



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

**NATIONAL TRANSMISSION
 CORPORATION,**

Petitioner,

G.R. No. 186102

Present:

VELASCO, JR., J.,
Chairperson,

PERALTA,

PEREZ,

REYES, and

JARDELEZA, JJ.

- versus -

**HEIRS OF TEODULO EBESA,
 namely: PORFERIA L. EBESA,
 EFREN EBESA, DANTE EBESA
 and CYNTHIA EBESA, and ATTY.
 FORTUNATO VELOSO,**

Respondents.

Promulgated:

February 24, 2016

[Signature]

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DECISION

REYES, J.:

This is a petition for review on *certiorari*¹ filed under Rule 45 of the Rules of Court, assailing the Resolution² dated January 14, 2009 of the Court of Appeals (CA) in CA-G.R. CEB CV No. 01380, which dismissed the appeal on the ground of non-payment of appeal fees.

The Facts of the Case

The National Transmission Corporation (NTC) is a government-owned and controlled corporation (GOCC) created and existing by virtue of Republic Act No. 9136, under which it is granted the authority to exercise

¹ *Rollo*, pp. 10-40.

² Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Franchito N. Diamante and Edgardo L. Delos Reyes concurring; *id.* at 42-53.

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the power of eminent domain.³

Early in 2005, NTC filed a case to expropriate the 1,479-square-meter portion of Lot No. 18470, covered by Original Certificate of Title No. 1852, which has a total area of 6,014 sq m and situated in Quiot, Pardo, Cebu City. It is declared under the co-ownership of the heirs of Teodulo Ebesa, namely, Porferia Ebesa, Efren Ebesa, Dante Ebesa and Cynthia Ebesa Ramirez (Heirs of Ebesa), but is occupied by Atty. Fortunato Veloso (Veloso) (respondents), who allegedly purchased the property, as evidenced by an unregistered Deed of Sale. NTC alleged that the acquisition of an easement right-of-way over a portion of the subject property is necessary for the construction and maintenance of the 138KV DC/ST Transmission Line (Tie Line) of the Quiot (Pardo) 100MVA Substation Project in Cebu City, an undertaking that partook of a public purpose.⁴

In his Answer, Veloso, acting as his own counsel in collaboration with Atty. Nilo Ahat, conceded that the project was indeed intended for a public purpose but disputed its necessity and urgency. He alleged that the project will not only affect a portion of the property but its entirety considering that the construction entails the installation of huge permanent steel towers and the air space directly above the subject property will be permanently occupied with transmission lines. Ultimately, the NTC wanted to acquire not only an easement of right-of-way but a site location for its permanent structures and improvements which seriously affects the marketability of the remainder of the property which was incidentally classified as residential in character.⁵

On April 22, 2005, NTC filed an Urgent Motion for the Issuance of a Writ of Possession alleging that it has deposited with the Land Bank of the Philippines the amount of ₱11,300.00, representing the assessed value of the subject property and that it has served Notice to Take Possession to interested parties.⁶

On July 15, 2005, the Regional Trial Court (RTC) of Cebu City, Branch 21, issued an order of expropriation, declaring that the NTC has a lawful right to take the subject property and use the same for the intended public purpose subject to the payment of just compensation which shall be based on its value at the time of the filing of the complaint.⁷

³ Id. at 55.

⁴ Id.

⁵ Id. at 56.

⁶ Id.

⁷ Id. at 57.

On July 20, 2005, the NTC filed a compliance informing the RTC that it already complied with the requirement for the payment of just compensation based on the Bureau of Internal Revenue zonal valuation and prayed for the immediate issuance of a writ of possession. Thereafter, on July 21, 2005, the RTC issued an order for the issuance of a writ of possession.⁸

On August 2, 2005, the RTC issued an order, directing the NTC and Veloso to submit within 10 days from receipt thereof the name of the individuals respectively nominated by them to be appointed as commissioners tasked to determine the amount of just compensation for the subject property. Thereafter, in an Order dated August 25, 2005, the RTC appointed Alfio Robles (Robles), Rodulfo Lafradez, Jr. (Lafradez Jr.) and Wilfredo Muntuerto (Muntuerto) as commissioners. The Board of Commissioners were directed to include in its report (1) the amount of fair market value of the property sought to be expropriated, (2) the existence and value of improvements, (3) the existence and value of consequential damages, if any, on the remainder of the property, and (4) the existence and value of consequential benefits, if any, to be derived by the owner of the subject property.⁹

On September 22, 2005, the Board of Commissioners submitted a Commissioner's Report with Dissenting Opinion. In the majority opinion penned by Muntuerto and Lafradez Jr., both believed that the applicable fair market value for the year 2005 is ₱6,222.42 per sq m and that the remainder of the property suffered consequential damage equivalent to 70% of its fair market value. On the other hand, Robles, in his dissent, opined that the applicable fair market value is ₱3,100.00 per sq m and that no consequential damage was suffered. Both the NTC and Veloso submitted their respective oppositions to the report.¹⁰

Ruling of the RTC

On January 9, 2006, the RTC rendered a Decision,¹¹ upholding the majority opinion in the report of the Board of Commissioners, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered:

⁸ Id.

⁹ Id. at 58.

¹⁰ Id. at 59.

¹¹ Issued by Presiding Judge Eric F. Menchavez; id. at 55-68A.

Fixing the just compensation which [the NTC] must pay [Veloso] for the land with an area of 1,479 square meters described in the complaint in the reasonable amount of ₱35,179,984.88.

Directing [NTC] to pay [Veloso] interest at the legal rate on the amount of just compensation from the time writ of possession was issued and until the said amount shall have been paid in full. The amount initially paid by [NTC] to [Veloso] based upon the relevant BIR zonal valuation shall accordingly be deducted the same being part payment of the just compensation payable.

Directing the [NTC] to either immediately pay [Veloso] the amount of just compensation fixed herein plus the mandated interest plus the costs and retain the possession taken by it under Section 2, Rule 67 of the 1997 Rules of Civil Procedure of the land x x x subject of this case, or, immediately return to [Veloso] the possession of the land subject of this case and await finality of this judgment before paying the just compensation fixed herein, it being clear from Section 10, Rule 67 of the 1997 Rules of Civil Procedure that [the NTC's] right to retain the possession of the subject land which it took pursuant of Section 2, Rule 67 of the 1997 Rules of Civil Procedure, is predicated upon its payment of the just compensation fixed in this judgment.

Declaring the condemnation or expropriation of the subject land with an area of 1,479 square meters described in the complaint for the public use or stated in the complaint, that is, to enable the [NTC] to construct and maintain its 138KV DC/ST Transmission Li[n]e (Tie Line) of the Quiot (Pardo) 100MVA Substation Project, upon payment of the just compensation fixed above plus the applicable interest.

Declaring that [NTC] shall have the right to transfer the subject property in its name and own the same in perpetuity after it shall have paid in full the above amount of just compensation and the legal interest provided for.

SO ORDERED.¹²

On January 24, 2006, the NTC filed a Motion for Reconsideration,¹³ alleging that the foregoing decision was not supported by facts and existing laws. The RTC, however, denied the same in its Order dated February 14, 2006. Unyielding, the NTC appealed with the CA.¹⁴

On July 31, 2006, the CA directed the NTC to submit official receipt or proof of payment of the appeal fees within 10 days from notice.¹⁵

¹² Id. at 68-68A.

¹³ Id. at 69-75.

¹⁴ Id. at 76.

¹⁵ Id. at 42.

On August 18, 2006, the NTC filed a Manifestation, alleging that it cannot comply with the order of the CA as it did not pay appeal docket fees. It asseverated that the receiving clerk of the RTC did not accept its payment for the appeal fees on the ground that it is exempted from doing so, being a GOCC.¹⁶

On September 14, 2006, the respondents filed a Motion to Dismiss, arguing that the RTC's Decision dated January 9, 2006 has become final and executory since the payment of docket fees is mandatory and jurisdictional and non-payment thereof will not toll the running of the appeal period. The respondents further pointed out the NTC's failure to file the record on appeal which is required under Section 2, Rule 41 of the 1997 Rules of Civil Procedure.¹⁷

The NTC, on September 27, 2006, filed another Manifestation, informing the CA that it already filed on September 18, 2006 a Manifestation with Urgent Ex-Parte Motion with the RTC and settled the payment of appeal fees. The NTC also submitted the official receipts for the said payment.¹⁸

On March 27, 2007, the respondents filed a Motion for Leave to File Supplemental Motion to Dismiss, with the attached Supplemental Motion to Dismiss, seeking to notify the CA that the RTC denied the NTC's motion to accept its belated tender of appeal docket fees and its motion for reconsideration.¹⁹

In its Comment to the respondents' motion, the NTC claimed that it was in good faith and that the failure to pay the appeal docket fees was attributable to the receiving clerk of the RTC. It also alleged that it had already paid the appeal docket fees and the belated payment does not preclude the CA from taking cognizance of the appeal. Finally, it claimed that the notice of appeal was valid and that the record on appeal is not required.²⁰

Ruling of the CA

On January 14, 2009, the CA issued the assailed Resolution, granting the respondents' motion to dismiss, the dispositive portion of which reads:

¹⁶ Id.
¹⁷ Id. at 43.
¹⁸ Id. at 43-44.
¹⁹ Id. at 44.
²⁰ Id. at 45.

Accordingly, the Motion to Dismiss and Supplemental Motion to Dismiss filed by [the respondents] are hereby **GRANTED**.

SO ORDERED.²¹

The CA held that the NTC's counsel should know that as a GOCC, it is not exempted from the payment of docket and other legal fees. Such knowledge can be presumed from the fact that NTC was required initiatory filing fees when it filed the expropriation case and was even prepared to defray appeal fees. The CA found it preposterous for the NTC's counsel to blindly rely on the receiving clerk's advice knowing fully well the importance of paying the docket and other legal fees. The NTC's counsel was negligent and the reason for his omission can hardly be characterized as excusable.²²

The CA added that even granting that the NTC timely paid the appeal docket fees, its appeal would still not prosper for non-filing of a record on appeal.²³

Unyielding, the NTC, in its present appeal, contends that the failure to pay appeal docket fees does not automatically cause the dismissal of the appeal, but lies on the discretion of the court. It asseverates that since its failure to pay the appeal fees was not willful and deliberate, its omission could be excused in the interest of justice and equity. It reiterates that it was prepared to pay the docket fees if not for the receiving clerk's advice that the same was not necessary as it is a GOCC. Even then, it eventually paid the appeal fees, although past the reglementary period.²⁴

In the same manner, the NTC argues that it is erroneous for the CA to require the filing of a record on appeal and deem the case also dismissible on that ground. It asserts that Section 1, Rule 50 of the Rules of Court confers only a discretionary power, not a duty, upon the CA to dismiss the appeal based on the failure to file a record on appeal as can be deduced from the use of the word "may". The CA may thus exercise its discretion to dismiss the appeal or not, taking into consideration the reason behind the omission. And, in this case, the NTC believes that the record on appeal is no longer necessary since the first stage of expropriation had already been concluded and no appeal was taken on it. The order recognizing the power to expropriate had long become final and the only issue left is the amount of just compensation.²⁵

²¹ Id. at 53.

²² Id. at 49-50.

²³ Id. at 51.

²⁴ Id. at 20-22.

²⁵ Id. at 24-25.

Ruling of the Court

It has been repeatedly underscored in a long line of jurisprudence that the right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.²⁶

Basically, there are three requirements in order to perfect an appeal: (1) the filing of a notice of appeal; (2) the payment of docket and other legal fees; and (3) in some cases, the filing of a record on appeal, all of which must be done within the period allowed for filing an appeal. Failure to observe any of these requirements is fatal to one's appeal.

In the instant case, the NTC bewails the dismissal of its appeal for non-payment of appeal docket fees. Specifically, it claims that its failure to pay the appeal fees was due to the erroneous advice of the RTC's receiving clerk. It implores the liberality of the Court that its omission be deemed as an excusable neglect as it was ready and willing to pay the docket fees.

In *M.A. Santander Construction, Inc. v. Villanueva*,²⁷ the Court emphasized, thus:

The mere filing of the Notice of Appeal is not enough, for it must be accompanied by the payment of the correct appellate docket fees. Payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. Failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional and failure to perfect an appeal renders the judgment final and executory.²⁸ (Citations omitted)

Verily, the payment of appeal docket fees is both mandatory and jurisdictional. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. The failure to pay or even the partial payment of the appeal fees does not toll the running of the prescriptive period, hence, will not prevent the judgment from becoming final and executory.

²⁶ *Julian v. Development Bank of the Philippines, et al.*, 678 Phil. 133, 143 (2011).

²⁷ 484 Phil. 500 (2004).

²⁸ *Id.* at 505.

Such was the circumstance in the instant appeal. The NTC failed to pay the appeal fees without justifiable excuse. That its counsel or his representative was misled by the advice of the receiving clerk of the RTC is unacceptable as the exercise of ordinary diligence could have avoided such a blunder. It is apparent from the records that the NTC had ample time to rectify the error or clarify its reservation regarding the propriety of its supposed exemption from the appeal fees. It received a copy of the RTC Decision dated January 9, 2006 on January 10, 2006²⁹ and the Order denying its motion for reconsideration on February 17, 2006³⁰ and had until March 6, 2006 to file a notice of appeal and pay the corresponding docket fees.³¹ NTC's counsel, through his representative, did file a notice of appeal as early as February 17, 2006 but did not pay the docket fees apparently because of the advice of the receiving clerk of the RTC, although he was ready and willing to pay the amount at that time. If the NTC came prepared to the trial court with the necessary voucher to settle the docket fees at the time of filing of the notice of appeal, it understood that it was not exempted from paying the said fees. This can be further deduced from the fact that the NTC was required to pay filing fees with the RTC at the commencement of the action.

Further, NTC's counsel should have been diligent enough to inquire whether the appeal had been properly filed and that the corresponding fees were accordingly paid knowing fully well the significance of these considerations. Had he only bothered to do so, he would have known about the non-payment of the filing fees and could have easily consulted with other lawyers to settle this uncertainty. The NTC, a GOCC, maintains a pool of learned lawyers, who must have had exposure with expropriation cases. He could have easily confirmed from them the necessity of paying the docket fees and settled it promptly especially since there are still a number of days left after the notice of appeal was filed.

The implication of the timely payment of docket fees cannot be overemphasized. "The payment of the full amount of the docket fee is a *sine qua non* requirement for the perfection of an appeal. The court acquires jurisdiction over the case only upon the payment of the prescribed docket fees."³²

Indeed, there are instances when the Court relaxed the rule and allowed the appeal to run its full course. In *La Salette College v. Pilotin*,³³ the Court ruled:

²⁹ *Rollo*, p. 55.

³⁰ *Id.* at 76.

³¹ *Id.* at 48.

³² *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, 492 Phil. 698, 701 (2005).

³³ 463 Phil. 785 (2003).

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

In *Mactan Cebu International Airport Authority v. Mangubat*, the payment of the docket fees was delayed by six (6) days, but the late payment was accepted, because the party showed willingness to abide by the Rules by immediately paying those fees. *Yambao v. Court of Appeals* saw us again relaxing the Rules when we declared therein that “the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for x x x the failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant.”³⁴ (Citations omitted and italics in the original)

In the present case, the NTC failed to present any justifiable excuse for its failure to pay the docket fees like in the cases of *Mactan Cebu International Airport Authority v. Mangubat*³⁵ and *Yambao v. CA*.³⁶ In *Mactan Cebu International Airport Authority*, the petitioner took the initiative to verify the necessity of paying the docket fees and paid it outright, albeit six days after the lapse of the period to appeal. Quite the opposite, the NTC in the present case never lifted a finger until it was required by the CA to present proof of its payment of the docket fees and paid the same only six months after the period to appeal has prescribed.

The NTC cannot also invoke the ruling of the Court in *Yambao* as it does not share the same factual milieu as in the instant case. In *Yambao*, the petitioner expressed willingness to pay by settling the docket fee of ₱820.00 within the period of appeal, however, deficient in the amount of ₱20.00 due to the erroneous assessment of the receiving clerk of the RTC. In the instant case, the NTC did not pay at all and solely attributed the blame on the supposed advice of the receiving clerk of the RTC about its exemption from the payment of docket fees notwithstanding circumstances that would have expectedly stirred second thoughts. Its unthinking reliance on the alleged advice of the receiving clerk is utterly irresponsible and inexcusable.

³⁴ Id. at 794.

³⁵ 371 Phil. 393 (1999).

³⁶ 399 Phil. 712 (2000).

Apart from failure to pay the docket fees, the NTC likewise failed to file a record on appeal. Apparently, the NTC is of the impression that the record on appeal is only necessary when what is being appealed is the first phase of the action, that is, the order of condemnation or expropriation, but not when the appeal concerns the second phase of expropriation or the judgment on the payment of just compensation.³⁷

In *Municipality of Biñan v. Judge Garcia*,³⁸ the Court elucidated, thus:

There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, “of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.” x x x.

The second phase of the eminent domain action is concerned with the determination by the Court of “the just compensation for the property sought to be taken.” This is done by the Court with the assistance of not more than three (3) commissioners. x x x.³⁹ (Citations omitted)

NTC asseverates that the rationale for requiring the record on appeal in cases where several judgments are rendered is to enable the appellate court to decide the appeal without the original record which should remain with the court *a quo* pending disposal of the case with respect to the other defendants or issues. This usually happens in expropriation cases, when an order of expropriation or condemnation is appealed, while the issue of just compensation is still being resolved with the trial court.⁴⁰ It is the contention of the NTC that considering that the first phase of the action had already been concluded and no appeal was taken, the record on appeal is no longer necessary. There is no longer any issue on the order of expropriation, the appeal having been made on the just compensation only.

The issue replicates that which had been resolved by the Court in *National Power Corporation v. Judge Paderanga*.⁴¹ In the said case, the trial court upheld the propriety of the order of condemnation of the property and proceeded to deliberate on the just compensation

³⁷ *Rollo*, pp. 24-25.

³⁸ 259 Phil. 1058 (1989).

³⁹ *Id.* at 1068.

⁴⁰ *Rollo*, pp. 23-24.

⁴¹ 502 Phil. 722 (2005).

due the defendants, notwithstanding the failure of one of the defendants to file answer. The petitioner, however, appealed the amount of the just compensation awarded by the trial court but dispensed with the filing of a record on appeal. For this reason, the trial court dismissed the petitioner's appeal, holding that the latter did not perfect its appeal due to its failure to file the record on appeal. The CA affirmed the dismissal and this was upheld by this Court. The Court ruled:

That the defendant Enriquez did not file an answer to the complaint did not foreclose the possibility of an appeal arising therefrom. For Section 3 of Rule 67 provides:

Sec. 3. Defenses and objections. x x x.

x x x x

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, *at the trial of the issue of just compensation, **whether or not a defendant has previously appeared or answered**, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.* x x x.

In other words, once the compensation for Enriquez' property is placed in issue at the trial, she could, following the third paragraph of the immediately-quoted Section 3 of Rule 67, participate therein and if she is not in conformity with the trial courts determination of the compensation, she can appeal therefrom.

Multiple or separate appeals being existent in the present expropriation case, NPC should have filed a record on appeal within 30 days from receipt of the trial court's decision. The trial court's dismissal of its appeal, which was affirmed by the appellate court, was thus in order.⁴² (Emphasis, underscoring and italics in the original)

The same ratiocination holds with respect to the instant case. While Veloso's co-defendants, the Heirs of Ebesa, did not file any objection to the order of condemnation, they may at any time question the award of just compensation that may be awarded by the trial court. While there was an allegation that the property had already been sold by the Heirs of Ebesa to Veloso, the extent of the said unregistered sale was not specified hence it is not unlikely that the former have remaining interest over the subject property. No proof was likewise presented that the property or portion thereof was already transferred under Veloso's sole ownership. As it is, the Heirs

⁴² Id. at 732-733.

of Ebesa are still the declared owners of the property in the title, hence, the probability that they will file a separate appeal is not remote. It is for this reason that the record on appeal is being required under the Rules of Court and the NTC's insistence that it is unnecessary and dispensable lacked factual and legal basis.

Finally, the pronouncement of the Court in *Gonzales, et al. v. Pe*⁴³ finds relevance in the instant case, thus:

While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.⁴⁴ (Citation omitted)

WHEREFORE, in view of the foregoing disquisition, the Resolution dated January 14, 2009 of the Court of Appeals in CA-G.R. CEB CV No. 01380 is **AFFIRMED**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

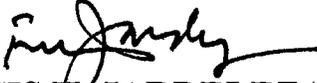

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

⁴³ 670 Phil. 597 (2011).

⁴⁴ Id. at 614.


DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

A