

SECOND DIVISION

[G.R. No. 217916, June 20, 2018]

**ABS-CBN PUBLISHING, INC., PETITIONER, VS. DIRECTOR OF
THE BUREAU OF TRADEMARKS, RESPONDENT.**

DECISION

REYES, JR., J:

The Case

Challenged before the Court via this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Resolution^[1] of the Court of Appeals promulgated on May 20, 2014, which denied ABS-CBN Publishing, Inc.'s (petitioner) "Motion for Extension of Time [To File Petition for Review]." Likewise challenged is the subsequent Resolution^[2] of the Court of Appeals promulgated on April 15, 2015, which upheld the earlier Resolution.

The Antecedent Facts

In 2004,^[3] the petitioner filed with the Intellectual Property Office of the Philippines (IPO) its application for the registration of its trademark "METRO" (applicant mark) under class 16 of the Nice classification, with specific reference to "magazines."^[4] The case was assigned to Examiner Arlene M. Icban (Examiner Icban), who, after a judicious examination of the application, refused the applicant mark's registration.

According to Examiner Icban, the applicant mark is identical with three other cited marks, and is therefore unregistrable according to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC).^[5] The cited marks were identified as (1) "Metro" (word) by applicant Metro International S.A. with Application No. 42000002584,^[6] (2) "Metro" (logo) also by applicant Metro International S.A. with Application No. 42000002585,^[7] and (3) "Inquirer Metro" by applicant Philippine Daily Inquirer, Inc. with Application No. 42000003811.^[8]

On August 16, 2005, the petitioner wrote a letter^[9] in response to Examiner Icban's assessment, and the latter, through Official Action Paper No. 04, subsequently reiterated her earlier finding which denied the registration of the applicant mark. Eventually, in the "Final Rejection"^[10] of the petitioner's application, Examiner Icban "determined that the mark subject of the application cannot be registered because it is identical with the cited marks METRO with Regn. No. 42000002584 ['Metro' (word)] and Regn. No. 42000003811 ['Inquirer Metro'].^[11]

The petitioner appealed the assessment of Examiner Icban before the Director of the Bureau of Trademarks of the IPO, who eventually affirmed Examiner Icban's

findings. The decision averred that the applicant and cited marks were indeed confusingly similar, so much so that there may not only be a confusion as to the goods but also a confusion as to the source or origin of the goods. The *fallo* of the Bureau Director's decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** and the Final Rejection contained in Official Action Paper No. 04, **SUSTAINED**. Serve copies of this Decision to [petitioner] and herein Examiner Arlene M. Icban.

SO ORDERED.^[12]

Upon the denial of the petitioner's motion for reconsideration, the petitioner appealed to the Office of the Director General (ODG) of the IPO. After the submission of the memoranda from the parties, the ODG, on September 19, 2013, rendered a Decision which upheld Examiner Icban's assessment and the Bureau Director's decision.

According to the ODG; there is no merit in the petitioner's appeal because (1) the applicant and cited marks are identical and confusingly similar,^[13] (2) the petitioner's mark was deemed abandoned under the old Trademark Law, and thus, petitioner's prior use of the same did not create a vested right^[14] under the IPC,^[15] and (3) the applicant mark has not acquired secondary meaning.^[16] The *fallo* of the ODG decision reads:

Wherefore, premises considered, the appeal is hereby **DENIED** and the Decision dated 29 March 2010 and the Order denying the Appellant's Motion for Reconsideration, of the Director of the Bureau of Trademarks, are hereby **SUSTAINED**. The Appellant's Trademark Application No. 4-2004-004507 for METRO is likewise **DENIED**.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Trademarks. Let a copy of this Decision be furnished also the library of the Documentation, Information and Technology Transfer Bureau for its information and records purposes.

SO ORDERED.^[17]

The petitioner received a copy of the ODG decision only on October 9, 2013. On the same day, the petitioner filed before the Court of Appeals its "Motion for Extension of Time (To File Petition for Review)" which requested for an extension of fifteen (15) days from October 24, 2013, or until November 8, 2013, to file its petition for review.^[18] On October 25, 2013, the petitioner once more filed a motion for extension of time. In the second motion, the petitioner asked the appellate court for another extension of the deadline from November 8, 2013 to November 23, 2013.^[19]

Meanwhile, on October 25, 2013, the Court of Appeals issued a Resolution which granted the petitioner's first motion praying for an extension of time to file its petition for review, subject to the "warning against further extension." Thus, the Court of Appeals extended the deadline only until November 8, 2013.^[20]

Relying on the appellate court's favorable response to its second motion for extension (which was not acted upon by the Court of Appeals), the petitioner failed to file its petition for review on the deadline set in the Resolution dated October 25, 2013. Instead, the petitioner filed its petition for review only on November 11, 2013-three (3) days after the deadline.^[21]

To justify this delay in filing, the petitioner stated that: (1) it received a copy of the October 25, 2013 Resolution only on November 8, 2013 at 11:30 in the morning; (2) on that same day, this Court, through its Public Information Office, suspended offices in the National Capital Judicial Region in view of Typhoon Yolanda; and (3) November 9 and 10, 2013 fell on a Saturday and Sunday, respectively.^[22]

On May 20, 2014, the Court of Appeals rendered the assailed Resolution. It ruled that the petitioner violated its October 25, 2013 Resolution, as well as Section 4, Rule 43 of the Rules of Court, which provides for the period of appeal.^[23]

On the basis of the foregoing, and the prevailing jurisprudence, the Court of Appeals consequently denied the petitioner's second motion for extension of time, and dismissed the petition for the petitioner's failure to file its petition for review within the deadline.^[24]

On April 15, 2015, the appellate court denied the petitioner's motion for reconsideration.^[25]

Hence, this petition.

The Issues

The ground upon which the petitioner prays for the reversal of the ruling of the Court of Appeals is two-fold: first is on procedural law-*whether or not the Court of Appeals erred in dismissing the petition outright for the petitioner's failure to file its petition for review within the time prescribed by the Court of Appeals*; and second is on substantive law-*whether or not the ODG was correct in refusing to register the applicant mark for being identical and confusingly similar with the cited marks already registered with the IPO*.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds no merit in the petition.

First, on the procedural issue:

In *Bañez vs. Social Security System*,^[26] the Court had occasion to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.^[27] The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Perfection of an appeal within the statutory or reglementary period is not only mandatory but

also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal.^[28]

In connection herewith, Section 4, Rule 43 of the Rules of Court is clear. The appeal shall be taken within fifteen (15) days from the notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.^[29]

More, a litigant is allowed to file only one (1) motion for reconsideration, subject to the payment of the full amount of the docket fee prior to the expiration of the reglementary period. Beyond this, another motion for extension of time may be granted *but only for the most compelling reasons*.^[30]

Again, in *Bañez*, the Court ruled that filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein.^[31] While there are instances when the Court has relaxed the governing periods of appeal in order to serve substantial justice, this was done only in exceptional cases.^[32]

In this case, no exceptional circumstance exists.

In asking the Court of Appeals for a second extension to file its petition for review, the petitioner merely cited as its excuse the following: (1) heavy pressure of other professional work; and (2) attendance of the lawyers in charge in an international lawyers' conference. It said:

However, due to the heavy pressure of other equally important professional work coupled with intervening delays and the fact of the necessary attendance of the lawyers in charge of the case in an international lawyer's (sic) conference, the undersigned counsel will need more time to review and finalize petitioner ABS-CBN Publishing, Inc.'s *Petition for Review*.^[33]

As the Court has ruled upon in a number of cases, a lawyer has the responsibility of monitoring and keeping track of the period of time left to file pleadings, and to see to it that said pleadings are filed before the lapse of the period.^[34] Personal obligations and heavy workload do not excuse a lawyer from complying with his obligations particularly in timely filing the pleadings required by the Court.^[35] Indeed, if the failure of the petitioner's counsel to cope with his heavy workload should be considered a valid justification to sidestep the reglementary period, there would be no end to litigations so long as counsel had not been sufficiently diligent or experienced.^[36]

Further, the petitioner should not assume that its motion for extension of time would be granted by the appellate court. Otherwise, the Court will be setting a dangerous precedent where all litigants will assume a favorable outcome of a motion which is addressed to the discretion of the courts based on the prevailing circumstances of the case.

To be sure, there is a dearth of jurisprudence that upholds the Court of Appeals' power of discretion in disallowing a second extension of fifteen (15) days. As correctly cited by the appellate court, *Spouses Dycoco vs. Court of Appeals*^[37] explains that the Court of Appeals could not be faulted for merely applying the rules, and that a dismissal of a petition in accordance therewith is discretion duly exercised, and not misused or abused.^[38]

Based on the foregoing, and for the guidance of both the bench and the bar, the rule as it currently stands is that, in the absence of, or in the event of a party's failure to receive, any resolution from the courts which specifically grants a motion for extension of time to file the necessary pleading, the parties are required to abide by the reglementary period provided for in the Rules of Court. Failure to comply thereto would result to a dismissal or denial of the pleadings for being filed beyond the reglementary period.

In the case at hand, the Court of Appeals was correct in dismissing the petition. The petitioner could not assume that its motion would be granted, especially in light of its flimsy excuse for asking the second extension of time to file its petition for review.

On this ground alone, the dismissal of the current petition for review is justifiable. The Court reiterates its warning in the case of *Hernandez vs. Agoncillo*:^[39]

Time and again, this Court has cautioned lawyers to handle only as many cases as they can efficiently handle. The zeal and fidelity demanded of a lawyer to his client's cause require that not only should he be qualified to handle a legal matter, he must also prepare adequately and give appropriate attention to his legal work. Since a client is, as a rule, bound by the acts of his counsel, a lawyer, once he agrees to take a case, should undertake the task with dedication and care. This Court frowns upon a lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation or manifestation for his omission. **Failure of a lawyer to seasonably file a pleading constitutes inexcusable negligence on his part.**^[40] (Emphasis and underscoring supplied)

That said, however, even on the merits, the petition still fails to convince.

Second, on the substantive issue:

According to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC),^[41] a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.^[42]

To determine whether a mark is to be considered as "identical" or that which is confusingly similar with that of another, the Court has developed two (2) tests: the