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WHEREFORE, the trial court's judgment is affirmed with the slight modification that the appellants should pay solidarily to Francisco Lazaro the sum of twenty-three pesos (₱23) which was taken from him by one of the robbers. Costs against the appellants.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-49247. March 13, 1979]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. WENCESLAO M. POLO, Presiding Judge, Court *of First Instance of Samar, Branch V (Calbayog City);* BASILIO ROSALES, TRINIDAD D. ENRIQUEZ, JOSE ROÑO, CESAR DEAN, MARIA S. QUESADA, AURORA SOLIMAN, JAIME ROCO and HERMINIGILDO ROSALES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE; SERVICE OF DECISION ON THE CITY FISCAL, NOT A SERVICE UPON THE SOLICITOR GENERAL.** — In a land registration case where it appears that although the Solicitor General requested the city fiscal to represent him in the trial court, he, nevertheless made his own separate appearance as counsel for the State and indicated in his notice of appearance that "only notices of orders, resolutions and decisions served on him will bind" the Government, it was held that the thirty-day period to perfect appeal shall be counted from the date when the Solicitor General received a copy of the decision

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because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General. It is obvious that, strictly speaking, the city fiscal did not directly represent the Government. He was merely a surrogate of the Solicitor General whose office, "as the law office of the Government of the Republic of the Philippines," is the entity that is empowered to "represent the Government in all registration and related proceedings" (Sec. 1(e) Presidential Decree No. 478).

2. ID.; ID.; APPEALS; PETITION FOR REVIEW; WHEN MAY BE TREATED AS A *MANDAMUS* ACTION. — A petition for review to compel the trial court to give due course to the Government's appeal may be treated as *mandamus* action. (Sec. 15, Rule 41, Rules of Court.) Such a petition could have been filed in the Court of Appeals in aid of its appellate jurisdiction (Sec. 30, Judiciary Law). But it may also properly be filed in the Supreme Court which has concurrent jurisdiction with the Court of Appeals to issue the writ of *mandamus*.

BARREDO, *J., concurring:*

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE OF PLEADING; MUST BE MADE UPON COUNSEL OF RECORD. — Service of pleadings and processes is legally effective only when it is made to the counsel of record, and the mere fact that an attorney appears at the trial or at any stage of the proceedings in collaboration with or in representation of the former does not make the latter a counsel of record.

2. ID.; ID.; ID.; SERVICES OF MOTION FOR NEW TRIAL; RULE. — Unlike in the making of an appeal under Section 3 of Rule 41 in which it is required to also serve upon the adverse party the notice of appeal, the appeal bond and the record on appeal within the period that the said notice, bond and record should be filed with the court, there is no such requirement of service of the motion for new trial within the period for appeal under Rule 37. Neither is there such a requirement under Rule 38 relative to the petition for relief. But, of course, it is indispensable that the adverse party be duly notified of the hearing of the motion for new trial. Reasonably construed, Section 6 of Rule 15 does not imperatively mandate that if the notice of hearing is not served within the period specified in Section 4 of the same rule (at least 3 days before the hearing) the court must deny the

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motion. In any case, it is within the discretion of the court as the interests of justice may require under the obtaining circumstances of the case to order the corresponding service before hearing and acting on the motion.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Noblejas, Sorreta & Associates for respondents.

DECISION

AQUINO, *J.*:

This case is about the timeliness of the Governments appeal in a land registration case. The Court of First Instance of Samar in a decision dated May 10, 1978 in LRC Case No. N-86-CC granted the application of Basilio Rosales, Herminigildo Rosales, Trinidad D. Enriquez, Jose Roño, Maria S. Quesada, Cesar Dean, Aurora Soliman and Jaime Roco for the registration of thirteen lots (including a small island), with a total area of about seven hectares, located at Barangay Malahug, Tinambacan, Calbayog City.

A copy of that decision was received in the Solicitor General's Office on May 25, 1978. On June 23, 1978 or twenty-nine days after service of the said decision, the Solicitor General filed a motion for reconsideration. A copy of the order denying that motion was received in the Solicitor General's Office on August 18, 1978. On that same date, he filed a notice of appeal and a motion for an extension of thirty days from August 19 (last day of the thirty-day reglementary period) within which to file the record on appeal. The motion for extension was not acted upon. The record on appeal was filed on September 15, 1978 or within the period sought in the motion for extension.

The lower court disapproved the record on appeal and did not give due course to the Government's appeal because the record on appeal was allegedly filed out of time. The lower court reasoned out that the thirty-day period should be computed,

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not from May 25, 1978, when the Solicitor General was served with a copy of the decision, but from May 11, 1978, when the city fiscal of Calbayog City, who represented the Solicitor General at the hearings, was served with that decision.

Disagreeing with that order, the Solicitor General, in behalf of the Republic of the Philippines, filed this petition for review to compel the lower court to give due course to the appeal. The case may be treated as a *mandamus* action to require the trial court to allow to Government's appeal (Sec. 15, Rule 41, Rules of Court).

The issue is whether the thirty-day period should he reckoned from the service of the decision upon the fiscal or from the time it was served upon the Solicitor General.

We hold that the thirty-day period should be counted from the date when the Solicitor General received a copy of the decision because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General.

It should be clarified that, although the Solicitor General requested the city fiscal to represent him in the trial court, he, nevertheless, made his own separate appearance as counsel for the State. In that "notice of appearance," he expressly requested that he should be served in Manila with "all notices of hearings, orders, resolutions, decisions and other processes" and that such service is distinct from the service of notices and other papers on the city fiscal.

The Solicitor General also indicated in his "notice of appearance" that he "retains supervision and control of the representation in this case and has to approve withdrawal of the case, *non-appeal* or other actions which appear to compromise the interests of the Government" and that "*only notices of orders, resolutions and decisions served on him will bind*" the Government.

The Solicitor General in requesting the city fiscal to represent him at the hearings called the attention of that official to Circular No. 41 of the Secretary of Justice dated November 28, 1973 wherein provincial and city fiscals; were advised that, in cases

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where they represent the Solicitor General, "*service on the Solicitor General shall be the basis*" "*for the purpose of finality of the decision.*"

In this case, it is obvious that, strictly speaking, the city fiscal did not directly represent the Government. He was merely a surrogate of the Solicitor General whose office, "as the law office of the Government of the Republic of the Philippines," is the entity that is empowered to "represent the Government in all land registration and related proceedings" (Sec. 1[e], Presidential Decree No. 478).

The trial court in disallowing the Government's appeal relied on the ruling that the service of the decision in a land registration case on the fiscal is necessarily a service on the Solicitor General (*Republic vs. Reyes*, L-35545, June 18, 1976, 71 SCRA 426, 436-437).

That ruling is not applicable to this case because in the *Reyes* case the fiscal as representative of the Solicitor General, was authorized not only to attend hearings but also to file pleadings for the Government. In the instant case, the city fiscal's authority was confined to attending the hearings. The Office of the Solicitor General was the one that filed the pleadings and motions in the lower court.

The Solicitor General in his petition herein observed that it was the ruling in the *Reyes* case that prompted his office "to revise completely the letter of authority to fiscals representing" him by making it clear that it is the service of the decision on the Solicitor General that would bind the Government.

The respondents contend that the petition for review is unwarranted because the Solicitor General stated in his notice of appeal that he was appealing to the Court of Appeals. They argue that the petition is not a special civil action of *certiorari* since no jurisdictional errors were committed by the trial court and, therefore, this Court should not entertain the petition.

As already stated, the petition should be regarded as an action for *mandamus*. That petition could have been filed in the Court of Appeals in aid of its appellate jurisdiction (Sec. 30, Judiciary

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Law). But it was also properly filed in this Court which has concurrent jurisdiction with the Court of Appeals to issue the writ of *mandamus*. (*Breslin vs. Luzon Stevedoring Co.*, 84 Phil. 618, 625; *Salva vs. Palacio*, 90 Phil. 731, 734).

The private respondents further contend that the Solicitor General's motion for reconsideration, which was filed on June 23, 1978 or on the twenty-ninth day, did not interrupt the period for appeal because they were personally served with a copy of the motion on June 27, 1978 or three days after the expiration of the period. They invoke the ruling that a motion for reconsideration, which was not served upon the adverse party, could not be entertained and did not interrupt the period for appeal (*Cabatit vs. Court of Agrarian Relations*, 120 Phil. 56; *National Development Company vs. CIR and National Textile Workers Union*, 116 Phil. 1085).

The instant case is not a case where there was no service at all of the motion for reconsideration, It is a case where the service of the motion was late. But the tardiness is more apparent than real because if the Solicitor General's office, on June 23, 1978, had opted to send a copy of that motion to the private respondents by registered mail, that copy would have reached them most likely *after June 27, 1978*, when they were *personally* served with a copy thereof. (See ruling that in the interest of justice, this Court may except a particular case from the operation of its own rules. *U.S. vs. Breitling*, 15 L. ed. 900, 902; *C. Viuda de Ordoveza vs. Raymundo*, 63 Phil. 275, 278; *Republic vs. Court of Appeals*, L-31303-04, May 31, 1978).

WHEREFORE, we hold that the appeal was perfected seasonably. The trial court's order disallowing petitioner's appeal is reversed and set aside. It is directed to pass upon the record on appeal, and, if found to be sufficient, to give due course to petitioner's appeal. No costs.

SO ORDERED.

Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

Fernando (Chairman), J., concurs in both opinions.

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Barredo, J., see attached concurring opinion.

BARREDO, *J., concurring*:

I concur.

Independently of the specific qualifications contained in the appearance of the Solicitor General which in effect gave notice to the court and the adverse parties of the limited extent of the authority of any other attorney who might appear in the case in behalf of the Republic of the Philippines, of which by law the Solicitor General is the sole authorized counsel, for which reason, the Republic cannot be bound by any notice to such other attorney, much less by any omission of the latter other wise fatal, it is important to reiterate here that service of pleadings and processes is legally effective only when it is made to the counsel of record, and the mere fact that an attorney appears at the trial or at any stage of the proceedings in collaboration with or in representation of the former does not make the latter a counsel of record. For the reasons stated in the main opinion, I agree that the ruling in *Republic v. Reyes* does not hold in the case at bar.

Unlike in the making of an appeal under Section 3 of Rule 41 in which it is required to also serve upon the adverse party the notice of appeal, the appeal bond and the record on appeal within the period that the said notice, bond and record should be filed with the court, there is no such requirement of service of the motion for new trial within the period for appeal under Rule 37. Neither is there such a requirement under Rule 38 relative to the petition for relief. But, of course, it is indispensable that the adverse party be duly notified of the hearing of the motion for new trial. Reasonably construed, Section 6 of Rule 15 does not imperatively mandate that if the notice of hearing is not served within the period specified in Section 4 of the same rule (at least three (3) days before the hearing) the court must deny the motion. In case of any delay, it is within the discretion of the court as the interests of justice may require under the obtaining circumstances of the case to order the corresponding service before hearing and acting on the motion.