

## THIRD DIVISION

[ G.R. No. 184542, April 23, 2010 ]

**ALMA B. RUSSEL, PETITIONER, VS. TEOFISTA EBASAN AND  
AGAPITO AUSTRIA, RESPONDENTS.**

### R E S O L U T I O N

**NACHURA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, questioning the June 18, 2007 <sup>[1]</sup> and the August 26, 2008<sup>[2]</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 01675.

The petition stems from a complaint for forcible entry filed by petitioner Alma B. Russel against respondents Teofista Ebasan and Agapito Austria. The Municipal Trial Court in Cities (MTCC) of Iligan City heard the ejectment proceedings and rendered judgment on November 23, 2006 in favor of petitioner.<sup>[3]</sup> The trial court ordered respondents to vacate the property involved and to pay attorney's fees and costs.<sup>[4]</sup>

Prejudiced by the ruling, respondents appealed to the Regional Trial Court (RTC). The RTC, in its March 28, 2007 Decision,<sup>[5]</sup> reversed the ruling of the MTCC and ordered the dismissal of the complaint.

Petitioner received her copy of the RTC decision on April 13, 2007.<sup>[6]</sup> Inclined to appeal the adverse ruling to the CA, petitioner, on April 20, 2007, filed a motion for an extension of 15 days from the expiry of the reglementary period for the filing of a petition for review. Petitioner attached to her motion postal money orders representing the filing and docket fees.<sup>[7]</sup> She consequently filed *via* registered mail her petition for review with the appellate court on May 15, 2007.<sup>[8]</sup>

In the assailed June 18, 2007 Resolution,<sup>[9]</sup> the CA dismissed the appeal on the following grounds:

1. The petition is filed out of time, in violation of Sec. 1, Rule 42. Even if petitioner's Motion for Extension of Time to File Petition for Review were granted, the Petition would have still been filed six (6) days late from the requested extension of time.
2. There is no Written Explanation why the Petition was filed by mail instead of the preferred mode of personal filing, as is required under Sec. 11, Rule 13.
3. The Verification and Certification page is defective, since there is no statement and therefore no assurance that the allegations in the

Petition are based on authentic records, in violation of Sec. 4, Rule 7.

4. Pertinent documents such as the Complaint and Answer filed before the MTCC, which are material portions of the record referred to in the Petition are not attached, in violation of Sec. 2(d), Rule 42.<sup>[10]</sup>

Petitioner received her copy of the June 18, 2007 Resolution on July 18, 2007.<sup>[11]</sup> On July 27, 2007, petitioner filed by registered mail her motion for reconsideration and admission of her amended petition. She pointed out in her motion that the petition was filed within the extended reglementary period. She also explained that her office clerk inadvertently failed to attach the page containing the explanation why filing by registered mail was resorted to. Petitioner also begged the appellate court's indulgence to accept the verification because only the phrase "based on authentic records" was missing in the same. She claimed that this was merely a formal requisite which does not affect the validity or efficacy of the pleading. She then pleaded for liberality in the application of the rules of procedure and for the consequent admission of her amended petition containing the written explanation, the corrected verification, and the certified true copies of the complaint and the answer filed before the trial court.<sup>[12]</sup>

The appellate court, however, in the assailed August 26, 2008 Resolution,<sup>[13]</sup> denied petitioner's motion. It ruled that the motion for reconsideration was filed only on October 4, 2007, or 63 days after the expiry of the reglementary period for the filing thereof.

Aggrieved, petitioner elevated the matter to this Court *via* the instant petition for review on *certiorari*.

The Court grants the petition and remands the case to the appellate court for disposition on the merits.

Petitioner's petition for review (under Rule 42) and motion for reconsideration before the appellate court were filed well within the reglementary period for the filing thereof.

It must be noted that petitioner received her copy of the RTC decision on April 13, 2007. Following the Rules of Court, she had 15 days or until April 28, 2007 to file her petition for review before the CA. Section 1 of Rule 42 provides:

*Sec. 1. How appeal taken; time for filing.*--A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and

the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

On April 20, 2007, petitioner filed before the CA, *via* registered mail, her motion for extension of time to file the petition for review. She pleaded in her motion that she be granted an additional 15 days, counted from the expiry of the reglementary period. Petitioner likewise attached to her motion postal money orders representing the docket fees.

Fifteen days from April 28, 2007 would be May 13, 2007. This was, however, a Sunday. May 14, 2007, the following day, was a legal holiday--the holding of the national and local elections. Section 1 of Rule 22 states:

Sec. 1. *How to compute time.*--In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Therefore, when petitioner filed her petition for review with the appellate court on May 15, 2007, the same was well within the extended period for the filing thereof.

Petitioner's motion for reconsideration was likewise filed on time. She received a copy of the June 18, 2007 CA Resolution on July 18, 2007. Under Section 1 of Rule 52, she had 15 days from notice, or until August 2, 2007, to file a motion for reconsideration.<sup>[14]</sup> Petitioner filed by registered mail her motion for reconsideration on July 27, 2007. The fact of mailing on the said date is proven by the registry return receipt,<sup>[15]</sup> the affidavit of service,<sup>[16]</sup> and the certification of the Office of the Postmaster of Iligan City.<sup>[17]</sup> Section 3, Rule 13 of the Rules of Court<sup>[18]</sup> provides that if a pleading is filed by registered mail, then the date of mailing shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading. Thus, in this case, as the pleading was filed by registered mail on July 27, 2007, within the reglementary period, it is inconsequential that the CA actually received the motion in October of that year.

As to the CA's dismissal of the petition for review on the ground that petitioner failed to attach a written explanation for non-personal filing, the Court finds the same improper. Iligan City, where petitioner resides and where her counsel holds office, and Cagayan de Oro City, where the concerned division of the CA is stationed, are separated by a considerable distance. The CA, in the exercise of its discretion, should have realized that it was indeed impracticable for petitioner to personally file the petition for review in Cagayan De Oro City. Given the obvious time, effort and expense that would have been spent in the personal filing of the pleadings in this