

*Trinidad Semira and Isidoro G. Mercado, Petitioners vs. Juan Enriquez, Respondents, G. R. No. L-2582, March 23, 1950.*

**JUDGMENTS; PETITION FOR CORRECTION OF JUDGMENT AND EXTENSION OF TIME TO APPEAL; DUTY OF COURT TO DECIDE.** — In case a party to a case files a petition for correction of the judgment rendered and for an extension of time to perfect an appeal, he is entitled to expect action thereon by the court. The latter is in duty bound to decide and resolve the two petitions and it is unfair for it to declare the judgment rendered in the case final and executory without first complying with its duty to act on the petitions for extension of time to perfect the appeal and for correction of judgment. *Certiorari* granted.

*Potenciano A. Magtibay* for petitioner.

*Respondent Judge* in his own behalf.

*Antonio L. Azores* for respondents *Azores*.

R E S O L U T I O N

PADILLA, J.:

This is a petition for a writ of *mandamus* to compel the respondent court to correct an erroneous statement made in its order of 26 May 1948, entered in civil case No. 43 of the court of first instance of the province of Batangas entitled "Trinidad Semira et al., plaintiffs, v. Jose R. Azores et al., defendants;" to secure declaration by this Court that the motion for correction of 21 June 1948 filed in said case by the petitioners, the plaintiffs in the court below, suspended the running of the 30-day period within which an appeal could be taken; and to have the order of 25 September 1948 entered by the respondent court in the case, whereby it declared that the judgment rendered therein had become final and executory, set aside.

Answering the petition, the judge of the respondent court alleges that the defendants in the case, in which the judgment sought to be appealed was entered, are necessary parties and must be joined; and, after setting forth the proceedings in the court below pertinent to the question raised by the petitioners, prays that the petition be dismissed for lack of merit.

The facts alleged in the petition are as follows: The petitioners are the plaintiffs and Jose R. Azores, Sinfaroso Azores, Antonio Azores, Norberta Azores, Bienvenido Azores, Apolonio Azores, Manuel Azores and Juana Azores are the defendants in civil case No. 43 of the court of first instance of Batangas. On 7 July 1944, judgment was rendered therein for the defendants. Counsel for the plaintiffs received a copy of the judgment on 7 August 1944. Twenty-seven (27) (should be 23) days after receipt of the notice of judgment, and three (3) (should be 7) days before the last day of the 30-day period within which the losing party could perfect an appeal, or on 30 August 1944, counsel for the plaintiffs filed a motion for reconsideration. On 26 May 1948, after the record of the case had been reconstituted, the respondent court denied the motion for reconsideration. On 21 June, counsel for the plaintiffs received a copy of the order denying the motion for reconsideration. But prior to the receipt of a copy of the last order, on 5 June 1948 counsel for the plaintiffs filed an urgent *ex-parte* petition *ad cautelam*, dated 1 June 1948, for additional 15 days within which to perfect the appeal, should the court deny the motion for reconsideration. As in the order of 26 May of 1948, denying the motion for reconsideration, a misstatement was made, to wit: that the defendants filed the motion for reconsideration and the plaintiffs filed an opposition thereto, when it was just the reverse, on 21 June 1948, or on the same day counsel for the plaintiffs received a copy of the last mentioned order, counsel filed a petition for correction and set it for hearing on 3 July following. As counsel for the plaintiffs did not receive notice of any action taken by the court on the two petitions for extension of time and for correction, he addressed a letter to the clerk of the court of first instance of Batangas inquiring as to what action, if any, had been taken on the petition for correction. On 2 October 1948, counsel for the plaintiffs received a copy of the order dated 25 September 1948, holding that the judgment rendered in the case on 7 July 1944 had become final and executory, because the motion for extension of time, in the opinion of the court below, could be granted for good reasons only and not when it is for the purpose of delay, and that the petition for correction did not stop the

running of the 30-day period within which an appeal could be perfected, because the misstatement was just a clerical error which could not and did not mislead the plaintiffs — now petitioners. The respondent court added that if the extension of time prayed for had been granted, the last day would have been 9 (should be 13) July 1948, and if denied, the last day would have been 24 (should be 28) June 1948.

That the defendants in the case for whom judgment was rendered and from which the plaintiffs — now petitioners — attempted to appeal should have been brought in or joined as respondents, admits of no doubt. They are the parties directly affected in these proceedings.

The petitioners, plaintiffs in the case in the court below, were entitled to expect action by the respondent court on their petitions for extension of time to perfect the appeal and for correction of the order of 26 May 1948. The respondent court was in duty bound to decide and resolve the two petitions and it is unfair for it to declare the judgment rendered to the case final and executory without first complying with its duty to resolve and decide the petitions for extension of time to perfect the appeal and for correction of the aforesaid order of 26 May 1948.

The petitioners are directed to amend their petition to include or implead as respondents the defendants in the case in the court below, within five (5) days from notice or receipt of a copy of this resolution; and, after such amendment shall have made, let the new respondents answer the petition within five (5) days from date of service upon them of the amended petition.

*Moran, Ozeta, Pablo, Bengzon, Tunson, Montemayor and Reyes, J.J.* concur

*Torres* voted in favor of the dispositive part of this resolution.

2.

*Andres M. Hagad* for appellant.  
*Meneses and Dimayuga* for appellees.