

SECOND DIVISION

[G.R. No. 171656, March 17, 2009]

**ERLINDA K. ILUSORIO, PETITIONER, VS. SYLVIA ILUSORIO-YAP,
RESPONDENT.**

R E S O L U T I O N

QUISUMBING, J.:

For review on certiorari are the Decision^[1] dated November 30, 2005 and Resolution^[2] dated February 15, 2006 of the Court of Appeals in CA-G.R. CV No. 82943.

The case arose from a Complaint^[3] for a Collection of Sum of Money with Preliminary Attachment filed by petitioner Erlinda K. Ilusorio (Erlinda) against her daughter, respondent Sylvia Ilusorio-Yap (Sylvia), before the Regional Trial Court (RTC) of Makati City. Erlinda alleged that sometime in August 1997 Sylvia borrowed P7 million from her and that she issued PCIBank Check No. 0013311 which Sylvia deposited in her own bank account. Sylvia, however, later refused to pay the loan despite her demands.

Sylvia moved to dismiss the complaint on the following grounds: (1) Erlinda's claim was paid, waived, abandoned, or extinguished; (2) no earnest efforts were made to compromise although the parties belong to the same family; and (3) the venue was improper.^[4]

The RTC granted the motion to dismiss in its Order^[5] dated February 12, 2003. The RTC ruled that the loan had already been extinguished, no earnest efforts were made to compromise, and the venue was improper. The RTC denied Erlinda's motion for reconsideration on July 1, 2003.^[6]

Erlinda appealed. But the Court of Appeals dismissed the appeal for late payment of docket fees and failure to justify the late payment. The *fallo* of the Court of Appeals decision reads:

WHEREFORE, the appeal is hereby **DISMISSED** for failure to perfect the same within the reglementary period.

SO ORDERED.^[7]

Upon the denial of her motion for reconsideration, Erlinda filed this petition, anchored on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THE APPEAL OF PETITIONER BASED ON HER ASSIGNMENT OF ERROR AND INSTEAD RULING ON ITS DISMISSAL BASED ON TECHNICALITIES WHICH HAVE ALREADY BEEN SETTLED BY THE COURT A *QUO*.

II.

THE COURT OF APPEALS PATENTLY ERRED IN DISMISSING PETITIONER'S APPEAL ON THE GROUND THAT SHE FAILED TO PERFECT THE SAME WITHIN THE REGLEMENTARY PERIOD.

III.

IN ANY CASE, PETITIONER'S APPEAL IS MERITORIOUS.^[8]

The basic issue is: Did the Court of Appeals err in dismissing Erlinda's appeal for late payment of docket fees?

Erlinda argues that the Court of Appeals should have considered that she had already paid the appeal fees instead of summarily dismissing her appeal on a mere technicality.^[9]

Sylvia counters that the Court of Appeals did not err in dismissing the appeal since failure to pay the appeal fees within the 15-day reglementary period to appeal is a fatal defect.^[10]

We agree with Sylvia's contention.

Appellate court docket and other lawful fees must be paid within the period for taking an appeal. The rule is stated in Section 4, Rule 41 of the Rules of Court, which reads as follows:

SEC. 4. Appellate court docket and other lawful fees. - Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

On August 18, 2003,^[11] Erlinda received the RTC's July 1, 2003 Order which denied her motion for reconsideration. She had 15 days from August 18, 2003 or until September 2, 2003 within which to appeal^[12] and pay the appeal fees. But it appears that Erlinda's payment of the appeal fees was made only on December 15, 2003,^[13] more than three months late, thus rendering the RTC's Orders dated February 12, 2003 and July 1, 2003 final.^[14]

Thus, we have no recourse but to affirm the Order of the Court of Appeals dismissing Erlinda's appeal. Pursuant to Section 1(c),^[15] Rule 50 of the Rules of Court, the Court of Appeals, on its own motion or that of the appellee, may dismiss the appeal on the ground that appellant failed to pay the docket and other lawful