



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 15, 2022 which reads as follows:*

**“G.R. No. 222139 (*Heirs of Antonio Almendra,\* represented by Joseph C. Almendra, petitioners v. Refugia A. Dictado, Mary Ann A. Dictado, Mary Rose A. Dictado and Jude Anthony A. Dictado, represented by their Attorney-in-Fact and Administrator, Atty. Arturo B. Astorga, respondents*).**

The Court resolves this petition for review on *certiorari* seeking to reverse and set aside the October 21, 2014<sup>1</sup> and December 4, 2015<sup>2</sup> Resolutions of the Court of Appeals, Cebu City (CA) in CA-G.R. CV No. 02783.<sup>3</sup> The CA dismissed the appeal on the ground of failure to comply with Section 13(a), (d), and (h), Rule 44 of the Rules of Court in relation to Sec. 1(f), Rule 50 of the same.

The September 5, 2008 Decision<sup>4</sup> of the Regional Trial Court of Abuyog, Leyte, Branch 10 (RTC), docketed as Civil Case No. 252, ordered the heirs of Antonio Almendra, represented by Joseph Almendra (*petitioners*), to vacate and turn over the subject property in favor of Refugia A. Dictado, Mary Ann A. Dictado, Mary Rose A. Dictado, and Jude Anthony A. Dictado, represented by their Attorney-in-Fact and Administrator, Atty. Arturo B. Astorga (collectively, *respondents*).

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\* Also referred to as “Antonio Almendra, Sr.” in some parts of the *rollo*, and in the Certificate of Death submitted to the Court.

<sup>1</sup> *Rollo*, pp. 24-28; penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Ramon Paul L. Hernando (now a Member of the Court) and Ma. Luisa Quijano-Padilla, concurring.

<sup>2</sup> *Id.* at 20-22; penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, concurring.

<sup>3</sup> Entitled “*Refugia A. Dictado, Mary-Ann A. Dictado, Mary Rose A. Dictado and Jude Anthony A. Dictado, represented by their Attorney-in-Fact and Administrator, Atty. Arturo B. Astorga, plaintiffs-appellees v. Antonio Almendra, defendant-appellant.*”

<sup>4</sup> *Rollo*, pp. 47-65; penned by Presiding Judge Buenaventura A. Pajaron.

The right to appeal is neither a natural right nor part of due process. It is merely a statutory privilege and may be exercised only in the manner of and in accordance with the provisions of law. When one seeks to avail of such right, the appellant must strictly comply with the requirements of the law; otherwise, the losing litigant will lose such right.<sup>5</sup>

Sec. 1, Rule 50 of the Rules of Court enumerates the grounds for dismissal of appeal:

Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

**(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44[.]**<sup>6</sup> (emphasis supplied)

In relation to Sec. 1(f), Rule 50, it is incumbent upon petitioners to file an appellant's brief in accordance with Sec. 13, Rule 44 of the Rules of Court:

Section 13. *Contents of appellant's brief.* — The appellant's brief shall contain, in the order herein indicated, the following:

**(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;**

x x x x

**(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;**

x x x x

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<sup>5</sup> See *Suib v. Ebbah*, 774 Phil. 1, 14 (2015), citing *Spouses Ortiz v. Court of Appeals*, 360 Phil. 95, 100-101 (1998).

<sup>6</sup> RULES OF COURT, Rule 50, Sec. 1.

**(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.**<sup>7</sup> (emphases supplied)

As correctly observed by the CA, petitioners failed to comply with paragraphs (a), (d), and (h) of Sec. 13, Rule 44 of the Rules of Court.

First, petitioners' appellant's brief did not have a subject index.

The requirement of having a subject index is not an arbitrary requisite. The subject index is akin to a table of contents, facilitating the review of appeals by providing ready reference.<sup>8</sup> Because there is no limit on the length of appeal briefs and appeal memoranda filed before our appellate courts, it is highly possible for courts to be swamped by voluminous documents. Thus, having a subject index will significantly assist the court in locating arguments, citations, or anything of relevance, for its consideration, among the voluminous records.

Second, the statement of facts in petitioners' appellant's brief was not supported by page references to the record.

In *De Liano v. Court of Appeals*<sup>9</sup> (*De Liano*), the Court underscored the critical role of facts in the determination of the law and jurisprudence applicable to the case which will, consequently, govern the appropriate relief. In *De Liano*, the Court categorically ordered the corollary dismissal of the appellant's brief for lack of page reference. Tersely put, *sans* a page reference, it is presumed that the statement of facts lacks support in the record and may be stricken off or disregarded altogether.<sup>10</sup>

The facts constitute the backbone of a legal argument; they are determinative of the law and jurisprudence applicable to the case, and consequently, will govern the appropriate relief. Appellants should remember that the Court of Appeals is empowered to review both questions of law and of [fact]. Otherwise, where only a pure question of law is involved, appeal would pertain to this Court. An appellant, therefore, should take care to state the facts accurately though it is permissible to present them in a manner favorable to one party. x x x Facts which are admitted require no further proof, whereas facts in dispute must be backed by evidence.

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<sup>7</sup> *De Liano v. Court of Appeals*, 421 Phil. 1033 (2001).

<sup>8</sup> *Id.* at 1042.

<sup>9</sup> *Supra*.

<sup>10</sup> *Id.* at 1044.

**Relative thereto, the rule specifically requires that one's statement of facts should be supported by page references to the record. Indeed, disobedience therewith has been punished by dismissal of the appeal. Page references to the record are not an empty requirement. If a statement of fact is unaccompanied by a page reference to the record, it may be presumed to be without support in the record and may be stricken or disregarded altogether.**<sup>11</sup> (emphasis supplied)

Finally, no copy of the assailed RTC decision was appended to the appellant's brief.

Sec. 13(h), Rule 44 of the Rules of Court mandates that a copy of the appealed judgment should be annexed to the appellant's brief.<sup>12</sup> Parallel to said provision, Sec. 7, Rule 43, in relation to Sec. 1, Rule 50 of the Rules of Court, directs the dismissal of the appeal for failure to attach the necessary documents with the petition:

*Section 7. Effect of failure to comply with requirements. —*  
The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the **documents which should accompany the petition** shall be sufficient ground for the dismissal thereof. (emphasis supplied)

According to petitioners, they could not append a copy of the assailed RTC decision to their appellant's brief because almost all of their records were destroyed during Typhoon Yolanda.

Petitioners' excuse has no merit.

Indeed, the aftermath of the typhoon is a matter of judicial notice. However, the application of the Rules is not suspended by the mere fact of destruction of records.

In *Suib v. Ebbah*<sup>13</sup> (*Suib*), the Court emphasized the duty of litigants; thus, a litigant, before filing a pleading to the courts, must first prepare all the necessary attachments to the pleading.<sup>14</sup> Following our disquisition in *Suib*, petitioners, as the losing party, do not have

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<sup>11</sup> Id.

<sup>12</sup> Rule 44, Sec. 13. x x x

x x x x

(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

<sup>13</sup> Supra note 5.

<sup>14</sup> Id. at 13.

the luxury of filing their appellant's brief without the necessary attachments; otherwise, the court shall consider the appellant's brief as a mere scrap of paper and may dismiss it outright.<sup>15</sup>

Thus, it is incumbent upon petitioners to comply with the Rules, which does not obtain in the present case. Here, petitioners were given ample time to file their appellant's brief. In fact, the records show that petitioners filed their appellant's brief on March 17, 2014, four months after Typhoon Yolanda. Verily, if petitioners lost their copy of the RTC decision, they had enough time to request a new copy from the CA should the records have already been transmitted from the RTC; or from the RTC prior to its transmittal. However, despite the time on their hands and knowledge of the destroyed copy of the RTC decision that needed to be attached to their appellant's brief, petitioners never exerted any effort to obtain a copy thereof.

As with all rules, the proceedings in the CA are designed for the proper and prompt disposition of cases. Indeed, appeal is a privilege and the losing litigant must strictly comply with the technicalities as provided in the law. Jurisprudence, however, holds that the subsequent and substantial compliance may call for the relaxation of procedure.<sup>16</sup> In *Gutierrez v. Secretary of the Department of Labor and Employment*,<sup>17</sup> the Court upheld that there was substantial compliance when petitioner subsequently attached to her supplemental motion for reconsideration certified true copies of the appealed orders to the CA, which she had initially failed to attach in her petition. In fact, the Court, in a plethora of cases, did not further inquire into the reasons behind the failure of the petitioners to comply with the Rules as long as they subsequently complied with the same.<sup>18</sup>

Unfortunately, the attendant circumstances of this case do not call for a similar relaxation of the Rules. Petitioners never attempted to rectify their mistake. They never filed an amended appellant's brief. In their motion for reconsideration, instead of remedying their noncompliance, petitioners insisted that they had substantially complied with the Rules and invoked the liberal construction thereof in their favor. They strongly implore this Court to relax the Rules without any effort to cure their transgression.

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<sup>15</sup> Id.

<sup>16</sup> *Gutierrez v. Secretary of the Department of Labor and Employment*, 488 Phil. 110, 124 (2004).

<sup>17</sup> Id.



<sup>18</sup> Id.

While appeal is neither a natural right nor a part of due process, the Court must still afford every party-litigant the amplest opportunity for the proper and just determination of the case, free from the constraints of technicalities.<sup>19</sup> In the face of minor defects, the Court must put a premium on the disposition of a case on the merits for a just resolution. Nevertheless, the Court is also mindful that the rules of procedure exist for a noble purpose,<sup>20</sup> and should not be disregarded in the guise of liberal construction.

**WHEREFORE**, the petition is **DENIED**. The October 21, 2014 and December 4, 2015 Resolutions of the Court of Appeals, Cebu City, in CA-G.R. CV No. 02783, are **AFFIRMED**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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(Civil Case No. 252)

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Supreme Court

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<sup>19</sup> *Dr. Malixi v. Dr. Baltazar*, 821 Phil. 423, 450 (2017), citing *Development Bank of the Philippines v. Court of Appeals*, 411 Phil. 121, 138 (2001).

<sup>20</sup> *Mendoza v. United Coconut Planters Bank, Inc.*, 656 Phil. 342, 359 (2011).

