

THIRD DIVISION

[G.R. NO. 148482, August 12, 2005]

**JOSEPH DORMAN D. TAMAYO, LAUREANA D. TAMAYO AND
LINAFLOR D. TAMAYO, PETITIONERS, VS. JOSE D. TAMAYO, JR.,
FLORITS TAMAYO-MAGNO, LUZMINDA TAMAYO-ANTHONY AND
FORTUNA TAMAYO-ENRIQUEZ, RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant petition for review on certiorari under Rule 45 of the 1997 Rules of Court, as amended, assailing the (a) Resolution^[1] dated April 5, 2001 of the Court of Appeals in CA-G.R. CV No. UDK-6185 dismissing petitioners' appeal for their failure to pay the docket and other lawful fees; and (b) Resolution dated June 8, 2001 denying their motion for reconsideration, thus:

"The failure of the appellants to pay the appellate docket fee within the period to perfect the appeal is fatal. This Court cannot accept the excuse proffered by appellants in their Motion for Reconsideration that they were not aware of the rule that they were supposed to pay said fees with the Clerk of Court of the court a quo within the time for taking an appeal pursuant to Sec. 14, Rule 41 of the Rules of Civil Procedure because these Rules have been in existence for almost four (4) years now.

WHEREFORE, for lack of merit, the Court DENIES the appellants' Motion for Reconsideration."^[2]

A brief factual background of the case follows:

Petitioners and respondents are half-blood siblings. Their mother is Dorothea Dayanghirang-Tamayo. Respondents are Dorothea's legitimate children with Dr. Jose Tamayo, Sr. Petitioners, on the other hand, are her illegitimate children with Jose Matuco.

Dorothea eventually separated from Jose Matuco. Respondents thereafter took care of Dorothea and petitioners. Respondents sent petitioners to school and even caused the issuance of their birth certificates, allowing them to use the surname Tamayo.

On November 15, 1977, spouses Tamayo executed, in favor of respondents, a Deed of Donation *Inter Vivos* of their two parcels of land covered by Transfer Certificates of Title Nos. 830 and 5868 of the Registry of Deeds, Davao City. Thus, these titles were cancelled and in lieu thereof, Transfer Certificates of Title Nos. T-61159 and T-61160 were issued in their names on April 5, 1978.

On October 7, 1990, Dr. Jose Tamayo, Sr. died. Thereafter, or on June 13, 1996, petitioners filed with the Regional Trial Court, Branch 11, Davao City, a complaint for the revocation of the said donation, alleging they were preterited from the estate of Dr. Tamayo; and that respondents fraudulently caused the execution of the Deed of Donation *Inter Vivos*.

The trial court dismissed the complaint, holding that:

"1. Plaintiffs (petitioners now) never offered any evidence of the subject document (Donation Inter Vivos) which they seek to nullify. Neither documentary nor testimonial evidence of the plaintiffs show that, indeed, there was such a document and they, the plaintiffs, were omitted therefrom. Plaintiffs concentrated on offering evidence to prove their legitimacy and filiation to Dr. Jose Tamayo, Sr.

x x x

2. Assuming *arguendo* that the subject document was properly offered and proven by plaintiffs, this Court cannot resolve the issue of preterition since there has been no determination of heirs yet of Dr. Jose Tamayo, Sr. No settlement of his estate had been instituted, in which forum, issue like determination of heirs, preterition, and collation may be properly addressed.

3. Again, assuming *arguendo* that plaintiffs properly offered and proved that there was such a donation and that, as they claimed, fraud was present, the right to bring the case of revocation or reduction of an inofficious donation must be brought within five (5) years from the donor's death, in this case, Dr. Jose Tamayo, Sr., who died in October 1990. This case was filed in June 1996 way beyond the five-year period. The action for revocation on the ground of fraud had prescribed."

Feeling aggrieved, petitioners interposed an appeal to the Court of Appeals, but failed to pay the corresponding docket fees. Hence, their appeal was dismissed. Petitioners filed a motion for reconsideration and tendered two manager's checks both dated April 23, 2001, one in the amount of P452.00, and another in the sum of P73.00. They explained that they failed to pay the docket fees because they were not advised by the trial court and the Court of Appeals when to pay the docket fees, thus:

"x x x neither the court a quo nor this Honorable Court advised or gave notice to plaintiffs-appellants or their counsel when the docket fee for the appeal of the subject case be paid. Unlike previously, when this Honorable Court, after taking cognizance of an appealed case, gave notice to the appellant when the docket fee will have to be paid x x x."^[3]

The Court of Appeals denied petitioners' motion for reconsideration.

Hence, the present petition.

Petitioners contend that the Court of Appeals should have considered the merits of this case, not the technical rules of procedures. The nonpayment of the docket fees does not automatically result in the dismissal of the appeal, as the word "may"