

SECOND DIVISION

[A.C. No. 5174, February 28, 2002]

ERNESTO M. RAMOS, COMPLAINANT, VS. ATTY. MARIANO A. DAJOYAG, JR., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a complaint filed by Ernesto M. Ramos against Atty. Mariano A. Dajoyag, Jr. for negligence in failing to appeal a ruling of the National Labor Relations Commission,^[1] which affirmed the dismissal by the Labor Arbiter of a complaint for illegal dismissal filed by complainant against DCCD Engineering Corporation. In a letter addressed to the Chief Justice, dated November 15, 1999, complainant stated:

As a result of the dismissal by the NLRC of my complaint, I have been physically and emotionally affected. Considering my status in the community of the respondents and where I live as a Civil Engineer, now 73 1/2 years of age, the illegal termination of my employment continuously caused me sleepless nights, mental anguish and torture, social humiliation and besmirch[ed] reputation. These have been compounded by the failure of my lawyer, Atty. MARIANO A. DAJOYAG, Jr. to file on time the petition for certiorari, which [the] Honorable Supreme Court dismissed with finality To lessen the impact of my sufferings and mental torture, which I could no longer bear for nearly six years since I received the notice of termination of my services in December 1993, I finally decided to report my lawyer's failure to perfect an appeal within the prescribed period which constitutes negligence and malpractice

This fact arose out of case G.R. 125244 (Ernesto Ramos vs. National Labor Relations Commission, DCCD Engineering Corp., et al.) Our motion for last extension of time within which to file [a] petition for review on certiorari [was] DENIED, "petitioner having been previously warned in the resolution of July 24, 1996 that no further extension will be given" per resolution of the First Division of [the] Honorable Court dated August 26, 1996. Our petition for certiorari filed on August 14, 1996 was dismissed per resolution of the First Division of [the] Honorable Court dated December 2, 1996 for having [been] filed out of time. Our motion for reconsideration [of] the resolution [dated] December 2, 1996, which dismissed the petition for certiorari, was likewise denied with finality per resolution dated February 19, 1997 of the First Division of [the] Honorable Court. Machine [copies] of the above-mentioned resolutions [are] attached hereto.

Because it was not my fault or shortcoming but that of my lawyer, Atty. Mariano A. Dajoyag, Jr., for his failure [in] his devotion to his client, warmth and zeal in the defense of his client's rights, it is requested that said erring lawyer be duly sanctioned and my petition for certiorari be reconsidered and accepted. Or through another counsel, I be allowed to file another petition for certiorari with [an] important addendum, which my said former lawyer failed to mention due to time constraint in filing [the] petition for certiorari.^[2]

Respondent denied the allegations against him. Commenting on the complaint, he said:

1. The records will show that complainant filed a complaint against DCCD Engineering Corp. on May 1994 before the National Labor Relations Commission docketed under NLRC-NCR Case No. 00-05-03667-94 for illegal lay-off, illegal deduction, overtime pay, service incentive leave pay, and related claims;
2. Complainant approached me being a "kababayan" from our hometown of Calaca, Batangas. He said that he was a friend of my late father, Atty. Mariano Dajoyag, Sr., and knew also my mother, Atty. Aurora Ampil Dajoyag, who is still living but in her middle eighties. After appealing to our common regional origin, complainant urged me to accept his case;
3. Being a *kabayan*, I was hesitant to secure a contract for legal services and that as it usually goes with such situation, it was "*bahala na lang pag natapos ang kaso*,"
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5. That before the Labor Arbiter, I filed the following:
 - a) Amended Complaint to implead proper parties and to include changes in the causes of action for a more plausible plea;
 - b) Position Paper consisting of 15 pages with annexes consisting of 11 pages;
 - c) Reply to Respondent's Position Paper consisting of 16 pages and annexes consisting of 24 pages;
 - d) Memorandum for Complainant consisting of 22 pages and annexes consisting of 4 pages;
6. That after the case was submitted for resolution, the Honorable Labor Arbiter dismissed the complaint in a decision dated April 3, 1995. Said decision in a nutshell concluded that: Complainant was a managerial employee with a field assignment for which he was not entitled to overtime pay and service incentive leave pursuant to the Labor Code, and that complainant's term of employment was [for] a fixed duration which already expired. . . .

To this decision, I prepared a Memorandum of Appeal in behalf of Complainant consisting of 18 pages which I also filed within the reglementary period at my own expense except the appeal fee and legal research fee which complainant had to pay being the party-litigant;

7. After the filing of this Memorandum of Appeal, and the respondent Company had filed its opposition, the NLRC ruled to affirm the Labor Arbiter's decision. The NLRC found that complainant was engaged as a consultant for a fixed period of time for which the termination of employment depended upon the termination of the agreement; and that complainant had also waived his right to file the complaint because he had executed a waiver and release wherein he expressly declared that his separation was legally valid. And there was no evidence that complainant was forced to sign this release which was held to be valid.

8. That in the face of this adverse ruling, I still filed a Motion for Reconsideration which was duly verified by complainant. This Motion for Reconsideration was thereafter denied in a Resolution, to wit:

"After due consideration of the Motion for Reconsideration filed by the complainant on February 9, 1996, from the Decision of January 22, 1996 of the Commission (Second Division) [the Court] RESOLVED to deny the same for lack of merit."

9. That despite another adverse ruling and even as I have to attend to daily hearings of my other cases or attend to other paper work, I still prepare[d] a Petition for Certiorari with the Supreme Court.

10. Thus on June 25th, 1996, I filed a Motion for Extension of time to file a Petition for Certiorari asking for 30 days which was up to July 25, 1996. Note: This Motion for Extension was granted through a Resolution of this Honorable Court dated July 24th 1996 - but which I only received on August 28, 1996. However, as July 25th 1996 was fast approaching, and I was still saddled with heavy workload aside from the fact that I needed numerous xerox copies of documents as well as [c]ertified [t]rue [c]opies also of certain crucial documents which had to be secured from the NLRC, I was really constrained to ask for a second extension of time FOR ONLY 20 DAYS OR UP TO AUGUST 14th, 1996 to file the aforesaid Petition;

. . . .

12. That to my utter surprise and sadness, the Resolution of the Honorable Court granting my first Motion for Extension from June 25th to July 25th contained a warning that it should be the last but which I ONLY received on August 28th after I have already filed the

second Motion for Extension for only 20 days and also the basic Petition for Certiorari.

To summarize:

- A) Motion for First Extension 30 days from June 25th, 1996 to July 25th - filed on June 25th;
- B) Motion for Second Extension for 20 days or from July 25, 1996 to August 14th - filed July 25th;
- C) Resolution dated July 24th granting First Motion for Extension from June 25th to July 25th with warning that no further extension shall be given-received ONLY on August 28th;
- D) Petition for Certiorari filed on August 14th - exactly within the period of the request [for] second extension had this second extension for only 20 days been granted.

13. That as mentioned above, the July 24th, 1996 Resolution reads as follows:

"G.R. No. 124244 (Ernesto Ramos vs. National Labor Relations Commission, DCCD Engineering Corp., et al.). The motion of petitioner for extension of thirty (30) days from June 25, 1996 within which to file petition for certiorari is GRANTED WITH WARNING THAT THE SAME SHALL BE THE LAST AND THAT NO FURTHER EXTENSION will be given."

14. That on August 26th 1996, a resolution was promulgated by the Honorable Court which was received by respondent counsel on October 5, 1996, to wit:

"G.R. No. 124244 (Ernesto Ramos vs. National Labor Relations Commission, DCCD Engineering Corp., et al.,). The motion of petitioner for a second extension of twenty (20) days from July 25, 1996 within which to file petition for review on certiorari is DENIED, petitioner having been previously warned in the resolution of July 25, 1996 that no further extension will be given."

15. That to this denial I filed a Motion for Reconsideration on October 18, 1996 of this August 26th 1996 denial order.

16. That prior to the filing of the Motion for Reconsideration of the denial of the second Motion for Extension of Time to file petition,

the Honorable Court issued a Resolution dated October 9, 1996 directing respondents to file Comment - which was received on Nov. 5, 1996;

17. That pursuant to this Resolution, private respondent filed its Comment and the Solicitor General requested for extension of time to file his Comment. But after the Comment of private respondent, the Honorable Court issued a Resolution dated December 2, 1996, to wit:

"G.R. No. 124244 (Ernesto Ramos v. National Labor Relations Commission, DCCD Engineering Corp., et al.).
- Considering the private respondent's Comment/Opposition to the petition for certiorari, the Court Resolved to DISMISS the petition for having been filed out of time.

The motion of the Solicitor General for an extension of thirty (30) days from November 8, 1996 within which to file Comment on the petition for Certiorari is further NOTED in view of the dismissal of the petition."

18. That from the said Resolution dated December 2, 1996, the undersigned respondent counsel in behalf of complainant still filed a Motion for Reconsideration pleading for the reinstatement of the Petition[.] But inspite of my earnest and sincere efforts, the Honorable Court denied the Motion for Reconsideration with finality;
19. That complainant was properly informed of this adverse ruling. He insisted that I file another Motion for Reconsideration. I did not accede to his desire and I told him that the dismissal was with finality and we might be cited for contempt for filing such pleading. He was unhappy about it and that was the last time we saw each other.

. . . .

It appears that the Resolution granting my request for 1st extension contained a warning that no further extension would be given. BUT I WAS NOT AWARE OF THIS BECAUSE WHEN I FILED MY MOTION FOR LAST EXTENSION FOR ONLY 20 DAYS, I HAVE NOT YET RECEIVED THE COPY OF SAID RESOLUTION. And in fact, even at the time I filed the basic Petition for Certiorari, I HAVE NOT YET STILL received said July 24, 1996 Resolution.

I RELIED IN GOOD FAITH AND IN THE HONEST BELIEF THAT THE FIRST MOTION FOR EXTENSION FOR 30 DAYS WOULD BE GRANTED - WITHOUT THE WARNING - SINCE IT WAS MERELY A FIRST EXTENSION. Then even as I was terribly saddled with heavy load and at times had some difficulty in getting in touch with complainant, I dropped everything to be able to beat the supposed deadline of August 14th, 1996.

I am sorry if I had to rely in good faith that my Motion for 1st Extension