied the motion to quash said writ of execution, ruling that the judgment in Civil Case No 5256 having become final, it is now beyond its authority to amend it by dismissing the same insofar as defendant Elias L. Lorilla is concerned, and that the suggested remedy, if at all, is a petition for its annulment. Petitioners moved to reconsider the denial of their motion to quash the writ of execution, but the Makati Court stood pat on its ruling, hence, petitioners’ recourse to this Court for annulment of judgment.”^[4]

Petitioners, thus, filed with the Court of Appeals a Petition for annulment of Judgment, Writ of Execution, and/or Levy on Execution with Preliminary Injunction and Restraining Order to annul or enjoin enforcement of the judgment dated April 5, 1989 of the Makati Court in Civil Case No. 5262. In its decision promulgated on November 29, 1994, the Court of Appeals resolved to deny the

petition, hence petitioners' present recourse to this Court. They assign the following errors:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT ANNULING THE DECISION OF THE TRIAL COURT, DATED 5 APRIL 1989, INsofar AS DECEASED DEFENDANT ELIAS LORILLA IS CONCERNED, THEREBY VIOLATION (sic) PETITIONERS' RIGHT TO DUE PROCESS OF LAW.

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN VIOLATING SECTION 21, RULE 3, AND SECTIONS 5 AND 7, RULE 86 OF THE REVISED RULES OF COURT.

III

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONERS THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.”^[5]

In our view, the main issue for resolution now is whether the respondent appellate court erred and gravely abused its discretion in denying petitioners' action for annulment of judgment of the RTC of Makati, Branch 58, concerning the deceased defendant Elias Lorilla. Pertinently, we have to consider whether Section 21 of Rule 3 and Sections 5 and 7 of Rule 86 of the Revised Rules of Court are applicable in the present case. Similarly, we have to inquire whether petitioners, heirs of Elias Lorilla, were deprived of their right to due process of law.

Petitioners argue that the cause of action of private respondent Commercial Credit Corp. (now known as Pentacapital Finance Corp. and hereinafter referred to as PENTACAPITAL) did not survive for being in violation of Section 21 of Rule 3 of the Revised Rules of Court. They claim that under this rule, the trial court lost jurisdiction

over the person of Elias Lorilla when he died, and consequently the action against him should have been dismissed.

Section 21 of Rule 3 states:

“SECTION 21. Where claim does not survive. — Where the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.”

Section 21 of Rule 3 provides that upon the defendant’s death, the action “shall be dismissed to be presented in the manner especially provided in these rules.” Petitioners argue that this manner is provided for in Sections 5 and 7 of Rule 86 of the Revised Rules of Court.^[6] As contemplated in Section 21 of Rule 3, the action has to be dismissed without prejudice to the plaintiff thereafter presenting his claim as a money claim in the settlement of the estate of the deceased defendant.^[7] The claim becomes a mere incident in the testamentary or intestate proceedings of the deceased where the whole matter may be fully terminated jointly with the settlement and distribution of the estate.^[8]

In the present case, however, the records do not show if any notice of death was filed by Atty. Alfredo Concepcion, counsel of record of Elias Lorilla in Civil Case No. 5262 before the Makati Court. Thus, neither the Makati Court nor PENTACAPITAL were made aware of the death of Elias Lorilla. The trial court could not be expected to know or take judicial notice of the death of Lorilla, absent such notice. Neither could the petitioners have been made aware of the trial court’s judgment adverse to their father, for all notices and orders of the court were sent to Lorilla’s counsel of record, who did not bother to inform the parties concerned of Elias Lorilla’s death. Apparently, Lorilla’s counsel failed in his duty to promptly inform the court of the death of his client, as the Rules require.^[9]

As far as the Makati Court was concerned, until the Writ of Execution was issued and the levy thereof on August 5, 1993, Lorilla continued to be represented by counsel of record, Atty. Concepcion; and that upon service of a copy of the decision on said counsel at the latter’s

address, Lorilla was deemed to have been validly served notice of the judgment.^[10] The failure of Atty. Concepcion to serve notice on the court and the adverse parties regarding his client's death binds herein petitioners as much as the client himself could be so bound. Jurisprudence teems with pronouncements that a client is bound by the conduct, negligence and mistakes of his counsel.^[11]

In this case, petitioners claim that their right to due process was violated when the Court of Appeals did not annul the decision of the Makati Court dated April 5, 1989. They claim that as heirs of Elias Lorilla, they would be deprived of their lawful inheritance without due process, as they were not parties to the case where the adverse decision against their father was rendered. Said judgment, they posit, cannot be enforced against them because the court had not acquired jurisdiction over them, nor over the estate of Elias Lorilla.

True, a judgment may be annulled for want of jurisdiction or lack of due process of law.^[12] But while petitioners were not properly substituted for Elias Lorilla as defendants, absent any notice of his death, it could not be said that petitioners were deprived of due process of law, for as far as the trial court was concerned, they were not parties to the case. To rule otherwise would be in fact, a more obvious and grievous transgression upon due process.

Moreover in this case, we find that the property which petitioners claim as their lawful inheritance, was no longer part of the estate of Elias Lorilla at the time of his death. For Elias Lorilla had earlier executed a dacion en pago over this property in favor of the Joint Resources Management Development Corporation (JRMDC). By reason thereof, Lorilla's transfer certificate of title was cancelled, and a new one was issued in favor of JRMDC.^[13] The levy of PENTACAPITAL annotated on Lorilla's certificate of title was carried over onto the title of JRMDC. Elias Lorilla's payment of his obligation to JRMDC being one of dation in payment, it is governed by the law on sales.^[14] The subject property was validly transferred to JRMDC already. Hence petitioners could not claim that they were deprived of their lawful inheritance without due process of law.

Section 21 of Rule 3 of the Revised Rules of Court sets out the procedure that should be followed after the death of the defendant in

a case. If he died “before final judgment in the Court of First Instance,” the action should be dismissed without prejudice to the plaintiff presenting his claim in the settlement of the estate of the deceased in accordance with and as required by Section 5 of Rule 86 of the Revised Rules of Court.^[15] Here, however, the property in question had already been taken out of the estate of Elias Lorilla, even before judgment in Civil Case No. 5262 was rendered, and it was transferred to JRMDC by virtue of the dacion en pago executed by Elias Lorilla. For this reason, Section 5, Rule 86 loses its pertinence to the case at bar.

Likewise, Section 7 of Rule 39 of the Revised Rules of Court^[16] will not apply to the present case. For it speaks of a situation where a party dies after the entry of the judgment or order of the court. It does not cover a situation where the court was reportedly informed of the death of a party only after final judgment.

Since there was no timely appeal taken from the judgment of the Regional Trial Court of Makati dated April 5, 1989, in Civil Case No. 5262, that judgment had properly become final and executory. As well said by respondent appellate court, to adopt a view contrary would “open the floodgates to protracted and endless litigations, because all that counsel for defendant has to do, in an action for recovery of money, in case said defendant dies before final Judgment in a regional trial court, is to conceal such death from the court and thereafter pretend to go through the motions of trial, and, after judgment is rendered against his client, to question such judgment for being violative of Section 21, Rule 3 of the Rules of Court. Thus, counsel for such defendant could unduly delay the rendering of a judgment against his client It is a fundamental concept in any jural system, that even at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law. Interest rei publicae ut finis sit litim.”^[17]

We see no reason, in the interest of justice, to disturb, much less annul, the aforesaid judgment.

WHEREFORE, the assailed decision of the Court of Appeals promulgated on November 29, 1994 and its Resolution promulgated

on January 11, 1995 are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Bellosillo, Mendoza, Buena and De Leon, Jr., JJ., concur.

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- [1] Rollo, pp.19-24.
[2] CA Rollo, p. 9
[3] Supra, note 1 at 25.
[4] Id. at 19-22.
[5] Id. at 12.
[6] Id. at 14-15 (Emphasis ours)
[7] F. Regalado, REMEDIAL LAW COMPENDIUM, Vol. I, pp. 66-67 (5th ed. 1988).
[8] R. Martin, RULES OF COURT OF THE PHILIPPINES WITH NOTES AND COMMENTS, Vol. I, pp. 232-233 (1989 ed.), citing Pabido vs. Jaranilla and Hidalgo Cuyugan & Co., 60 Phil. 247 (1934).
[9] Section 16, Rule 3, Revised Rules of Court provides: “Duty of attorney upon death, incapacity, or incompetency of party. — Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative”, Cordova vs. Tornilla, 246 SCRA 430, 432 (1995).
[10] Section 2, Rule 13, Revised Rules of Court provides: “Papers to be filed and served. —If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court.”
[11] Bernardo vs. Court of Appeals, 275 SCRA 413, 428 (1997); Casolita, Sr. vs. Court of Appeals, 275 SCRA 257, 264-265 (1997); Salonga vs. Court of Appeals, 269 SCRA 534, 545 (1997); People vs. Salido, 258 SCRA 291, 295 (1996); B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28, 39 (1992); Manila Electric Co. vs. Court of Appeals, 187 SCRA 200, 208 (1990).
[12] Salonga vs. Court of Appeals, 269 SCRA 534, 542 (1997).
[13] Rollo, p. 20; CA Rollo, p. 107, back page.
[14] Article 1245, New Civil Code.
[15] F. Regalado, REMEDIAL LAW COMPENDIUM, Vol. I, pp. 99-100 (6th ed. 1997); Section 5 of Rule 86 (“CLAIMS AGAINST ESTATE”) provides: “Claims which must be filed under the notice. If not file, barred; exceptions. — All claims for money against the decedent arising from contract, express or implied, whether the same be due, not due or contingent, all claims for

funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants.”

[16] Section 7 of Rule 39 provides: “Execution in case of death of party. — Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases.” (Emphasis ours).

[17] Rollo, p. 23; *Vda. De Kilayko vs. Judge Tengco*, 207 SCRA 600, 612 (1992); *Allied Banking Corporation vs. Court of Appeals*, 229 SCRA 252, 258 (1994).