



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

NESTOR BRACERO,
 Petitioner,

G.R. No. 212496

Present:

-versus-

CARPIO, *J.*, Chairperson,
 VELASCO, JR.,*
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

**RODULFO ARCELO and THE
 HEIRS OF VICTORIANO
 MONISIT, namely: LOURDES
 MENCHAVEZ, ROGELIO RUELO,
 and MARTINIANA APOR,**
 Respondents.

Promulgated:
 MAR 18 2015

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DECISION

LEONEN, J.:

Nestor Bracero filed this Petition¹ for Review assailing the Court of Appeals' (a) August 28, 2013 Decision² affirming *in toto* the Regional Trial Court Order³ denying his Urgent Motion to Vacate Order for the Issuance of the Writ of Execution Against Defendants Spouses Nestor and Lilia Bracero and to Furnish Copy of the Decision to their Counsel⁴ (Urgent Motion to Vacate the Writ of Execution) and (b) April 14, 2014 Resolution⁵ denying the motion for its reconsideration.

* Designated acting member per S. O. No. 1951 dated March 18, 2015.

¹ *Rollo*, pp. 4–11. The Petition was filed pursuant to Rule 45 of the Rules of Court.

² *Id.* at 47–53. The Decision was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos (Chair) and Marilyn B. Lagura-Yap of the Eighteenth Division.

³ *Id.* at 37–38.

⁴ *Id.* at 31–32.

⁵ *Id.* at 62–63. The Resolution was penned by Associate Justice Gabriel T. Ingles (Chair) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Ma. Luisa C. Quijano-Padilla of the Special Former Eighteenth Division.

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Nestor Bracero prays that this court nullify the assailed Court of Appeals Decision and Resolution, as well as the Regional Trial Court's February 11, 2010 Order; compel the trial court to furnish his counsel with a copy of its Decision so he may appeal this Decision within the 15-day period from counsel's receipt; prohibit the execution of the Regional Trial Court Decision; and reprimand or admonish the Regional Trial Court's Clerk of Court for failing to send his counsel a copy of the Decision.⁶

The heirs of Victoriano Monisit filed a Complaint⁷ for Quieting of Titles/Ownership, Recovery of Possession with Damages against Rodulfo Arcelo and Nestor Bracero over a 48,632-square-meter parcel of land located in Lubo, Sogod, Cebu.⁸

The Complaint stated that Victoriano Monisit owned the 48,632-square-meter land.⁹ The heirs of Victoriano Monisit inherited this property identified as Lot No. 4327 upon his death and declared it under their names for tax purposes in 2002.¹⁰

During Victoriano Monisit's lifetime, 5,000 square meters of the land was mortgaged to Rodulfo Arcelo's grandmother, Damiana Mendoza. Damiana Mendoza's death was followed by her son's death, and Rodulfo Arcelo inherited the right over the mortgaged portion of the property.¹¹

Sometime in 1982, Nestor Bracero, claiming to be Rodulfo Arcelo's tenant, cultivated this 5,000-square-meter mortgaged portion of the property.¹²

Sometime in 1993, Victoriano Monisit sued Nestor Bracero for the recovery of the property he cultivated for his failure to share the products.¹³ Nestor Bracero countered that the land he cultivated belonged to Rodulfo Arcelo.¹⁴ Both complaint and counterclaim were dismissed.¹⁵

Victoriano Monisit died single on August 3, 1995, and his legal heirs extra-judicially partitioned his properties. His heirs Lourdes Menchavez,

⁶ Id. at 10.

⁷ Id. at 12–17.

⁸ Id. at 12.

⁹ Id.

¹⁰ Id. at 14 and 48. Lot No. 4327 was declared under the heirs of Victoriano Monisit in Tax Declaration No. 11877.

¹¹ Id. at 48.

¹² Id.

¹³ Id. This case was docketed as Civil Case No. CEB-6815 with Branch 11 of the Regional Trial Court of Cebu.

¹⁴ Id.

¹⁵ Id.

Rogelio Ruelo, and Martiniana Apor inherited Lot No. 4327 as their share and immediately took possession.¹⁶

Meanwhile, Nestor Bracero expanded his occupation of the mortgaged portion of the property to the entire 48,632 square meters. He consequently drove out Victoriano Monisit's tenant worker Salvacion Montecillo and his family.¹⁷ The heirs of Victoriano Monisit brought the matter to the Barangay Captain "but no settlement was reached."¹⁸ Thus, they filed their Complaint for Quieting of Title/ Ownership, Recovery of Possession with Damages on January 8, 2004.¹⁹

Rodulfo Arcelo filed an Answer²⁰ denying that Nestor Bracero was his tenant.²¹ He claimed he was only impleaded as respondent to help the heirs oust Nestor Bracero from the property.²² Rodulfo Arcelo did not claim ownership²³ of the 5,000-square-meter portion.²⁴

Nestor Bracero filed a Motion to Dismiss arguing prematurity, *res judicata*, and lack of jurisdiction.²⁵

The trial court denied Nestor Bracero's Motion to Dismiss and also denied reconsideration.²⁶ The Court of Appeals dismissed his Petition for Certiorari and/or Prohibition and also denied reconsideration.²⁷

Meanwhile, trial proceeded. On motion by the heirs of Victoriano Monisit, the Regional Trial Court's November 18, 2004 Order declared Nestor Bracero in default for failure to file an answer.²⁸

On April 16, 2009, the trial court ruled in favor of the heirs of Victoriano Monisit.²⁹ On May 4, 2009, the trial court served Nestor Bracero with a copy of its Decision.³⁰

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 5.

²⁰ Id. at 18–25.

²¹ Id. at 19.

²² Id. at 21.

²³ Id. at 20.

²⁴ Id. at 49.

²⁵ Id. at 48.

²⁶ Id. The Motion to Dismiss was denied on July 22, 2004, while his Motion for Reconsideration was denied on January 25, 2005.

²⁷ Id. The Petition for Certiorari was dismissed on November 23, 2006, while his Motion for Reconsideration was denied on June 19, 2007.

²⁸ Id. at 48–49.

²⁹ Id. at 52.

³⁰ Id. at 49–50.

The period to appeal lapsed. The heirs of Victoriano Monisit filed a motion for execution and furnished the counsels of Nestor Bracero and Rodulfo Arcelo with copies. The trial court issued the Writ of Execution on October 7, 2009 without opposition.³¹

Nestor Bracero received the Notice to Vacate on Execution³² dated January 8, 2010.³³ On the same day, his counsel Atty. Danilo Pilapil filed the Urgent Motion to Vacate the Writ of Execution on the ground that counsel was not furnished a copy of the Regional Trial Court Decision.³⁴ The heirs of Victoriano Monisit filed their Comment.³⁵

The Regional Trial Court, in its February 11, 2010 Order, denied the Urgent Motion to Vacate the Writ of Execution.³⁶

The Court of Appeals, in its August 28, 2013 Decision, affirmed *in toto* the Regional Trial Court Order.³⁷ It also denied reconsideration.³⁸

Hence, petitioner Nestor Bracero filed this Petition.

Petitioner's counsel alleges that even if the motion for execution indicated that he was furnished a copy, he never received such copy. Respondent heirs did not present a post office certification to prove they furnished counsel with a copy.³⁹

Assuming petitioner's counsel received a copy of this motion, he still could not have filed an opposition since petitioner was declared in default and had lost standing to file any motion. He also could not have appealed the Regional Trial Court Decision since he was not furnished with a copy.⁴⁰

Petitioner's counsel raises that the Regional Trial Court's Clerk of Court departed from usual procedure by sending a copy of the Decision directly to petitioner. He explains that his client is a poor farmer who lives in the remote mountain barangay of Lubo with no telephone connection, and these circumstances made it easy to defeat his client's right to appeal.⁴¹

³¹ Id. at 50.

³² Id. at 30.

³³ Id. at 6.

³⁴ Id. at 50.

³⁵ Id. at 6 and 34–36.

³⁶ Id. at 6 and 38. The Order was penned by Presiding Judge Edito Y. Enemecio of Branch 25 of the Regional Trial Court of Danao City.

³⁷ Id. at 53.

³⁸ Id. at 63.

³⁹ Id. at 8.

⁴⁰ Id.

⁴¹ Id. at 8–9.

Lastly, he argues that even if he received a copy of the motion for execution, “to require undersigned counsel to verify the existence of the decision with the Regional Trial Court is to unfairly burden the undersigned counsel and to unduly exonerate the clerk of court who was remiss in his duty in sending a copy of the Decision to the undersigned counsel.”⁴² He explains that the court in Danao is 30 kilometers away from his office in Mandaue.⁴³

In their Comment,⁴⁴ respondent heirs argue that petitioner has no legal claim on the property.⁴⁵ Petitioner did not file an answer to the Complaint or a motion to set aside the Order declaring him in default.⁴⁶

Respondent heirs contend that petitioner no doubt received the Regional Trial Court Decision on May 4, 2009.⁴⁷ Petitioner insists, however, that his counsel was not furnished a copy, and client’s receipt was not equivalent to counsel’s receipt.⁴⁸

Respondent heirs submit that Barangay Lubo is along the national highway from Sogod, has electricity, and is “accessible to all kinds of transportation and communications.”⁴⁹ Thus, petitioner’s counsel’s claim that petitioner is a poor farmer who is barely literate and lives in the remote barangay of Lubo lacks merit.⁵⁰ Respondent heirs submit that petitioner hired a private counsel who had been legally assisting him since 1985.⁵¹ Also, “petitioner could not be considered so naïve not to be able to comprehend the importance of a decision to his case for purposes of informing his counsel immediately upon receipt thereof in the same manner that he informed his counsel on the same day, January 8, 2010 when he was served by the Sheriff the Writ of Execution of the decision.”⁵²

Respondent heirs contend that “[petitioner’s] counsel did not categorically say that he was not informed by his client of the decision on the date of receipt on May 4, 2009.”⁵³ Respondent heirs quote *Santiago v. Guadiz, Jr.*⁵⁴ in that “petitioners cannot invoke due process on the basis of feigned ignorance as lack of formal notice cannot prevail against the fact of actual notice.”⁵⁵

⁴² Id. at 9.

⁴³ Id.

⁴⁴ Id. at 71–77.

⁴⁵ Id. at 72.

⁴⁶ Id.

⁴⁷ Id. at 73.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id. at 74.

⁵⁴ G.R. No. 85923, February 26, 1992, 206 SCRA 590 [Per J. Cruz, First Division].

⁵⁵ *Rollo*, p. 74.

Petitioner's counsel was also served a copy of the motion for execution on September 11, 2009, with notice to submit the motion for court approval on September 15, 2009. Thus, petitioner's counsel had actual notice of the Decision, yet he did not file an opposition.⁵⁶ Respondent heirs argue that petitioner is now in estoppel to assail the Regional Trial Court Order dated February 11, 2010.⁵⁷

Lastly, respondent heirs add that petitioner's argument of lost standing in court lacks merit. The trial court acted on his Urgent Motion to Vacate the Writ of Execution when it directed plaintiffs to comment on this motion, and they did.⁵⁸

For his part, respondent Rodulfo Arcelo filed the Manifestation⁵⁹ dated September 10, 2014 waiving his right to file a Comment to the Petition.

This court finds no reversible error by the Court of Appeals in affirming the Regional Trial Court Order dated February 11, 2010 denying petitioner's Urgent Motion to Vacate the Writ of Execution.

The Court of Appeals found that petitioner's counsel was furnished a copy of the motion for execution.⁶⁰ Respondent heirs also alleged in their Comment to the Motion for Reconsideration⁶¹ before the Court of Appeals that:

[c]ontrary to the allegations that counsel for the movant-petitioner did not received [sic] [a] copy of the Motion for Execution and that no certification from the post office was presented to this Honorable Court, in the comments filed by private respondents dated July 11, 2011 to the petition (p.4, par.2) a copy of the Motion for Execution was served on counsel for petitioner on September 11, 2009 with notice to submit said Motion for the consideration of the Honorable Court on September 15, 2009 at 9:00 in the morning. A certification to this effect was issued by Mandaue City Central postal office dated January 29, 2010 certifying that registry letter No. 971 addressed to Atty. Danilo Pilapil of Maguikay, Mandaue City was actually delivered and received by Vergie Pilapil on September 11, 2009. Said certification was attached to Annex "B" as Annex "A" thereof in the Comments to the Petition of herein private respondents dated July 11, 2011.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id. at 75.

⁵⁹ Id. at 88.

⁶⁰ Id. at 50.

⁶¹ Id. at 58–60.

This was not refuted then by movant-petitioner.⁶²

Thus, the issue to be resolved before this court is whether receipt of petitioner's counsel of a copy of the motion for execution amounts to effective official notice of the Regional Trial Court Decision dated April 16, 2009 if he was not furnished a copy of the Decision.

Rule 13, Section 2 of the Rules of Court states in part that “[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.”

Notice sent directly to client is not notice in law.⁶³ Nevertheless, this rule admits of exceptions.

In *Santiago*, this court considered the filing of a motion for reconsideration as actual notice of the assailed Decision:

The petitioners also maintain that they should have first been furnished with a copy of the final decision before a writ of execution could be validly enforced against them. Formal service of the judgment is indeed necessary as a rule but not, as it happens, in the case at bar. The reason is that the petitioners had filed a motion for reconsideration of the decision of Judge Guadiz, which would indicate that they were then already informed of such decision. The petitioners cannot now invoke due process on the basis of a feigned ignorance as the lack of formal notice cannot prevail against the fact of actual notice.⁶⁴

In *Ramos v. Spouses Lim*,⁶⁵ this court considered Atty. Estaniel's receipt of Atty. Datukon's Manifestation informing the court that he had been formally substituted by Atty. Estaniel as counsel⁶⁶ as “an alerting medium that a final ruling has been issued by the trial court[.]”⁶⁷ Atty. Datukon filed this Manifestation after he was served a copy of the motion for execution.⁶⁸ Thus, this court held that Atty. Estaniel's period to appeal the trial court Decision commenced from his receipt of Atty. Datukon's Manifestation on April 1, 1996, when he was put on effective official notice of the Decision:

⁶² Id. at 58–59.

⁶³ *Ramos v. Spouses Lim*, 497 Phil. 560, 565 (2005) [Per J. Garcia, Third Division], citing *Mancenido v. Court of Appeals*, 386 Phil. 627, 633 (2000) [Per J. Quisumbing, Second Division], in turn citing *Riego, et al. v. Riego, et al.*, 124 Phil. 659, 662 (1966) [Per J. Makalintal, En Banc]; *Spouses Soriano v. Soriano*, 558 Phil. 627, 642 (2007) [Per J. Chico-Nazario, Third Division], citing *De Leon v. Court of Appeals*, 432 Phil. 775, 788 (2002) [Per J. Quisumbing, Second Division].

⁶⁴ *Santiago v. Guadiz, Jr.*, G.R. No. 85923, February 26, 1992, 206 SCRA 590, 597 [Per J. Cruz, First Division].

⁶⁵ 497 Phil. 560 (2005) [Per J. Garcia, Third Division].

⁶⁶ Id. at 562–563.

⁶⁷ Id. at 567.

⁶⁸ Id. at 562.

The foregoing notwithstanding, the Court of Appeals ruled, and rightly so, that although Atty. Estaniel was not officially sent a copy of the trial court's January 31, 1996 decision, he was however, put on effective official notice thereof on April 1, 1996. He must, therefore, be made accountable for his failure to seek, within the reglementary period counted from April 1, 1996, a review of said decision. . . .

....

The foregoing disposition and the premises holding it together commend themselves for concurrence. In particular, we agree with the designation of April 1, 1996 as the controlling date when Atty. Estaniel is considered to have effectively been put on notice of the trial court's decision and whence the period of appeal should accordingly be reckoned.

There can be no quibbling that Atty. Estaniel received a copy of Atty. Datukon's April 1, 1996 "*MANIFESTATION*" on the same date. Said manifestation carried all the basic earmarks of a proper pleading or like papers filed in court. It carried the precise case number and title. The exact branch of the handling RTC was particularly identified, the lawyers involved in the litigation were named and the specific subject covered by the manifestation, *i.e.*, motion for execution of the decision in Civil Case No. 580, was clearly discernible. Atty. Estaniel, therefore, cannot plausibly feign ignorance as to what decision the motion for execution was about. . . .

....

In a very real sense, Atty. Datukon's "*MANIFESTATION*" was an alerting medium that a final ruling has been issued by the trial court, which should have thus prodded Atty. Estaniel — and any prudent counsel for that matter — to act accordingly. Canon 18 of the Code of Professional Responsibility imposes upon a lawyer the duty to "*serve his client with competence and diligence.*" Subsumed in this imposition, which commences from the time a lawyer is retained until his effective release from the case or final disposition of the whole subject of the litigation, is the duty to safeguard his client's interest with the vigilance and attention of a good father of the family. In line with his duty as defined in Canon 18 of the Code, it behooved Atty. Estaniel, upon receipt of Atty. Datukon's manifestation, to posthaste inquire from the trial court or even from Atty. Datukon himself, about the status of petitioner's case since the manifestation, a copy of which he has thus been furnished, already made specific reference to a motion for execution filed by the counsel of his clients' adversary. Atty. Estaniel must thus be held to task for his failure to exercise due diligence in the discharge of his duties as counsel. Petitioners, too, must suffer the consequence of such failure because a client is bound by the conduct, negligence or mistakes of his counsel.⁶⁹ (Emphasis in the original, citations omitted)

Petitioner's counsel was furnished a copy of the motion for execution

⁶⁹ Id. at 565–567.

on September 11, 2009.⁷⁰ As discussed by the Court of Appeals, this motion categorically states that the trial court rendered its Decision on April 16, 2009, yet petitioner's counsel filed no opposition.⁷¹ At that time, he did not file any motion asserting that he was not furnished a copy of the Decision.⁷² It was only on January 8, 2010 when his client informed him of the Writ of Execution did petitioner's counsel file an Urgent Motion to Vacate the Writ of Execution on the ground that he did not receive a copy of the Regional Trial Court Decision.⁷³

Jurisprudence reiterates that “[l]itigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their cases.”⁷⁴ This court has held that “equity aids the vigilant, not those who slumber on their rights[,]”⁷⁵ and a party should “periodically keep in touch with his counsel, check with the court, and inquire about the status of the case.”⁷⁶

The explanation of petitioner's counsel that his client only finished Grade 6 and lives in a remote mountain barangay⁷⁷ fails to convince. Petitioner immediately informed his counsel about the Notice to Vacate on Execution on the same day he was served a copy.⁷⁸ This contradicts counsel's explanation implying difficulty in communicating with his client. This even raises the possibility that his client did immediately inform him about the Regional Trial Court Decision upon receiving a copy.

Equally unconvincing and disappointing is the submission of petitioner's counsel that even if he received a copy of the motion for execution, “to require undersigned counsel to verify the existence of the decision with the Regional Trial Court is to unfairly burden the undersigned counsel and to unduly exonerate the clerk of court who was remiss in his duty in sending a copy of the Decision to the undersigned counsel,”⁷⁹ and that the court in Danao is 30 kilometers away from his office in Mandaue.⁸⁰ Counsels have the duty to serve their clients with competence and diligence.⁸¹ The distance from counsel's office to the court should not be used as an excuse by counsel from keeping himself updated with the status

⁷⁰ *Rollo*, pp. 50, 52, and 73.

⁷¹ *Id.* at 52.

⁷² *Id.*

⁷³ *Id.* at 50 and 52–53.

⁷⁴ *Ampo v. Court of Appeals*, 517 Phil. 750, 756 (2006) [Per J. Ynares-Santiago, First Division], *citing Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 168 (2004) [Per J. Panganiban, Third Division].

⁷⁵ *Id.* at 755, *citing Philippine Rabbit Bus Lines, Inc. v. Judge Arciaga*, 232 Phil. 400, 404 (1987) [Per J. Paras, Second Division].

⁷⁶ *Id.*, *citing Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 168 (2004) [Per J. Panganiban, Third Division].

⁷⁷ *Rollo*, p. 9.

⁷⁸ *Id.* at 50.

⁷⁹ *Id.* at 9.

⁸⁰ *Id.*

⁸¹ Code of Professional Responsibility, Canon 18.

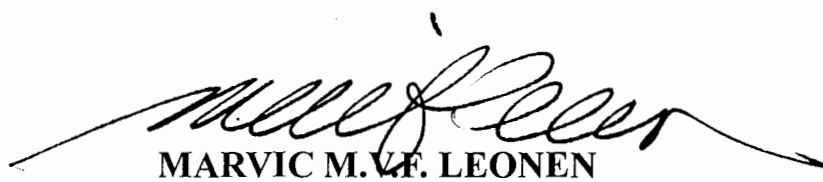
of the cases he is handling.

This court has held that “[r]elief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence.”⁸² Petitioner, through his counsel, did not file an answer to the Complaint. After the trial court declared petitioner in default for failure to file an answer, his counsel did not file an opposition to or motion to lift the Order declaring him in default. After petitioner’s counsel was furnished a copy of the motion for execution, he did not immediately file an opposition to the motion or raise the ground that he was not furnished a copy of the Decision.

Petitioner Nestor Bracero, through his counsel Atty. Danilo Pilapil, had several opportunities to argue his position before the courts but failed to take them. Petitioner should now be considered in estoppel from assailing the Regional Trial Court Order dated February 11, 2010 denying petitioner’s Urgent Motion to Vacate the Writ of Execution, affirmed by the Court of Appeals. Also, “[t]o frustrate the winning party’s right through dilatory schemes is to frustrate all the efforts, time and expenditure of the courts, which thereby increases the costs of litigation.”⁸³


WHEREFORE, the Petition is **DENIED**.

SO ORDERED.



MARVIC M. V. LEONEN
Associate Justice


WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson

⁸² *Ampo v. Court of Appeals*, 517 Phil. 750, 756 (2006) [Per J. Ynares-Santiago, First Division], citing *Cerezo v. Tuazon*, 469 Phil. 1020, 1039 (2004) [Per J. Carpio, First Division].


⁸³ *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 573 [Per J. Bersamin, First Division].



PRESBITERO J. VELASCO, JR.
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ANTONIO T. CARPIO
Acting Chief Justice