FIRST DIVISION

[G.R. No. 200539. August 02, 2023]

HEIRS OF KUKUNGAN TIMBAO, REPRESENTED BY MUSA TIMBAO, HALIMA TIMBAO ANDANG, FATIMA TIMBAO ISMAEL, OMAR TIMBAO, AND ZUBAINA TIMBAO ATOG, *PETITIONERS*, VS. OSCAR D. ENOJADO, *RESPONDENT*.

D E C I S I O N

GESMUNDO, C.J.:

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the February 9, 2011[2] and December 6, 2011[3] Resolutions of the Court of Appeals, Cagayan de Oro City (*CA*) in CA-G.R. CV No. 02203-MIN which denied due course and dismissed the appeal of the Heirs of Kukungan Timbao, represented by Musa Timbao, Halima Timbao Andang, Fatima Timbao Ismael, Omar Timbao, and Zubaina Timbao Atog (*petitioners*), for failure to file the required Appellant's Brief under Section 1(e), Rule 50 of the Rules of Court.

Antecedents

Petitioners, all Muslim-Filipinos and claiming to be members of the National Cultural Communities of the Philippines, filed a complaint for recovery of ownership, possession and damages, with prayer for the issuance of a temporary restraining order (*TRO*) and/or writ of preliminary injunction (*WPI*), and receivership against Oscar D. Enojado (*respondent*) before the Regional Trial Court of General Santos City, Branch 23 (*RTC*) which was docketed as Civil Case No. 7623. They alleged that their deceased father, Kukungan Timbao (*Timbao*), was the owner, possessor, and occupant of a 5.25-hectare agricultural land located at *Purok* Abtalael, *Barangay* San Isidro, General Santos City and covered by Plan PSU-179955. However, during the Ilaga-Blackshirt conflicts in the 1970s, their father and the members of his family were forced to vacate the said ancestral land. Since the evacuation and after their father's death, a certain *Felix* Enojado (Felix) gained possession over the subject agricultural land.[4]

When relative peace was re-established in the area, petitioners wanted to return to the subject property, but Felix and his wife, Rosario Enojado (*Rosario*), informed them that the

same was already registered in the name of their son, herein respondent, under OCT No. P-2887.[5]

Petitioners thus filed a civil action for recovery of ownership and possession against respondent, claiming that: 1) the certificate of title is null and void because respondent was still a minor in 1974 when he applied for free patent; 2) the parcel of land is an ancestral land which petitioners inherited from their father; 3) petitioners, as members of a cultural minority, did not convey the contested realty to respondent; and 4) the title issued to respondent violated paragraph 1 of Presidential Decree (*P.D.*) No. 152,[6] and therefore null and void.[7]

Respondent, on the other hand, admitted that he was a minor at the time of his application for free patent and that Timbao was the original owner, possessor, and occupant of the subject property. He countered, among others, that: 1) petitioners' action for recovery has already prescribed because the title issued to him had become indefeasible; 2) petitioners are estopped from questioning the transfer of property since their father had validly sold the same to his mother, Rosario; and 3) after such transfer, Rosario executed an Affidavit of Waiver of Rights over the said realty in his favor.[8]

Ruling of the RTC

In its March 14, 2008 Order,[9] the RTC dismissed the complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, finding the affirmative defenses of the defendants to have been duly proved and with merit, this case is hereby ordered DISMISSED. There being no evidence presented to prove the counterclaims of the defendant, the same is also DISMISSED.
>
> SO ORDERED.[10]

The RTC ruled that respondent had duly proven that: 1) the subject property was sold by petitioners' parents to Rosario based on a Transfer of Rights and Sale of Improvements; and 2) that Rosario executed an Affidavit of Waiver of Rights covering the said realty in respondent's favor.[11] It also held that the heirs' rights and action to recover ownership and possession of the subject property had already prescribed since the Torrens title issued on

the basis of the free patent had become indefeasible and incontrovertible one year after its issuance and registration.[12]

Aggrieved by the said order, petitioners appealed before the CA.

Ruling of the CA

In its February 9, 2011 Resolution, the CA denied due course and dismissed petitioners' appeal for failure to file an Appellant's Brief. The CA disposed:

> In view of the Judicial Records Division (JRD) verification report dated February 1, 2011 that no Appellant's Brief has yet been filed by plaintiffs-appellants, the instant appeal is **DENIED DUE COURSE** and is hereby **DISMISSED** pursuant to *Section 1(e), Rule 50 of the Revised Rules of Court*.
>
> **SO ORDERED.**[13]

On Motion for Reconsideration,[14] petitioners claimed to have filed their Appellant's Brief through registered mail. They averred that their counsel had filed the said pleading through registered mail as shown by Registry Receipt No. 1000.[15] To prove their filing, petitioners submitted a photocopy of an Affidavit of Service for the said pleading where pasted at the bottom was the said registry receipt.[16] In its December 6, 2011 Resolution, the CA denied petitioners' motion after finding that they do not have said pleading on file. It also faulted petitioners for failing to ensure that the CA had received their pleading, and to submit, albeit belatedly or at least simultaneously with their motion for reconsideration, a copy of their Appellants' Brief.[17]

Issue

Undaunted, petitioners now seek relief before the Court *via* a Petition for *Certiorari*, ascribing grave abuse of discretion on the part of the CA for dismissing their appeal based on a technicality. They likewise assail the validity of the free patent issued to respondent, contending that it was void because respondent was then a minor and did not reside in the contested realty.[18]

By way of Comment,[19] respondent posits that petitioners chose a wrong remedy, having filed a petition for *certiorari* under Rule 65 instead of a petition for review under Rule 45. He contends that assuming the CA had indeed erred in dismissing petitioners' appeal and denying their motion for reconsideration, it merely committed an error of judgment which is not correctible by *certiorari*.[20] Petitioners also did not attach a certification from the Office of the Postmaster of Tacurong City to prove that they had deposited a copy of the Appellants' Brief with the post office.[21]

In their Reply,[22] petitioners insist on the correctness of their remedy, and maintain that the CA should have been more considerate and, should have instead, required them to re-submit their brief which was unfortunately lost by the Post Office of Tacurong City.[23] Since the loss of the pleading was beyond their control, petitioners opine that the CA acted with grave abuse of discretion when it dismissed their appeal.[24]

Ruling of the Court

The petition is partly meritorious.

The CA may dismiss an appeal for failure to serve and file an appellant's brief; Petitioners failed to prove filing of the Appellants' Brief to the CA.

It must be stated at the outset that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.[25] One who seeks to avail of the right to appeal must comply strictly with the requirements of the rules, otherwise, it often leads to the loss of such right.[26]

Except when a record of appeal is required, Sec. 3,[27] Rule 41 of the 1997 Rules of Civil Procedure (*1997 Rules*) provides that an ordinary appeal from the RTC shall be taken within 15 days from notice of judgment or final order appealed from. Upon the perfection of appeal, it is the duty of the clerk of court to verify the correctness and completeness of the records that will be transmitted to the appellate court.[28] The appellant is thereafter duty-bound to file seven copies of the appellant's brief with the court, within 45 days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, with proof of service of two copies thereof upon the appellee.[29]

On the other hand, Sec. 1(e), Rule 50 of the 1997 Rules authorizes the CA to dismiss the appeal, *motu proprio* or upon motion of the appellee, for failure of the appellant to *serve and file* the appellant's brief within the reglementary period. Pertinently, *filing* and *service* of pleadings refer to two different acts. Sec. 2, Rule 13 of the 1997 Rules defines *filing* as the act of presenting the pleading or other paper to the clerk of court. On the other hand, *service* is the act of providing a party with a copy of the pleading or paper concerned. Although they pertain to different acts, filing and service go hand-in-hand and must be considered together when determining whether the pleading, motion, or any other paper was filed within the applicable reglementary period.[30]

Corollary, Sec. 12, Rule 13 of the 1997 Rules states that the filing of the pleading shall be proved in the following manner:

> Section 12. *Proof of filing*. — The filing of a pleading or paper shall be proved **by its existence in the record of the case**. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; **if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered**. (Emphases supplied)

Principally, a pleading is deemed filed if the same exists in the records of the case. Otherwise, it may be proved depending on the manner by which it was filed. If filing was done personally, it may be proved through the acknowledgment made by the clerk of court on the party's receiving copy. However, in the case of filing by registered mail, two documents should be presented to prove the same: (1) the registry receipt and (2) the affidavit of the person who mailed the pleading. Sec. 12 also specifically enumerates the required contents of the said affidavit: a full statement of the date and place of depositing the mail in the post office in a sealed envelope *addressed to the court*, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after 10 days if not delivered.

The Court agrees with the CA that there was no such pleading in their records. Nonetheless,

petitioners have been consistent in claiming that they filed their Appellants' Brief by registered mail. Pursuant to Sec. 12, they are burdened to prove such filing by presenting a copy of the registry receipt and the affidavit of the person who mailed the said pleading. Unfortunately, they failed to discharge their burden.

While petitioners were able to submit a copy of Registry Receipt No. 1000 which was purportedly issued by the post office when they deposited a copy of their Appellants' Brief intended for the CA, they however have failed to submit an affidavit pursuant to Sec. 12. A simple perusal of the affidavit they attached to their motion would reveal that it pertained to the *service* of the pleading to respondent, and not its *filing* with the CA. Patently, this is not the affidavit contemplated by Sec. 12.

Moreover, the distinction between the act of filing and service would move this Court to rule that the submission of the said affidavit does not amount to substantial compliance with Sec. 12. To reiterate, petitioners are bound to prove that they filed their appellants' brief by depositing the same in a sealed envelope addressed to the CA, instead of their service of the pleading to respondent. However, petitioners' affidavit only proved their service of the subject pleading to respondent, and not the filing of the same to the CA. In this regard, the CA had sufficient basis to dismiss petitioners' appeal and subsequently deny their motion for reconsideration.

Certiorari shall lie against the CA for instantly dismissing petitioners' appeal.

Regardless of petitioners' failure to meet the conditions under Sec. 12 of Rule 13, the Court agrees with them that the CA gravely abused its discretion in dismissing their appeal.

To recall, petitioners seek recourse to this Court pursuant to Rule 65 of the Rules of Court, Sec. 1 of which states:

> Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment

> be rendered annul ling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

Evidently, the party filing a petition for *certiorari* must not merely allege, but be able to prove that the concerned court or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. In *National Home Mortgage Finance Corporation v. Tarobal*,[31] the Court ruled that:

> The doctrine is that *certiorari* will issue only to correct errors of jurisdiction and that no error or mistake committed by a court will be corrected by *certiorari* unless said court acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction. The writ is available only for these purposes and not to correct errors of procedure or mistake in the findings or conclusions of the judge. It is strictly confined to the determination of the propriety of the trial court's jurisdiction whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[32]

Alquiza v. Alquiza[33] explained that the appellate court exercises not only judgment, but most importantly, discretion when it decides to dismiss an appeal based on failure of the appellant to file a brief or to explain such failure.[34] In employing such discretion, the appellate court shall consider the circumstances obtaining in the case, particularly, the demands of substantial justice. If an appeal has been dismissed, the appellate court also has sufficient discretion to reinstate the same, provided, there is good and sufficient cause obtaining in the case:

> Granting that the power or discretion to reinstate an appeal that had been dismissed is included in or implied from the power or discretion to dismiss an appeal, still such power or discretion must be exercised upon a showing of good and sufficient cause, in like manner as the power or discretion vested in the appellate court to allow extensions of time for the filing of briefs. There must be such a showing which would call for, prompt and justify its exercise. Otherwise, it cannot and must not be upheld.[35]

Petitioners have constantly insisted having filed their brief through registered mail, which they now claim to have been lost.[36] They likewise point to the Affidavit of Proof of Service and Registry Receipt No. 1000 to prove that they indeed submitted the subject pleading.

To resolve this matter, the Court has no recourse but to go over the records and lay down the timeline related to the filing, or non-filing, of the subject brief.

On July 23, 2010, the CA, thru its Judicial Records Division, required the parties to submit their respective briefs within the reglementary period as provided by Secs. 7 to 9, Rule 44 of the 1997 Rules.[37] On September 15, 2010, petitioners' counsel filed a Motion for Extension[38] of 30 days from the initial deadline of September 16, 2010, or until October 16, 2010, within which to file the appellants' brief.

It appears that on December 29, 2010,[39] the CA received respondent's Appellee's Brief dated December 17, 2010. In paragraph 1 of the said Brief, respondent alleged that "[t]he statement of facts and case made by plaintiffs-appellants in their brief is so inaccurate and unsupported by the records of the case x x x."[40]

On February 1, 2011, the Judicial Records Division submitted a Verification Report[41] stating that "No appellant's brief filed per docket book entry as of 2/1/11." For this reason, the CA was constrained to dismiss the appeal on February 9, 2011 pursuant to Sec. 1(e), Rule 50 of the 1997 Rules. Petitioners' counsel received a copy of the said resolution on February 22, 2011.[42] Two days thereafter, or on February 24, 2011, petitioners filed their "Motion for Reconsideration of Resolution, dated February 9, 2011"[43] and averred that they had duly filed their appellants' brief via registered mail on October 13, 2010 to which the post office issued Registry Receipt No. 1000. Petitioners submitted, as proof, a photocopy of the purported Affidavit of Proof of Service which appears to have been attached to their appellants' brief. A close examination of the affidavit would reveal that at the bottom portion thereof appears to be a photocopy of Registry Receipt No. 1000.[44]

Instead of resolving the motion for reconsideration, the CA issued a Resolution[45] dated June 13, 2011, which directed respondent to file his comment or opposition to said motion. Respondent complied by filing a Comment[46] which contained the following averments:

1. On October 21, 2020, defendant-appellee received a copy of plaintiffs-appellants' Brief which was sent by registered mail on October 13, 2010.
2. On December 17, 2010, defendant-appellee filed his brief by registered

mail.

3. However, defendant-appellee is not certain whether plaintiffs-appellants had filed their Brief in the Court of Appeals.

3.1 If the record in the above-entitled case shows that indeed plaintiffs-appellants had filed their Brief, then the motion for reconsideration should be granted and this case be decided on the merits.

3.2 However, if the record in the above-entitled case does not show that indeed plaintiffs-appellants had filed their Brief, then plaintiffs-appellants must be required to submit to this Court the Registry Return Card of Registry Receipt No. 1000 in order to determine whether plaintiffs-appellants' Brief was really filed in this Court or not.[47]

The CA noted respondent's Comment,[48] and two months thereafter, issued the now assailed Resolution denying the motion for reconsideration, holding as follows:

> In this case, there is no Appellant's Brief actually on file. Plaintiffs-appellants failed to exert effort to see to it that their brief was received by the Court of Appeals. Besides, plaintiffs-appellants did not even file their brief, albeit belatedly, but at least simultaneously with their motion for reconsideration.[49]

Based on the above chronology of the events, it is not difficult to discern why the CA resolved to dismiss petitioners' motion for reconsideration.

Firstly, the CA merely followed the letter of Sec. 1(e), Rule 50 of the 1997 Rules which grants it the authority to dismiss an appeal for failure to file and serve the appellant's brief.[50]

Secondly, as previously discussed, petitioners failed to sufficiently demonstrate that they filed the requisite pleading by complying with Sec. 12 of Rule 13.

Lastly, the CA pointed out that despite the months that had passed before it issued the challenged Resolution, petitioners did not bother to file or re-submit, even belatedly, a copy of their Appellants' Brief.

The CA aptly emphasized that petitioners should have exercised diligence and exerted efforts in ascertaining that it has properly received the document they filed by registered mail. Due diligence in filing the required pleading does not end with the mere deposit of the

same to the post office for mailing, most especially in this case, where petitioners have been apprised of the fact of non receipt by the CA. This Court is even perplexed as to why petitioners' counsel chose to be stubborn and insist that they had filed the brief instead of simply furnishing the CA with another copy thereof. Such would have changed the course of this case, as the CA could have judiciously exercised its discretion by admitting petitioners' brief, and eventually decide the same based on the merits.

Notwithstanding the authority granted by Sec. 1(e) of Rule 50, as well as the circumstances which convinced the CA to dismiss petitioners' appeal, the Court holds that it committed grave abuse of discretion in doing so.

The dismissal of an appeal based on failure to file an appellant's brief should be guided by the principles laid down in *The Government of the Kingdom of Belgium v. Court of Appeals*[51] (*The Government of the Kingdom of Belgium*), to wit:

> (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;
>
> (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;
>
> **(3)** The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;
>
> **(4)** In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:
>
> **(a) the circumstances obtaining warrant the court's liberality;**
>
> **(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;**
>
> **(c) no material injury has been suffered by the appellee by the delay;**
>
> **(d) there is no contention that the appellees' cause was prejudiced;**
>
> **(e) at least there is no motion to dismiss filed.**
>
> (5) In case of delay, the lapse must be for a reasonable period; and
>
> (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:
>
> (a) where the reckless or gross negligence of counsel deprives the client of due process of law;
>
> (b) when application of the rule will result in outright deprivation of the client's liberty or property; or
>
> (c) where the interests of justice so require.[52] (Emphases supplied)

Clearly, the CA exercises *discretionary power* to dismiss an appeal when an appellant's brief has not been timely filed. Based on the same discretion, the CA may allow the belated filing of the appellant's brief, as long as: (1) it is duly warranted by the circumstances; (2) there

appears to be strong considerations of equity in the interest of substantial justice; (3) the appellee will not suffer any material injury caused by the delay; (4) there is no contention that the appellees' cause was prejudiced; or (5) the respondent did not file any motion to dismiss.

The circumstances obtaining before the CA provide sufficient basis to allow a belated submission of the appellants' brief.

Foremost, the CA failed to notice that respondent admitted in his Comment that he received a copy of the appellants' brief on October 21, 2010. Said pleading was sent by registered mail on October 13, 2010.[53] It is worth noting that the date of the registered mail coincides with the date appearing on Registry Receipt No. 1000 which petitioners claim to have been issued by the post office for the appellants' brief intended for the CA. Also, the date of the mailing was done before October 16, 2010, the last day of the extension prayed for by petitioners.

More importantly, the CA failed to consider the fact that respondent was able to file an Appellee's Brief which, under Sec. 8, Rule 44 of the 1997 Rules, shall be filed within 45 days *from receipt of the appellant's brief*. Respondent's filing of the appellee's brief sufficiently indicates that petitioners have properly served upon him a copy of the appellants' brief. Else stated, respondent could not have drafted and filed his brief if he was not furnished a copy of the appellants' brief.

With the service of the appellants' brief to respondent, it would be absurd to presume that petitioners did not file the same. To reiterate, filing and service go hand-in-hand and must be considered together in determining whether the pleading was filed.[54]

Furthermore, respondent did not appear to have been prejudiced or suffered material injury by virtue of the non-filing of the appellants' brief. The Court even finds as commendable, respondent's candor and sense of fairness, when he admitted receiving appellants' brief and even provided the date when it was sent through registered mail. He even exhorted the CA to require petitioners to submit the registry return card to determine whether they have indeed made the requisite filing.[55]

Indeed, the Court has ruled that the failure to file an appellant's brief, although not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal.[56] However, *The Government of the Kingdom of Belgium* recognizes that failure to timely file the appellant's brief is not a cause for automatic dismissal of the appeal, and that

the CA has discretionary authority to allow its belated filing when warranted.

It is well-established that rules of procedure, especially those prescribing the time within which certain acts must be done, are absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. Procedural rules are tools meant to facilitate the adjudication of cases. They may be relaxed, but such relaxation in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity.[57] The Court will not hesitate to be liberal in its interpretation and application of the rules, but only under the most exceptional circumstances.

Indubitably, the instant case is not one that should receive a strict application of the rules. Although petitioners may be faulted for their shortcomings, the preceding circumstances may be considered in determining whether they were remiss in filing the required pleading. These should have prompted the CA to observe more prudence in treating petitioners' appeal, by simply requiring the latter to submit their appellants' brief. For such lack of prudence, the CA had, lamentably, gravely abused its discretion.

The finding of grave abuse of discretion by the CA would have resulted in remanding this case to provide the latter an opportunity to resolve it based on the merits. However, to save time and in the interest of justice, the Court finds it proper to resolve the instant case.

Sec. 44 of Commonwealth Act (CA) No. 141[58] does not require the applicant to be of legal age and an actual resident of the land subject of the free patent application.

Petitioners argue in the main that a free patent cannot be validly issued on the contested land in favor of a minor who did not reside thereon.

The Court is not persuaded. While respondent may have been a minor at the time the free patent was issued to him, there appears to be no legal impediment in the issuance of such title.

The requirements for filing an application for free patent are laid down by Sec. 44 of CA No. 141 which originally provides that:

> Section 44. Any natural-born citizen of the Philippines who since July fourth,

> nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.

Clear from Sec. 44 that there were only two requirements that must be satisfied in filing an application for a free patent: (1) that the applicant is natural-born citizen of the Philippines; and (2) that since July 4, 1926, the applicant or his/her predecessors-in-interest have continuously occupied and cultivated the public agricultural land, or have paid real estate tax thereon.

At the time that respondent was granted a free patent, Sec. 44 was amended by Republic Act (*R.A.*) No. 3872.[59] However, R.A. No. 3872 only introduced an additional paragraph to Sec. 44 which read as follows:

> Section 44. x x x
>
> A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: *Provided*, That at the time he files his free patent application he is not the owner of any real estate secured or disposable under this provision of the Public Land Law.

Several decades thereafter, the first paragraph of Sec. 44 was further amended by R.A. No. 6940.[60] Still, Sec. 44 does not provide for an age limit to applicants of free patent as the amendment introduced by R.A. No. 6940 reads as follows:

> Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of

> agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.

Verily, applications for free patent, whether it be under the original text of Sec. 44 or its amendments, do not provide for age limitations unlike in the other provisions in CA No. 141.[61] Hence, petitioners' challenge against the free patent issued to respondent while he was a minor lacks legal support.

As regards the contention that respondent was not residing on the subject property which invalidates the free patent issued to him, again, petitioners are mistaken.

Aside from citizenship, Sec. 44 only requires *continuous occupation and cultivation* of the land either by the applicant or through the predecessors-in-interest. "Occupation" is not the same as "residence." Occupation is not even synonymous with "possession," the latter being broader in scope while the former delimits the all-encompassing effect of constructive possession.[62] Residence, in civil actions, refers to a place of abode, whether permanent or temporary, and differs from domicile which denotes a fixed permanent residence to which when there is absence, one has the intention of returning.[63]

Accordingly, the term "occupation and cultivation" as used in Sec. 44 does not refer to residence. Occupation and cultivation of the realty for the prescribed period grants an individual with a right to apply for a free patent under CA No. 141.[64]

It is basic rule in statutory construction that where the law does not distinguish, neither should the Court.[65] Sec. 44 of CA No. 141 did not lay down any qualification as to the age and residence of the free patent applicant. Hence, petitioners' insistence to annul respondent's title is devoid of any legal basis.

Respondent's free patent has become indefeasible; The action for reconveyance has already prescribed.

It is settled that once a patent is registered and the corresponding certificate of title is issued, the land covered by it ceases to be part of the public domain and becomes private

property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of issuance of such patent.[66] Thereafter, the remaining remedy is to file an action for reconveyance. However, an action for reconveyance and cancellation of title prescribes in 10 years from the time of the issuance of the Torrens title over the property.[67]

In the case at bench, respondent's title, Free Patent No. 557040, was issued on January 25, 1974, and registered with the Office of the Register of Deeds in General Santos City on April 18, 1974.[68] Evidently, the free patent issued to respondent had already become indefeasible after the expiration of one year from the date its issuance.

Thus, when petitioners filed their complaint on August 28, 2006,[69] or 32 years after the issuance of the free patent, the latter was already incontrovertible. Consequently, petitioners' action for recovery of ownership has been barred by prescription.

Petitioners failed to prove that the subject property was reserved and declared as an ancestral land.

Finally, petitioners insist that the subject property is a private ancestral land and therefore not part of public land which can be disposed by virtue of a free patent. For this reason, respondent's free patent is null and void.[70]

Again, the argument lacks merit.

It is worth noting that petitioners had consistently relied and anchored their claims on CA No. 141, as well as P.D. No. 152, which amended certain provisions of CA No. 141, despite the effectivity of R.A. No. 8371[71] or "The Indigenous Peoples Rights Act of 1997" (*IPRA*) at the time they filed their complaint.[72] The IPRA specifically governs the rights of indigenous peoples to their ancestral lands and domains.[73] The IPRA defines ancestral lands, as follows:

> SEC. 3. Definition of Terms. – x x x
>
> x x x x
>
> b) Ancestral Lands – Subject to Section 56 hereof, [refer to lands] occupied, possessed and utilized by individuals, families and clans who are members of the

> ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots; x x x.

At any rate, any person seeking relief under CA No. 141 admits that the property being applied for is public land.[74] CA No. 141 or the Public Land Act allows the disposition of public lands through confirmation of imperfect or incomplete titles, which may be done either judicially or through the issuance of a free patent.[75] The second paragraph of Sec. 44 of CA No. 141, as amended by R.A. No. 3872, even expressly provides that indigenous peoples may apply for free patent over such realty which they have continuously cultivated and occupied since July 4, 1955.

Relatedly, Chapter III, Sec. 12[76] of the IPRA and its Implementing Rules and Regulations[77] even expressly provide for an option to secure a certificate of title under CA No. 141, as amended, over individually-owned ancestral lands which are classified as alienable and disposable agricultural lands. Thus, petitioners' insistence that the subject realty is not part of disposable public land, but a private ancestral land, does not hold water.

Additionally, under Sec. 84 of CA No. 141, lands possessed by indigenous peoples[78] will have to be declared by the President through a proclamation, as reserved for their exclusive use. The same may also be granted to them individually, by virtue of a title or gratuitous patent, and which cannot be more than four hectares. Similarly, the rights of indigenous peoples over their ancestral lands may be formally recognized under the IPRA, through the issuance of certificates of ancestral land titles (*CALT*).[79] Proofs of claims to ancestral lands include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52(d) of the IPRA Law, including tax declarations and proofs of payment of taxes,[80] such as:

1) Written accounts of the ICCs/IPs customs and traditions;
2) Written accounts of the ICCs/IPs political structure and institution;

3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
5) Survey plans and sketch maps;
6) Anthropological data;
7) Genealogical surveys;
8) Pictures and descriptive histories of traditional communal forests and hunting grounds;
9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
10) Write-ups of names and places derived from the native dialect of the community.[81]

In *Lamsis v. Dong-e*,[82] the Court ruled that the application for the issuance of a CALT is akin to a registration proceeding. Thus, titling does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial.[83] Although it is settled that certificates of title are not conclusive evidence of ownership, it is however the best proof of ownership of a piece of land.

In here, there was no indication of any kind that the subject parcel of land had been previously reserved and proclaimed as ancestral land. Neither was it shown that at the very least, an application for ancestral land claim was filed over the same. Apart from their bare allegations, petitioners did not offer any other proof to support their claim that the subject property was indeed an ancestral land.

In sum, petitioners failed to present proof that they possess the requisite right to reconveyance and possession of the subject realty. Hence, while the CA was found to have gravely abused its discretion when it instantly dismissed their appeal for failure to file their Appellants' Brief, the Court still affirms the dismissal of their appeal for being unmeritorious.

Petitioners are not entitled to a TRO and/or WPI.

Provisional or ancillary remedies serve to protect actual existing rights and maintain the *status quo* of things. A TRO and a WPI both constitute temporary measures availed of during the pendency of the action. They are, by nature, ancillary because they are mere incidents in and are dependent upon the result of the main action.[84] They are preservative remedies

for the protection of substantive rights or interests, and, hence, not a cause of action in itself, but merely adjunct to a main suit.[85]

The grant or denial of a TRO or an injunctive writ rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination.[86] The issuance thereof is considered an extraordinary or transcendent remedy and a strong arm of equity. As such, the power to issue a writ is done with utmost caution, prudence, and deliberation, and should be exercised reasonably and sparingly only in exceptional circumstances.[87] In every application for provisional injunctive relief, the applicant must establish the actual and existing right sought to be protected. The applicant must also establish the urgency of a writ's issuance to prevent grave and irreparable injury. Failure to do so will warrant the court's denial of the application,[88] as in this case.

Petitioners need not substantiate their claim with complete and conclusive evidence since only *prima facie* evidence or a sampling is required "to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."[89] However, their bare allegations in this petition were insufficient to warrant the issuance of a TRO or WPI. In view of their unsubstantiated claims and the lack of merit of the instant petition, their prayer for such reliefs must perforce be denied.

WHEREFORE, the instant petition for *certiorari* is **PARTIALLY GRANTED**. The Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying due course to and dismissing petitioners' appeal based on technicality.

The Resolutions dated February 9, 2011 and December 6, 2011 by the Court of Appeals, Cagayan de Oro City in CA-G.R. CV No. 02203-MIN are **AFFIRMED** with **MODIFICATION** in that petitioners' appeal is **GIVEN DUE COURSE**, but the same is **DISMISSED for lack of merit**.

The urgent prayer for the issuance of temporary restraining order and/or writ of preliminary injunction is hereby **DENIED**.

SO ORDERED.

Hernando, Zalameda, Rosario, and *Marquez, JJ.*, concur.

[1] *Rollo*, pp. 4-13.

[2] *Id.* at 15-16; penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Nina G. Antonio-Valenzuela.

[3] *Id.* at 24-27; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles.

[4] *Id.* at 4-5.

[5] *Id.* at 5.

[6] Entitled "Prohibiting the Employment or Use of Share Tenants in Complying with the Requirements of the Law Regarding Entry, Occupation, Improvement and Cultivation of Public Lands, Amending for the Purpose Certain Provisions of Commonwealth Act No. 141, As Amended, Otherwise Known as The Public Land Act." Approved on March 13, 1973.

[7] *Rollo*, p. 50.

[8] *Id.* at 50-51.

[9] *Id.* at 68-78.

[10] *Id.* at 78.

[11] *Id.* at 74-75.

[12] *Id.* at 75-76.

[13] *Id.* at 15-16.

[14] *Id.* at 17-19.

[15] *Id.* at 17.

[16] *Id.* at 20-21.

[17] *Id.* at 26.

[18] *Id.* at 7-9.

[19] *Id.* at 82-86 (Written Explanation with Comment to Petition).

[20] *Id.* at 83.

[21] *Id.* at 82-83.

[22] *Id.* at 89-93.

[23] *Id.* at 89-90.

[24] *Id.* at 90.

[25] **Ramirez v. Elomina, G.R. No. 202661**, March 17, 2021.

[26] **Ang v. Court of Appeals, G.R. No. 238203**, September 3, 2020, 949 SCRA 285, 292.

[27] Sec. 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

[28] Sec. 10, Rule 41. *Duty of clerk of court of the lower court upon perfection of appeal.* — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

(a) To verify the correctness of the original record or the record on appeal, as the case may be, and to make a certification of its correctness;
(b) To verify the completeness of the records that will be transmitted to the appellate court;
(c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and
(d) To transmit the records to the appellate court.

If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.

The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court.

[29] Sec. 7, Rule 44. *Appellant's brief* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[30] **Philippine Savings Bank v. Papa**, 823 Phil. 725, 733-734 (2018).

[31] 803 Phil. 694 (2017).

[32] *Id*. at 702, citing **Ysidoro v. Doller**, 681 Phil. 1, 14-15 (2012) and **Chua v. Court of Appeals**, 338 Phil. 262, 269 (1997).

[33] 130 Phil. 523 (1968).

[34] *Id*. at 526.

[35] **Chavez v. Ganzon**, 108 Phil. 6, 9 (1960).

[36] *Rollo*, pp. 7-8.

[37] CA *rollo*, p. 10.

[38] *Id*. at 12-14.

[39] *Id*. at 17.

[40] *Id*. at 19.

[41] *Id*. at 15 (dorsal portion).

[42] *Id*. at 74.

[43] *Id*. at 74-77.

[44] *Id*. at 78.

[45] *Id*. at 81.

[46] *Id*. at 83-86.

[47] *Id.* at 83-85.

[48] *Id.* at 94; Resolution dated October 5, 2011.

[49] *Id.* at 102.

[50] **Del Mar v. Court of Appeals**, 429 Phil. 19, 30 (2002).

[51] 574 Phil. 380 (2008).

[52] *Id.* at 397-398.

[53] CA *rollo*, p. 83.

[54] **Philippine Savings Bank v. Papa**, *supra* note 30, at 734.

[55] CA *rollo*, pp. 83-85.

[56] **Sibayan v. Costales**, 789 Phil. 1, 9 (2016).

[57] **Philippine Savings Bank v. Papa**, *supra* note 30, at 737.

[58] Entitled "An Act to Amend and Compile the Laws Relative to Lands of the Public Domain," otherwise known as "The Public Land Act." Approved on November 7, 1936.

[59] Entitled "An Act to Amend Sections Forty-Four, Forty-Eight and One Hundred Twenty of Commonwealth Act Numbered One Hundred Forty-One, As Amended, otherwise known as the 'Public Land Act,' and for Other Purposes." Approved on July 18, 1964.

[60] Entitled "An Act Granting a Period Ending on December 31, 2000 for Filing Applications for Free Patent and Judicial Confirmation of Imperfect Title to Alienable and Disposable Lands of the Public Domain under Chapters VII and VIII of the Public Land Act (CA 141, as Amended)." Approved on March 28, 1990.

[61] Namely: Sec. 12 (homestead patent); Sec. 22 (sales patent); Sec. 33 (lease); and Sec. 84 (gratuitous patents).

[62] **Republic v. Rovency Realty and Development Corp.**, 823 Phil. 177, 197 (2018), citing **Republic v. Gielczyk**, 720 Phil. 385, 402 (2013).

[63] **Ang Kek Chen v. Spouses Calasan**, 555 Phil. 115, 126 (2007), citing **Koh v. Court of**

Appeals, 160-A Phil. 1034, 1042 (1975).

[64] See **Naval v. Jonsay**, 95 Phil. 939 (1954).

[65] **Villanueva v. Court of Appeals, G.R. No. 209516**, January 17, 2023.

[66] **Republic v. Bellate**, 716 Phil. 60, 71 (2013).

[67] **Spouses Aboitiz v. Spouses Po**, 810 Phil. 123, 142 (2017).

[68] *Rollo*, p. 56.

[69] *Id.* at 35.

[70] *Id.* at 5.

[71] Entitled "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous People, Establishing Implementing Mechanics, Appropriating Funds Therefor, and for Other Purposes." Approved on October 29, 1997.

[72] Petitioners filed their complaint on August 28, 2006 while the IPRA became effective on November 22, 1997 (**Lamsis v. Dong-E**, 648 Phil. 372, 397 [2010]).

[73] **Begnaen v. Spouses Caligtan**, 793 Phil. 289, 302 (2016).

[74] **Republic v. Spouses Noval**, 818 Phil. 298, 307 (2017).

[75] *Id.*

[76] Sec. 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496. — Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in

character and actually used for agricultural, residential, pasture, and tree farming purposes, including those With a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.

[77] NCIP Administrative Order No. 01-98 (Rules and Regulations Implementing Republic Act No. 8371).

Rule III, Part III, Sec. 3. Option to Secure Patents under Commonwealth Act No. 141, as Amended. Formal recognition of native title to ancestral lands is secured through the issuance of a Certificate of Ancestral Land Title under the Act.

Members of the ICCs/IP communities who individually own ancestral lands shall have the option to secure Certificates of Title to such land pursuant to the provisions of Commonwealth Act No. 141, as amended, provided such option is exercised within twenty (20) years from approval of the Act.

Pursuant to Section 12 of the Act, all ancestral lands which have been individually owned and actually used continuously by ICCs/IPs for a period of at least thirty (30) years for agricultural, residential, pasture, or tree farming purposes, including those with slope of more than eighteen (18) degrees are hereby classified as alienable an disposable agricultural lands and may be titled in accordance with the provisions of Commonwealth Act No. 141, as amended.

Ancestral lands within ancestral domains shall remain an integral part thereof and can only be transferred or otherwise encumbered subject to customary laws and traditions of the community where the same is located.

[78] Sec. 84 refers to them as "non-Christian Filipinos." The term "non-Christians" was coined during the American occupation to differentiate tribal Filipinos from the majority of the population who are Christians. See Montillo-Burton, Erlinda M., "*The Quest of the Indigenous Communities in Mindanao, Philippines: Rights to Ancestral Domain*," UNHR Working Paper, Working Group on Minorities Ninth Session, Sub-Commission on Promotion and Protection of Human Rights, Commission on Human Rights. Available at https://economics.uwo.ca/undergraduate/wuer/WUER_Citation_Guide.pdf, last accessed on July 14, 2023.

[79] The Indigenous Peoples' Rights Act of 1997, R.A. No. 8371, Chapter II, Sec. 3(d).

[80] *Id.*, Chapter VIII, Sec. 53(c).

[81] *Id.*, Sec. 52(d).

[82] *Supra* note 72.

[83] *Id.* at 393-394.

[84] **Ombudsman Carpio Morales v. Court of Appeals**, 772 Phil. 672, 736 (2015).

[85] *Id.*

[86] **Tiong Bi, Inc. v. Philippine Health Insurance Corporation**, 847 Phil. 906, 912 (2019).

[87] **Ekistics Philippines, Inc. v. Bangko Sentral ng Pilipinas, G.R. No. 250440**, May 12, 2021.

[88] **Evy Construction and Development Corp. v. Valiant Roll Forming Sales Corp.**, 820 Phil. 123, 126 (2017).

[89] **Bicol Medical Center v. Botor**, 819 Phil. 447, 459 (2017).

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