

## SECOND DIVISION

[ G.R. Nos. 172760-61, October 15, 2007 ]

**KAREN AND KRISTY FISHING INDUSTRY AND SPS. HELIODORO TUVILLA AND AQUILINA TUVILLA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, FIFTH DIVISION AND NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, RESPONDENTS.**

### D E C I S I O N

**TINGA, J,:**

This is a special civil action for certiorari under Rule 65 of the Rules of Civil Procedure which seeks to nullify two resolutions of the Court of Appeals in CA-G.R. SP No. 63286 and 63750 for having been issued without or in excess of jurisdiction and/or with grave abuse of discretion. The 06 March 2006 Resolution<sup>[1]</sup> denied petitioners' motion for time to file a motion for reconsideration of the Court of Appeals Decision<sup>[2]</sup> dated 29 December 2005 in the aforementioned cases. The 10 April 2006 Resolution<sup>[3]</sup> denied petitioners' motion for reconsideration of the 06 March 2006 Resolution.

The following factual antecedents are undisputed.

Petitioners spouses Heliodoro Tuvilla, now deceased, and Aquilina Tuvilla ("spouses Tuvilla") were the proprietors of Karen & Kristy Fishing Industry which operated the fishing vessels M/V Karen and M/V Kristy. On 11 August 1998, several fishermen-crew members of said vessels filed a complaint for illegal dismissal, unfair labor practice and money claims against Spouses Tuvilla and Karen & Kristy Fishing Industry (herein collectively referred to as petitioners).

The Labor Arbiter rendered a Decision<sup>[4]</sup> on 1 December 1999 ordering petitioners to pay the money claims but dismissed the complaint for illegal dismissal and unfair labor practice. Petitioners elevated the matter to the National Labor Relations Commission (NLRC) which affirmed<sup>[5]</sup> the Labor Arbiter's ruling, except for the computation of the salary differentials, 13th month pay and service incentive leave. Both parties sought reconsideration of the NLRC decision but were rebuffed.

Both parties again filed separate petitions for certiorari with the Court of Appeals.<sup>[6]</sup> In view of the substantial identity of the parties and the issues, the separate petitions were ordered consolidated. During the pendency of the appeal, petitioner Heliodoro Tuvilla passed away.<sup>[7]</sup>

On 29 December 2005, the Court of Appeals rendered a Decision the dispositive portion of which reads:

**WHEREFORE**, the petition of Karen & Kristy and the Tuvillas docketed as CA-G.R. SP No. 63286, is **DENIED DUE COURSE** and **DISMISSED**. On the other hand, the petition of the Employees docketed as CA-G.R. SP No. 63750 is **GIVEN DUE COURSE** and **GRANTED**. Accordingly the assailed Decision dated September 29, 2000 and Resolution dated January 19, 2001 of the NLRC are **SET ASIDE** and **VACATED** while the Decision of the Labor Arbiter is **REINSTATED**.

**SO ORDERED.**<sup>[8]</sup>

A copy of the said decision was sent by registered mail to Atty. Eugenio Dela Cruz, petitioners' counsel of record, but it was returned as said counsel had moved out of the address of record. Thus, the Court of Appeals Clerk of Court resent another copy of the decision by registered mail to spouses Tuvilla. The registry return receipt showed that the copy was delivered to their address in Olongapo City on 27 January 2006.

On 6 February 2006, petitioner Aquilina Tuvilla filed with the Court of Appeals a motion captioned "Motion to Allow Petitioner/Movant a Period Within Which to Search for Her Counsel; In the Alternative to Look for a New Counsel and Time to File Necessary Pleading or Motion for Reconsideration of the Decision Received by the Movant/Petitioner last January 27, 2006,"<sup>[9]</sup> manifesting that she had difficulty finding their counsel of record as it was her deceased husband who was handling the case prior to his death.

The following day, she filed a notice of appearance and urgent motion for extension of time to file motion for reconsideration,<sup>[10]</sup> asking for an additional 15 days within which to file a motion for reconsideration.

On 8 February 2006, she filed a motion captioned "Application for Substitution of Counsel or Employment of New Counsel with Notice to the Original Counsel of Record,"<sup>[11]</sup> asking that petitioners' counsel of record be replaced by Atty. Rutillo B. Pasok.

On 21 February 2006, petitioners filed a Motion to Admit Attached Motion for Reconsideration and Notice of Death of Petitioner, Heliodoro Albotra Tuvilla.<sup>[12]</sup>

On 6 March 2006, the Court of Appeals issued the first assailed Resolution,<sup>[13]</sup> denying the first three motions. The appellate court ruled that a motion for extension of the period to file the motion for reconsideration is not allowed by the Rules of Court. Petitioners' failure to file a motion for reconsideration of the 29 December 2005 Decision within the reglementary period rendered said decision final and executory, the Court of Appeals stated. Petitioners filed another motion for reconsideration but it was denied in a Resolution dated 10 April 2006.

Petitioner Tuvilla elevated the denial of her motions to this Court via a special civil action for certiorari, raising the following grounds in support of her petition:

1. THE HONORABLE COURT OF APPEALS, FIFTH DIVISION GRAVELY ABUSED ITS DISCRETION WHICH IS TANTAMOUNT TO LACK OF JURISDICTION WHEN IT REFUSED TO SEE THE LIGHT THAT THE

TIME AND PERIOD TO FILE A MOTION FOR RECONSIDERATION BY THE PETITIONER HAS NOT YET STARTED TO RUN FOR REASON THAT THE DECISION WAS NOT YET SERVED OR RECEIVED BY HER COUNSEL OF RECORD AS MANDATED BY THE RULES AND, IT PREFERRED TO APPLY THE TECHNICALITIES OF THE RULES OF COURT IN EXCHANGE OF SUBSTANTIAL JUSTICE AND THE RIGHT OF THE PETITIONER TO BE ASSISTED BY A COUNSEL;

2. THE DEATH OF MOVANT'S HUSBAND REQUIRES THE SUBSTITUTION OF THE HEIRS, AND WITHOUT THE PROPER SUBSTITUTION AS REQUIRED BY THE RULES, THE HEIRS ARE BASICALLY DENIED OF THEIR CONSTITUTIONAL RIGHT TO THEIR PROPERTY WITHOUT DUE PROCESS;
3. THE NEGLIGENCE AND LACK OF INTEREST OF HER PREVIOUS COUNSEL OF HIS DUTY AS THE COUNSEL OF THE MOVANT CANNOT BIND THE MOVANT, AS SHE HAS NO WAY UPON WHICH SHE CAN CONTROL THE ACTS OF HER COUNSEL;
4. THE MOVANT RAISED A VALID AND SUBSTANTIALLY NEW ISSUES IN HER MOTION FOR RECONSIDERATION AND THAT THE LIBERAL INTERPRETATION OF THE PROCEDURAL RULES WILL BE IN KEEPING THE DEMANDS OF SUBSTANTIAL JUSTICE CONSIDERING THE AMOUNT OF THREE MILLION TWO HUNDRED THIRTY THOUSAND FIVE HUNDRED TEN AND 46/100 PESOS (P3,235,510.46), PHILIPPINE CURRENCY WOULD BE A WINDFALL AND UNJUST ENRICHMENT AT THE EXPENSE OF THE MOVANT.<sup>[14]</sup>

Petitioner Tuvilla argues that the reglementary period for filing a motion for reconsideration of the Court of Appeals decision had not commenced because Atty. Dela Cruz, petitioners' counsel of record at the time of the promulgation of the decision, did not receive a copy of said decision. Petitioner Tuvilla adds that neither should the reglementary period be counted from the date of receipt of the decision by petitioners in view of the rule that where a party appears by attorney in an action or proceeding in a court of record, all notices and orders must be given to the attorney of record.<sup>[15]</sup>

The records show that the failure of Atty. Dela Cruz, petitioners' counsel of record, to receive a copy of the Court of Appeals decision was caused by his failure to inform the appellate court of the change of his address of record. Thus, the Clerk of Court had to resend a copy of the decision, this time to the address of record of spouses Tuvilla.

If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.<sup>[16]</sup>

Jurisprudence is replete with pronouncements that clients are bound by the actions