

FIRST DIVISION

[G.R. NO. 167234, February 27, 2006]

TEODORO C. BORLONGAN, PETITIONER, VS. RAFAEL B. BUENAVENTURA AND NORBERTO C. NAZARENO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review are the August 31, 2004 Decision^[1] of the Court of Appeals which denied the petition filed by petitioner Teodoro C. Borlongan in CA-G.R. SP No. 79324, on the ground of absence of grave abuse of discretion on the part of the Office of the Ombudsman in dismissing the administrative complaint filed by petitioner against respondents Rafael B. Buenaventura and Norberto C. Nazareno; and its February 21, 2005 Resolution^[2] denying petitioner's motion for reconsideration.

On June 26, 2001, petitioner, then president of Urban Bank Inc. (UBI), filed a complaint-affidavit against respondent Rafael B. Buenaventura, Governor of the Bangko Sentral Ng Pilipinas (BSP) and Norberto C. Nazareno, President of Philippine Deposit Insurance Corporation (PDIC). Petitioner alleged that on April 26, 2000, Land Bank of the Philippines (LBP) had an existing inter-bank lendings to UBI, part of which was secured by assignment of National Food Authority (NFA) promissory notes.^[3] On even date, the Monetary Board of BSP issued a resolution ordering the closure of UBI and appointing PDIC as its receiver. However, instead of administering the properties of UBI for the benefit of all its creditors, respondents gave undue preference to LBP by allowing the latter to enforce collection from UBI on the promissory notes of NFA in the amount of P562,500,000.00, in violation of Sections 16 and 30, of Republic Act No. 7653, the New Central Bank Act. In support of his assertion, petitioner presented a document titled "Confirmation of Outright Purchase of Government Securities" dated April 25, 2000.^[4] Said document provides that the LBP confirms that it has purchased from UBI all its rights, titles and interest over the promissory notes of NFA in the total sum of P562,500,000.00.

Petitioner's complaint-affidavit spawned two cases: (1) OMB-0-01-0504, a proceeding for the determination of probable cause for the filing of criminal charges against respondents; and (2) OMB-ADM-0327, the instant administrative case.

On July 1, 2002, the Ombudsman issued an order^[5] finding Nazareno guilty of conduct prejudicial to the best interest of the service and imposing upon him the penalty of six months and one day suspension. The complaint was dismissed as to respondent Buenaventura. The Ombudsman held that Buenaventura's membership in the NFA Council and his being a director of PDIC, without proof of participation in any unlawful act, does not make him liable.

In an order^[6] dated July 22, 2002, the Ombudsman modified the order of July 1, 2002 and found Nazareno guilty only of simple misconduct with a penalty of one month and one day suspension.

Meanwhile, on July 2, 2002, the Ombudsman dismissed OMB-0-01-0504, for lack of probable cause. Petitioner sought relief before this Court *via* a petition for certiorari which was however dismissed on July, 25, 2005,^[7] considering that the finding by the Ombudsman that there was no probable cause to hold respondents for trial is conclusive and supported by substantial evidence.

Respondent Nazareno and petitioner filed their respective motions for reconsideration of the July 22, 2002 order. On August 21, 2002, the Ombudsman dismissed the administrative complaint against Nazareno, to wit:

The Motion for Reconsideration filed by complainant is denied. Further, the ruling contained in the Resolution dated July 2, 2002 issued in OMB-0-01-0504 is hereby adopted. Accordingly, the Motion for Reconsideration of respondent Nazareno is hereby granted and the charge against him is dismissed.^[8]

Petitioner filed a petition for certiorari with the Court of Appeals which denied the petition on August 31, 2004. It held that the Ombudsman committed no grave abuse of discretion in its appreciation of the evidence against respondents. Petitioner moved for reconsideration but was denied on February 21, 2005.

On March 16, 2005, petitioner filed a motion for extension of time to file petition for review on certiorari and paid the corresponding docket and other lawful fees.^[9] On April 11, 2005, petitioner passed away.^[10] His counsel subsequently filed the petition on April 18, 2005 with notice to the Court of his client's death.^[11]

The issue for resolution is whether petitioner's counsel was able to perfect an appeal.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Non-compliance therewith results in the loss of the right to appeal.^[12] The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.^[13]

In an appeal by way of petition for review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fees.^[14] Sections 1, 2 and 3, Rule 45 of the Rules of Court state:

SECTION 1. *Filing of petition with the Supreme Court.* - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

SEC. 2. *Time for filing; extension.*—The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

SEC. 3. *Docket and other lawful fees; proof of service of petition.* - Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

It is clear from the foregoing that perfection of an appeal by way of a petition for review before the Court is conditioned upon the following requisites: (1) payment of the required docket and other lawful fees; and (2) the filing of the verified petition within 15 days from receipt of the assailed decision or within the extended period granted by the Court.

In the case at bar, petitioner paid the docket and other fees. However, he failed to satisfy the second requisite because he died on April 11, 2005 before he could file the petition. The petition filed and verified by petitioner's counsel is a mere scrap of paper because he no longer has the authority to represent his deceased client. The settled rule is that attorney-client relationship is terminated upon the client's death. [15] A dead client has no personality and cannot be represented by an attorney. [16]

At any rate, even if petitioner was able to perfect an appeal, the same will still not prosper under the doctrine of conclusiveness of judgment. Under this doctrine, which is also known as "preclusion of issues" or "collateral estoppel," issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.

It may be recalled that the instant administrative complaint is grounded primarily on petitioner's claim that respondents violated Section 30 [17] the New Central Bank Act which prohibits the PDIC as receiver, from disposing the assets of a bank placed under receivership, like UBI. In essence, petitioner contended that respondents gave undue preference to LBP over the promissory notes of the NFA, after UBI was already placed under receivership of the PDIC. The evidence presented by petitioner in support of his arguments was the "Confirmation of Outright Purchase of Government Securities." Petitioner further asseverated that in violating Section 30, respondent Buenavetura also violated Section 16 [18] of the New Central Bank Act which holds the members of the Monetary Board of BSP liable for any violation of the Act.

However, all these contentions, which were also the basis of the investigation for the existence of probable cause in OMB-0-01-0504, had already been passed upon in