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FIRST DIVISION

[G.R. No. L-38006. May 16, 1978]

NATALIA DE LAS ALAS, assisted by her husband, AURELIO PANGANIBAN, AVELINA DE LAS ALAS, assisted by her husband, FRANCISCO SALAZAR, NORMA DE LAS ALAS, PEREGRINA DE LAS ALAS, assisted by her husband, HERNANDO GANAC, BIENVENIDO DE LAS ALAS, and NARCISO PANGANIBAN, *petitioners, vs.* **COURT OF APPEALS, HONORABLE BENJAMIN RELOVA, in his capacity as Judge, Court of First Instance of Batangas (Lipa City Branch), EUGENIO DE LAS ALAS, PABLO DE LAS ALAS, PERSEVERANDA DE LAS ALAS, FELISA DE LAS ALAS, assisted by her husband, ABUNDIO ROJALES, ARSENIO PEÑAFLORIDA, ISABEL PEÑAFLORIDA, PACITA PEÑAFLORIDA, ANGELA PEÑAFLORIDA, MARINO SOBERANO, TEODORO SOBERANO, MERCEDES SOBERANO, assisted by her husband, JULIANO BULANADE, PETRONILA SOBERANO, assisted by her husband, BENJAMIN ILAGAN, JOSEFA SOBERANO, ORENCIO SOBERANO, MILAGROS SOBERANO, assisted by her husband, DOMINGO JAMIR, JOSE SOBERANO, JR., PURIFICACION SOBERANO, assisted by her husband, ANTONIO FABIO, and NATIVIDAD SOBERANO, assisted by her husband, CARLOS BALINGIT**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; COMPUTATION OF TIME DURING WHICH MOTION FOR RECONSIDERATION IS PENDING.** — The date of filing of the motion for reconsideration and the date the movant received the order of denial should be included in the computation of the period during which said motion was

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pending. Thus, if the motion for reconsideration was filed on October 7, the motion is deemed pending from October 7, not from October 8, the day after it was filed, because it was already pending consideration by the trial court during the remaining hours of the 24 hours of October 7, when it was filed. October 7 did not (*ipso facto*) terminate or end upon the filing of said motion, much less automatically usher in the following day, October 8. And if the order of denial was received on November 16, this should also be included in the period during which the motion was pending, and excluded from the period of appeal. Consequently, from October 7, the date of filing of the motion for reconsideration, to November 16, the date of the receipt of the denial order, the motion for reconsideration shall be deemed pending for a period of 41 days — 25 days in October and 16 days in November.

2. **ID.; ID.; ID.; TIME DURING WHICH MOTION FOR RECONSIDERATION IS PENDING SHALL BE DEDUCTED FROM 30-DAY PERIOD TO APPEAL.** — The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted from the reglementary period of appeal, unless such motion fails to satisfy the requirements of Rule 37.

3. **ID.; ID.; APPEAL; EFFECT OF MISTAKE IN THE COMPUTATION OF PERIOD OF APPEAL.** — The real purpose behind the limitation of the period of appeal is to forestall or avoid an unreasonable delay in the administration of justice. Thus, a one-day delay does not justify the dismissal of the appeal where the circumstances of the case show that there is absent the element of intent to delay the administration of justice on the part of appellant's counsel, who had on the contrary, demonstrated cautiouness, concern and punctuality in the prosecution of the appeal. But even assuming that appellant's counsel committed a mistake in the computation of the period of appeal, an error not attributable to negligence or bad faith, the same should not be counted against the appellants. On a doubtful and controversial question of law, the benefit of the doubt must be given to them. "Mistake upon a doubtful or difficult question of law may be the basis of good faith."

4. **ID.; RULES OF PROCEDURE; LIBERAL CONSTRUCTION.** — Litigations should, as much as possible, be decided on their merits and not on technicality. "Dismissal of appeals purely

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on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated."

5. **ID.; STATUTES SUPERIOR TO RULES OF COURT; COMPUTATION OF PERIODS; EFFECT OF NON-INCORPORATION OF THE PROVISIONS ON COMPUTATION OF PERIODS IN THE NEW RULES OF COURT.** — The non-incorporation of Section 1, Rule 28, of the Old Rules of Court, in the Revised Rules of Court, does not change the rule of the computation of periods for filing pleadings as the very same provision is already embodied in Article 13 of the New Civil Code and in Section 13 of the Revised Administrative Code, which legal provisions are superior to a rule of court, aside from the fact that its incorporation into the Revised Rules of Court would be a mere superfluity.

APPEARANCES OF COUNSEL

Calixto O. Zaldivar and *Ceferino S. Gaddi* for petitioners.
Jorge A. Dolorfino for private respondents.

D E C I S I O N

MAKASIAR, *J.*:

This is an appeal by *certiorari* from a decision of the Court of Appeals dismissing the petition for *mandamus* filed by petitioners to compel the respondent Judge of the Court of First Instance of Batangas (Lipa City Branch) to approve and certify the appeal taken by petitioners from the decision in Civil Case No. 2117 of the said court.

It appears that the respondent lower court judge rendered a decision on August 7, 1972 in the aforementioned Civil Case No. 2117; that copy of the said decision was received by petitioners' counsel on September 9, 1972; that on September 28, 1972, petitioners' counsel filed an urgent motion for extension

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of fifteen (15) days from October 9, 1972 — the last day for filing a motion for reconsideration and/or perfecting the appeal — within which to file a motion for reconsideration of the aforementioned decision of August 7, 1972; that this motion for extension was granted as prayed for; that on October 7, 1972, petitioners filed their motion for reconsideration; that on November 9, 1972, the respondent lower court judge denied the motion for reconsideration and a copy of the order of denial was furnished petitioners' counsel on November 16, 1972; that on November 20, 1972, petitioners sent by registered mail their notice of appeal and an appeal bond, serving a copy thereof upon private respondents' counsel also by registered mail; that on the same day, November 20, 1972, petitioners filed a motion for extension of twenty (20) days within which to file their record on appeal, which motion for extension was granted; that under this extension the record on appeal was due for filing on December 25, 1972; that on December 8, 1972, petitioners filed their record on appeal; that on December 9, 1972, private respondents filed a motion to dismiss the appeal and to disapprove the record on appeal on the ground that the notice of appeal, the appeal bond and the record on appeal were filed out of time; that on December 20, 1972, herein petitioners filed their opposition to said motion to dismiss appeal and to disapprove record on appeal; that on January 26, 1973, the respondent lower court judge granted the said motion to dismiss and petitioners received a copy of the said order on February 9, 1973; that on March 9, 1973, petitioners filed a motion for extension of fifteen (15) days from March 11, 1973, within which to submit a motion for reconsideration; that on the same date, March 11, 1973, private respondents filed a motion for the execution of the decision of the respondent lower court judge dated August 7, 1972; and that on March 21, 1973, petitioners filed their motion for reconsideration of the order of the respondent lower court judge dated January 26, 1973, which motion for reconsideration was denied on June 18, 1973.

It should be noted that in their opposition to the motion to dismiss appeal and to disapprove the record on appeal, petitioners stressed that they had until October 9, 1972 within which to

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perfect their appeal; that this period was suspended on October 7, 1972 when they filed a motion for reconsideration; that they had still three more days within which to perfect their appeal and the remaining three days started to run anew on November 17, 1972 and expired on November 19, 1972; that since November 19, 1972 falls on a Sunday, petitioners had until November 20, 1972 within which to perfect their appeal; and that, having filed their notice of appeal, appeal bond and motion for extension of time to file record on appeal on November 20, 1972, their appeal was timely.

On July 3, 1973, petitioners filed a petition for *certiorari* and *mandamus* with preliminary injunction before the respondent Court of Appeals.

After private respondents filed their answer to the aforesaid petition, the respondent Court of Appeals rendered on September 12, 1973 a decision dismissing the petition as follows:

"After a careful review of the record and of the arguments of opposing counsel, we are constrained to uphold the contention of the private respondents (there, plaintiffs). The order of October 2, 1972 granting the petitioners-defendants fifteen days within which to file a motion for reconsideration of the decision of August 7, 1972 is clear and unequivocal. It is for the filing of a motion for reconsideration of the decision of August 7, 1972 and not for perfecting the appeal. Consequently, when petitioners-defendants filed the motion for reconsideration on October 7, 1972 within the original period, they did not avail of the extension. Such act on their part amounted to a waiver of the extension, hence, the order of October 2, 1972 granting the extension became *functus officio*. Besides, there is nothing in the law or rules which prohibits a party from waiving the right or privilege of the extension. And this brings Us to the second issue of whether or not from petitioners-defendants' receipt of the order of November 9, 1972 on November 16, 1972, they had only two days within which to perfect the appeal. We think the contention of the private respondent is correct. This follows from Our view that the extension of fifteen days for filing the motion for reconsideration granted to the petitioners-defendants did not extend the period of appeal. From September 9, 1972 when they received a copy of the decision of August 7, 1972 to October 7, 1972 when they filed their motion for reconsideration, twenty-eight (28) days had

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elapsed. So, on November 16, when they received a copy of the order of November 9, 1972 denying the motion for reconsideration, they had only two days within which to perfect their appeal. The reglementary period of thirty days for perfecting appeal thus expired on November 18, 1972. Thus, the filing on November 20, 1972 of the record on appeal, appeal bond and the motion for extension of twenty days for presenting the record on appeal, was beyond the said period. It follows from this that the granting of the extension of twenty days for presenting the record on appeal and the filing of the said record on appeal on December 8, 1972 within the extended period are null and void, for the respondent court had lost jurisdiction to grant the same and to approve the record on appeal.

"The filing of the notice of appeal, appeal bond and record on appeal within the reglementary period of thirty days from notice of the decision is not only mandatory but jurisdictional; and the provisions of the Rules of Court must be complied with strictly. Thus, an extension of time granted to amend a record on appeal does not carry with it an extension of the reglementary period for the filing of the appeal bond (*Salva vs. Palacio, et al.*, 52 Off. Gaz., p. 3089). Similarly, an extension granted for the filing of the record on appeal does not carry with it an extension for the filing of the notice of appeal and appeal bond. (*Altavas Conlu vs. Court of Appeals, et al.*, 106 Phil. 940). The *ratio decidendi* of said cases applies to the case at bar. The extension of time for the filing of the motion for reconsideration of the decision of August 7, 1972 does not carry with it the extension for the filing of the notice of appeal, appeal bond and record on appeal.

"It follows from the foregoing discussion that the respondent Judge did not commit any grave abuse of discretion in disapproving the record on appeal and in dismissing the appeal and that, therefore, *mandamus* does not lie" (Annex A; pp. 50-53, *Idem*).

Under date of October 19, 1973, petitioners filed a motion for reconsideration of the said decision, alleging, among other things, that:

"x x x the Honorable Court of Appeals was in error in holding that petitioners 'had only two days within which to perfect their appeal' when on Oct. 7, 1972 they received a copy of the respondent Court's decision dated Aug. 7, 1972; in holding that the reglementary period of appeal expired on Nov. 18, 1972; and in holding that the

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notice of appeal, appeal bond and the motion for extension of twenty days for presenting the record on appeal were filed beyond the said period.

"With all due respect, petitioners humbly contend that, as alleged and claimed in the opposition to the motion to dismiss and to disapprove the record on appeal dated Dec. 20, 1972, quoted above, *they still had three more days unused of their period of appeal as of the filing of their motion for reconsideration on October 7, 1972,* which unused period was interrupted and suspended on this date, and started to run anew on November 17, 1972, *the day after* November 16, 1972, when they received the respondent court's order of November 9, 1972 *denying said motion for reconsideration.* Therefore, petitioners still had up to November 19, 1972, within which to perfect their appeal. This last day being a Sunday, 'this period was extended to the first working day immediately following thereafter,' *i.e.*, November 20, 1972 (*Mintu v. Court of Appeals*, G.R. No. L-36845, Sept. 19, 1973, 53 SCRA 114, 117-118, citing *Meralco v. PSC*, 18 SCRA 651; Sec. 31, Rev. Adm. Code; italics ours).

xxx xxx xxx

In fine, petitioners' appeal was *improperly dismissed and* the herein petition should have been granted" (Annex D, pp. 110-111, 116, *Idem*).

On November 7, 1973, the private respondents filed their opposition to the motion for reconsideration (Annex E, pp. 120-139, *Idem*).

On November 20, 1973, petitioners filed a reply to private respondents' opposition (Annex F, pp. 134-151, *Idem*).

On December 13, 1973, the Court of Appeals rendered a resolution denying petitioners' motion for reconsideration (Annex G, pp. 152-157, *Idem*).

Hence, on January 17, 1974, petitioners filed the instant petition.

The pivotal issue in this petition is whether or not the appeal interposed by petitioners from the decision of the respondent Judge of the Court of First Instance dated August 7, 1972, was perfected on time. The resolution of this issue hinges solely on how many more days were left of the 30-day reglementary

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period of appeal as of the day petitioners filed their motion for reconsideration on October 7, 1972.

Petitioners maintain that they still had three (3) more days left of the period of appeal as of the day they filed their motion for reconsideration October 7, 1972, and this period was interrupted and suspended upon such filing, and started to run anew on November 17, 1972, the next day after November 16, 1972, when they received the respondent lower court Judge's order of November 9, 1972 denying their said motion for reconsideration. Consequently, petitioners claim that they had up to November 20, 1972 within which to perfect their appeal, since November 19, 1972, was a Sunday.

On the other hand, respondents contend that when petitioners filed their motion for reconsideration on October 7, 1972, they had only two (2) days left of their period of appeal after receipt of the order denying the motion for reconsideration, and hence the filing of the notice of appeal, appeal bond, and the motion for extension to file record on appeal on November 20, 1972, was beyond the reglementary period, invoking the rule embodied in the last paragraph of Article 13 of the New Civil Code which provides that in "computing a period, the first day should be excluded and the last day included."

It is discernible from the questioned decision that the respondent Court of Appeals followed the doctrine laid down in *Federal Films vs. Gutierrez David* (78 Phil. 472, 44, O.G. 3813), which overruled so much of the Taroma case as included the date of the filing of the motion for new trial and the date the movant was notified of the order of denial in the time consumed by the court in considering the said motion for new trial and deducted from the 30-day period for perfecting the appeal.

Said ruling in the Federal Films case, however, had ceased to be a precedent with the promulgation of *Lloren vs. De Vera* (4 SCRA 637), wherein this Court formulated a computation which, in the words of Chief Justice Moran "settles authoritatively the computation of appeal periods, which had hitherto given rise to divergent decisions of the Supreme Court" (2 Moran,

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Rules of Court, 1970 ed. 414; 2 Martin, Rules of Court, 1969 ed. 472).

It should be noted that in deciding the Lloren case this Court did not consider but disregarded the Taroma and the Federal Films cases and adhered strictly to the rule of computation embodied in Section 1, Rule 28 of the Old Rules of Court. Thus, in the Lloren case, We held —

"The question that now arises is: Was the appeal perfected outside of the reglementary period of 15 days? (Section 17, Rule 41, Rules of Court).

"It is contended by petitioner Lloren that from March 18, 1958 to April 2, 1958 there is an intervening period of 15 days, and having filed his motion for reconsideration on April 2, the exact number of days that has actually elapsed was only 14 days, because he filed his motion for reconsideration on exactly the 15th day. This day was interrupted and so when he received copy of the order denying his motion for reconsideration he was entitled to at least 1 more day within which to appeal. Applying the rule of computation prescribed in Rule 28 that the first day should be excluded and the last included, it follows that when he filed his notice of appeal bond on April 17, 1958, the same were filed exactly within the reglementary period of 15 days.

"Counsel for respondent, however, sustains the contrary view. He argues: 'By mathematical operation, we find that from March 18 (when petitioner received a copy of decision) to April 17, 1958 (when he filed his notice of appeal and appeal bond) there were actually 30 days, March 18 being *excluded* and April 17 being *included* in the counting. In the same manner, we find that from April 2, 1968 (when petitioner filed his motion for reconsideration) to April 16, 1958 (when he received a copy of the order denying his motion for reconsideration) there are actually 14 days, April 2 being *excluded*, and April 16 *included* in the counting. Deducting, therefore, 14 days from *30 days* the result is *16 days*. This means that petitioner (respondent below) filed his notice of appeal and appeal bond on the *16th day or one day late*, tardiness which is sufficient to bar the appeal.' This method of computation is in accordance with the rule followed by this Court in the case of *Federal Films, Inc. v. Judge of the First Instance of Manila*, 78 Phil. 472, which expressly modified

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the method of computation adopted in the case of *Taroma v. Cruz and Galinato*, 68 Phil., 281.

"After a mature deliberation, where the members of the Court delved once more into the methods of computation discussed in the cases mentioned by counsel for respondent, the Court resolved not to follow the ruling in either of them and to adhere strictly to the rule of computation embodied in Rule 28 of our rules. The idea that prevailed is that since petitioner Lloren filed his motion for reconsideration *on the 15th day of the period within which he may perfect his appeal*, that day should be excluded so that when he received copy of the order denying his motion for reconsideration he had still 1 day within which to perfect his appeal. This period of one day should be computed again in accordance with the rule above cited by excluding the day of receipt and including the next day, which in this case is April 17, 1958. Hence, the Court concluded that the appeal interposed by petitioner Lloren was still within the reglementary period" (*Lloren vs. De Veyra, supra*).

A meticulous comparative analysis of the three cases — Taroma, Federal Films and Lloren — shows that Lloren is a virtual revival of or reversion to the doctrine WE laid down in *Taroma, earlier referred to in this opinion, wherein this Court* observed:

"The pertinent facts related to the issue and not disputed by the parties are the following. The petitioner received on April 5, 1938 a copy of the decision which the respondent judge had rendered in the aforementioned land registration case; and filed his motion for new trial as a formal requisite to perfect his appeal on May 3, 1938, and his bill of exceptions on the twenty-first of the same month and year, which was three days after he was notified of the order which denied his motion for new trial.

"Relying upon the foregoing facts, petitioner maintains that he perfected his appeal within the period of thirty days, inasmuch as he makes the following computation: From April 5 to May 3, 1938, both dates excluded, only twenty-seven days elapsed; from May 3, when he filed his motion for new trial to May 18, 1938 when he was notified of the order of the respondent judge denying it, both dates included, 16 days passed, which period, petitioner contends, should not be counted against him, in view of the rule established and

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sanctioned several times by this court in the cases of *Paez vs. Berenguer* (6 Phil., 521); *Lavitoria vs. Court of First Instance of Tayabas* (32 Phil., 204); *Roman Catholic Bishop of Tuguegarao vs. Director of Lands* (34 Phil., 623); *Estate of Cordoba and Zarate vs. Alabado* (34 Phil., 920); *Roman Catholic Archbishop of Manila vs. Ruiz and Catli* (36 Phil., 279); *Bermudez vs. Director of Lands* (36 Phil., 774); *Director of Lands vs. Maurera and Tiongson* (37 Phil., 410); *Layda vs. Legazpi* (39 Phil., 83); *Director of Lands vs. Sanz* (45 Phil., 117); and from the aforementioned date of May 18, 1938 to the twenty-first of the same month and year, the first date excluded, following the rule of computation provided by Section 4 of Act No. 190, no more than three days elapsed, which is equivalent to saying that, according to his computation, petitioner perfected his appeal within the prescribed period.

"The respondent judge, in turn, maintains that the bill of exceptions in question was filed by the petitioner thirty-one days after the decision from which he desired to appeal had been promulgated, and computes the time that has elapsed as follows: From April 5 to May 3, 1938, excluding the first and including the last day there were twenty-eight days; from the eighteenth to the twenty-first of the same month and year, also excluding the first and including the last day, there were three days, to arrive later at the conclusion that, excluding the time during which petitioner's motion for new trial was under the respondent judge's consideration until petitioner was notified of the order denying it, or from May 4 to May 18, 1938, thirty-one days elapsed or one day more than the thirty days fixed by law.

"In other words, the same facts and the same question may be thus expressed: From April 5 to May 21, 1938, according to the theory of both petitioner and respondents, after the first day is excluded and the last day is included, there were forty-six days. After deducting from these forty-six days the sixteen days which the respondent judge spent in considering the petitioner's motion for new trial plus the time which elapsed since then until the latter was notified of the order denying his motion referred to, there are no more than thirty days. Petitioner then argues that his bill of exceptions was filed within that time. The respondent judge does not admit that there are sixteen days which must be deducted from the forty-six which elapsed from April 5 to May 21, 1938, the first day excluded, because he contends that there is and there should be no more than one rule of computation applicable both to himself and the petitioner, and that is the one

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provided in Section 4 of Act No. 190, restated in Section 13 of the Administrative Code. The rule aforementioned really says:

> "'Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday it shall be excluded.'

"It is true, however, that the rule which has been almost invariably followed and observed in this jurisdiction, at least since the case of *Paez vs. Berenguer, supra*, is that the time employed by the court in deciding motions for new trial of a party desiring to appeal from an adverse judgment should not be counted against him because it is not within his power to avoid it, nor hasten their resolution, except perhaps by motions when there are substantial grounds therefor. It is not amiss to repeat at this point what this court already said in this same case in its resolution of September 27, 1938 because it squarely resolves the question:

"'If the rule of computation provided by Section 4 of the Code of Civil Procedure be applied with rigorous technicality, it is clear that the bill of exceptions was filed out of time because from April 5 to May 3, twenty-eight days elapsed, and from the eighteenth to the twenty-first of the same month another three days passed, making a total of thirty-one days. But, as we have already said, it is not here attempted to so compute the period of thirty days, but to apply the rule which have uniformly held in the sense that *the time which the court employs in considering the motion for new trial should be excluded. It is admitted that May 3, being the date on which the* motion for new trial was filed, should be excluded, but in the computation of the thirty days, Section 4 of the Code of Civil Procedure is intended to be applied and May 3 is sought to be included in the counting so that until said date twenty-eight days had already elapsed. This procedure entirely nullifies the rule of exclusion which we had laid down and which now constitutes a precedent in procedural law. There is neither logic nor sense in this procedure which amounts to the exclusion of May 3 only to be included later on. It is either counted or dropped out. The latter excludes the former; no two antithetical ideas may be harmonized or given effect'" (*Taroma vs. Cruz, et al., supra*; italics supplied).

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Applying now the doctrine in Lloren to the case at bar, WE agree with petitioners. They had up to October 9, 1972, within which to perfect their appeal. Their motion for reconsideration was filed on October 7, 1972, and, if this date of filing must be added to the remainder of the period of appeal, petitioners clearly had three (3) more days left of their period of appeal — October 7, 8 and 9, 1972. Therefore, if petitioners received the order denying their motion for reconsideration on November 16, 1972, which day should also be excluded from the period of appeal in line with the Lloren doctrine, perforce their period of appeal extended up to November 19, 1972. But November 19, 1972, is a Sunday. Hence, petitioners' period to perfect their appeal was extended *ipso jure* to the first working day immediately following thereafter, *i.e.*, November 20, 1972. Having filed their notice of appeal and appeal bond on November 20, 1972, and their record on appeal within the period extended by the respondent lower court judge, it follows that petitioners perfected their appeal within the legal period.

Furthermore, there should not be any dispute that from September 9, 1972, the date the decision was received, to November 16, 1972, the date petitioners received the order of denial of their motion for reconsideration, there are actually 68 days, using the exclude-the-first and include-the-last method for computing any period of time. But, We have to consider also the express provision of the Revised Rules of Court, thus —

"SEC. 3. How appeal is taken. — Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. *The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.*" (Rule 41, Sec. 3, Revised Rules of Court; italics Ours).

under which "the time during which a motion to set aside the judgment or order or for a new trial *has been pending* shall be deducted" in reckoning the thirty-day period within which appeal may be taken.

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The record shows that the motion for reconsideration has been pending since October 7, 1972, the date of its filing and remained so until November 16, 1972, when petitioners received the order of denial of their motion for reconsideration. Therefore, the motion for reconsideration has been pending for a period of 41 days — 25 days in October and 16 days in November of 1972. October 7, the date of filing of the motion for reconsideration, should not be excluded in the computation of the period during which the motion for reconsideration was pending since it will be in violation of the express provision of the aforequoted provision of the Revised Rules of Court. To emphasize, the motion for reconsideration was pending from its filing on October 7, 1972, not from October 8, 1972, the day after it was filed on October 7, 1972; because it was already pending consideration by the trial court during the remaining hours of the 24 hours of October 7, 1972, the day it was filed. October 7, 1972 did not (*ipso facto*) terminate or end upon the filing of said motion, much less automatically usher in the following day, October 8, 1972. Deducting 41 days from 68 days, WE have 27 days.

WE, therefore, agree with petitioners that, on November 16, 1972, when they received the trial court's order denying their motion for reconsideration, they still had THREE (3) days more within which to perfect their appeal.

Private respondents contend that the doctrine laid down in Lloren applies only to motions for reconsideration filed on the last day of the period of appeal. WE do not agree. The Lloren doctrine must be applied to all cases whether the motion for reconsideration is filed before or on the last day of the appeal period. A perusal of Lloren shows that, in a criminal case, petitioner filed his motion for reconsideration on April 2, 1958, after receipt of the questioned decision on March 18, 1958. He received the order denying his motion for reconsideration on April 16, 1958, and perfected his appeal on April 17, 1958. This court ruled that petitioner's appeal was timely filed, because from April 2, 1958, the date of filing up to and including April 16, 1958, the date of receipt of the order of denial, there are

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actually 15 days, and deducting these 15 days from the 30-day period from March 18 to April 17, 1958, there are 15 days. Hence, the appeal was filed on time.

WE repeat, the decision in Lloren did not expressly or impliedly limit its application to cases where the motion for reconsideration is filed on the last day of the period of appeal. WE want to emphasize here that, for purposes of appeal, the time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted from the reglementary period of appeal, unless such motion fails to satisfy the requirements of Rule 37. To limit the application of the Lloren case to motions for reconsideration filed on the last day of the appeal period would be giving premium to laziness and punishing industry or punctuality if a grace period of one day would be given to a party who files his motion for reconsideration on the last day of the period of appeal and the same grace period is denied to a party who filed it before the last day. Stated differently, to deny application of the Lloren doctrine to the case at bar, would be to favor the filing of a motion on the very last day of the reglementary period and to penalize the filing of the same motion several days before the expiration of such a period.

In holding that the Lloren doctrine is not applicable to the petitioners' case, the respondent Court of Appeals observed in its resolution of December 13, 1973, denying petitioners' motion for reconsideration, that the Revised Rules of Court has not incorporated Section 1 of Rule 28 of the Old Rules of Court, but merely incorporated the Lloren doctrine in the second paragraph of Section 3 of Rule 41 of the Revised Rules of Court, and from this it concluded that the computation of time based on Section 1, Rule 28, of the Old Rules of Court is no longer tenable. This view is incorrect; because the non-incorporation of Section 1, Rule 28, of the Old Rules of Court, in the Revised Rules of Court, does not change the rule of the computation of periods for filing pleadings as the very same provision is already embodied in Article 13 of the New Civil Code and in Section 13 of the Revised Administrative Code,

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which legal provisions are superior to a rule of court, aside from the fact that its incorporation into the Revised Rules of Court would be a mere superfluity.

Regardless, however, of the above findings and, even assuming that respondents' position were correct, WE find that a one-day delay does not justify the dismissal of the appeal under the circumstances obtaining in this case. The real purpose behind the limitation of the period of appeal is to forestall or avoid an unreasonable delay in the administration of justice and to put an end to controversies (*Dy Chay vs. Crossfield*, 38 Phil. 521-526).

In resolving the instant case, WE must also bear in mind the prevailing atmosphere of liberality which has swept this Court in similar matters since the case of *Berkenkotter vs. Court of Appeals* (L-36629, Sept. 28, 1973, 53 SCRA 228), followed by *Pimentel, et al. vs. Court of Appeals* (L-39423 and L-39684, June 27, 1975, 64 SCRA 476), then by *Maqui and Maqui vs. Court of Appeals, et al.* (L-41609, Feb. 24, 1976, 69 SCRA 368), and lately by *Lopez, et al. vs. Court of Appeals, et al.* (L-43767, Feb. 28, 1977, 75 SCRA 401), wherein WE said:

"x x x the provision of Section 1, Rule 50 of the Revised Rules of Court which provides specific grounds for dismissal of appeal 'manifestly confers a power and does not impose a duty. What is more, it is directory, not mandatory.' Hence, it should be exercised with a great deal of circumspection, considering all the attendant circumstances.

Furthermore, WE note from the records the absence or lack of the element of intent to delay the administration of justice on the part of petitioners in this case. On the contrary, petitioners' counsel have demonstrated cautiousness, concern and punctuality in the prosecution of the appeal. They filed their motion for reconsideration on October 7, 1972, even if the respondent lower court judge had given them an extension up to October 24, 1972, within which to file the said motion. Petitioners had up to December 25, 1972, within which to submit their record on appeal, yet they filed their record on appeal on December 8, 1972, or 17 days before the deadline.

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Also, even assuming further that petitioners' counsel committed a mistake in the computation of the period of appeal, this error is clearly not attributable to negligence or bad faith and should not be counted against petitioners. On a doubtful and controversial question of law such as the one before Us in this case, the benefit of the doubt must be given to petitioners. "Mistake upon a doubtful or difficult question of law may be the basis of good faith" (Last par., Art, 526, New Civil Code).

Lastly, litigations should, as much as possible, be decided on their merits and not on technicality, and under the circumstances obtaining in this case, WE are reminded of what WE said in the case of *Gregorio vs. Court of Appeals* (L-43511, July 28, 1976, 72 SCRA 120, 126), thus —

"x x x Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated."

Once again, the teaching of *Alonso vs. Villamor* becomes imperative:

"x x x A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. x x x" (Vol. 16 Phil. 315, 321-322).

WHEREFORE, THE DECISION OF THE RESPONDENT COURT OF APPEALS, PROMULGATED ON SEPTEMBER 12, 1973, AND ITS RESOLUTION DENYING THE MOTION

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FOR RECONSIDERATION, DATED DECEMBER 13, 1973, ARE HEREBY REVERSED AND SET ASIDE. THE RESPONDENT TRIAL COURT IS HEREBY DIRECTED TO APPROVE PETITIONERS' BOND AND RECORD ON APPEAL AND TO CERTIFY THE SAID APPEAL TO RESPONDENT COURT OF APPEALS, FOR THE RESOLUTION OF THE CASE ON ITS MERITS. NO COSTS.

Teehankee (Chairman), Santos, Fernandez, and *Guerrero, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-47448. May 17, 1978]

THE PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. EMETERIO C. OCAYA, as District Judge, 15th Judicial District, Branch VI, Province of Bukidnon, and ESTERLINA MARAPAO, LETICIA MARAPAO and DIOSDADO MARAPAO**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; DURATION OF TREATMENT OF THE INJURY AS INDICATED IN THE MEDICAL CERTIFICATE DOES NOT CONFER JURISDICTION UPON THE COURT. — Respondent judge committed a grave abuse of discretion in precipitately dismissing the case for alleged lack of jurisdiction on the mere basis of his totally wrong notion that what governs in the filing of a physical injury case is the medical certificate regarding the