

KAINAN SA KIANGAN, REPRESENTED BY AQUILINO NARCISO/RAQUEL NARCISO, PETITIONER, VS. JERSON YAPAN, CHARLIE C. DELA CRUZ, Yael B. GONZALES, RONALDO CURA, GARIZALDY CURA, MANUEL DE ...

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before this Court is a Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure by petitioners Kainan sa Kiangan, represented by Aquilino Narciso and Raquel Narciso, seeking to annul and set aside the following issuances of public respondent National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000397-13 (NLRC NCR Case No. 01-01668-12), to wit: (1) Decision[1] promulgated on February 21, 2013, which affirmed the Labor Arbiter's November 29, 2012 Decision; and (2) Resolution[2] promulgated on April 4, 2013, denying petitioners' motion for reconsideration.

The instant controversy stemmed from a Complaint[3] for illegal dismissal, with claims for non-payment of separation pay and other benefits filed with the NLRC Regional Arbitration Branch by private respondents Jerson A. Yapan, Charlie C. Dela Cruz, Yael B. Gonzales, Ronaldo Cura, Garizaldy Cura, Manuel De Guzman, Bobby Rantayo and Daniel F. Juan against petitioners Kainan sa Kiangan, represented by Raquel C. Narciso and Aquilino Narciso, docketed as NLRC RAB No. NCR Case No. NCR-02-02253-12.

In their Position Paper, private respondents alleged[4] that on January 2, 2012, they filed a complaint against petitioners for monetary claims, such as underpayment of wages, overtime pay, holiday pay, premium pay, incentive leave pay and underpayment of 13th month pay, docketed as NLRC NCR Case No. 01-00004-12 and 01-00029-12, pending with Labor Arbiter Magno. After learning of the complaint against them, petitioners became very angry, and told private respondents "NAG FILE PALA KAYO NG KASO SA NLRC LABAN SA AMIN. GINIGIPIT TALAGA NINYO KAMI KAYA MAGANDA, MAGHIWAHIWALAY NA LANG TAYO." Private respondents in turn, tried to explain that they were only asking for the legal benefits due them. Petitioners then told private respondents not to report to work any more. Thereafter, petitioners changed the name of their establishment from Kaingan sa Kiangan to Stonebridge Catering Services. Since there was no just cause nor procedural due process was observed in their termination, private respondents maintained that they were illegally dismissed. Private respondents prayed for their reinstatement with full backwages, plus attorney's fees.

On the other hand, in their Position Paper,[5] petitioners countered that Stonebridge Catering Services should not be included in the complaint since it is different from Kainan sa Kiangan, and the latter is the one which hired private respondents on a daily basis. In essence, petitioners argued that private respondents are not their employees, since the former have no control over the latter's conduct. Furthermore, petitioners contended that they were merely protecting their business interests when they told private respondents to cease from reporting to work. Petitioners also insisted that there was forum shopping since there is an identity of parties, rights asserted and relief prayed for, in the present complaint and the case previously filed.

On November 29, 2012, the Labor Arbiter rendered a Decision in favor of private respondents, the decretal portion of which reads, as follows:[6]

WHEREFORE, premises considered, complainants except Angelito Mendoza are hereby declared to have been illegally dismissed from work.

Respondent Racquel C. Narciso(,) doing business under the style and name of Kainan sa Kiangan and Catering Services, now Stonebridge Catering Services(,) is hereby ordered to pay complainants except Angelito Mendoza the total amount of ONE MILLION NINE HUNDRED FORTY SEVEN THOUSAND FIVE HUNDRED THIRTY SIX PESOS and 08/100 (Php 1,947,536.08) representing their separation pay, backwages and attorney's fee per attached computation, which shall form an integral part of this Decision.

Petitioner appealed[7] the decision to the NLRC, stating therein that they have deposited Php 50,000.00 in cash and docket fees, which shall be treated as supplement to the appeal, among others.

On February 21, 2013, public respondent NLRC (4th Division) rendered the assailed Decision,[8] dismissing the appeal for non-perfection. In the said Decision, public respondent explained that the appeal bond of Php 50,000.00 posted by petitioners is not a reasonable amount in relation to the monetary award of Php 1,947,536.08 as required under Section 6, Rule VI of the Revised Rules of Procedure of the NLRC.

Petitioner filed a Motion for Reconsideration, but the motion was denied by the NLRC in a Resolution[9] promulgated on April 4, 2013.

Aggrieved, petitioner filed the present petition, raising the following issue:[10]

WHETHER OR NOT PUBLIC RESPONDENTS FOURTH DIVISION NLRC AND LA NAPIZA COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN THEY RULED THAT THERE IS NO FORUM SHOPPING COMMITTED BY RESPONDENTS AND CONSEQUENTLY ARE ENTITLED TO MONEY CLAIMS BY VIRTUE OF THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP. (Emphasis ours)

Petitioners reiterated their previous contention, specifically stating that:[11] (1) there is no employer-employee relationship between them and private respondents; and (2) forum shopping exists in this case since there are two actions or proceedings grounded on the same cause of action.

On the other hand, private respondents countered[12] that public respondent NLRC correctly dismissed petitioners' appeal for their failure to post the appeal bond. Furthermore, forum shopping is absent in this case since the first case private respondents filed on January 30, 2012 refers to money claims, while the instant case filed on January 30, 2012 pertains to illegal dismissal. Lastly, private respondents asseverate that petitioners failed to support with substantial evidence the latter's claim that the former were legally terminated due to serious violations.

The petition is unmeritorious.

A petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure requires the existence of grave abuse of discretion which exists where an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[13] In this case, no such grave abuse of discretion exists to warrant the issuance of the extraordinary writ of certiorari.

We note that in the assailed February 21, 2013 Decision, public respondent NLRC dismissed petitioners' appeal for non-perfection.[14] However, a perusal of the petition shows that petitioner skirted the issue, and failed to discuss the same.[15] In other words, petitioners failed to demonstrate how public respondent NLRC gravely abused its discretion in rendering the assailed Decision[16] and Resolution.[17]

The foregoing notwithstanding and in the interest of justice, we shall review the records and resolve the issue on the merits.

The Labor Code of the Philippines, provides:

ART. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis ours)

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Similarly, Section 4 (a) and 6 of Rule VI of the 2011 NLRC Rules of Procedure, provide:

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SECTION 4. Requisites for Perfection of Appeal. —

a) The appeal shall be:

- (1) filed within the reglementary period provided in Section 1 of this Rule;
- (2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
- (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, award or order;
- (4) in three (3) legibly typewritten or printed copies; and
- (5) accompanied by:
 - i) proof of payment of the required appeal fee and legal research fee;
 - ii) posting of a cash or surety bond as provided in Section 6 of this Rule; and
 - iii) proof of service upon the other parties. (Emphasis ours)

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of

the period for perfecting an appeal.

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SECTION 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

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No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

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The rule is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.[18] In *Philippine Scout Veterans Security & Investigation Agency, Inc. (PSVSIA) vs. Pascua*, it was held:[19]

After carefully deliberating the matter raised by movant-private respondent, We are of the opinion and so hold that petitioner's previously filed 'Motion to Reduce Bond,' which was not immediately acted upon by public respondent before the expiration of the period to file an appeal, is tantamount to an extension of the period for perfecting an appeal. If public respondent was not able to resolve such 'Motion to Reduce Bond,' still petitioner should have filed the required appeal bond within the ten-day reglementary period following receipt of the order, resolution, or decision of the NLRC to forestall the finality of such order, resolution or decision. Now, considering that petitioner did not file the required appeal bond which is an indispensable and jurisdictional requisite, the challenged NLRC Resolution dated March 31, 1998, dismissing petitioner's appeal for non-perfection thereof, is proper. It bears emphasizing that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law.

Similarly, in the assailed Decision, public respondent denied petitioners' motion for the reduction of the bond because the amount of Php 50,000.00 offered to be posted is not reasonable relative to the Labor Arbiter's award of Php 1,947,536.08.[20] There is showing that petitioners posted the appeal bond, hence, the Labor Arbiter's Decision became final and unappealable.

In brief, public respondent committed no grave abuse of discretion in dismissing the appeal for its non-perfection, and denying petitioners' motion for reconsideration thereon, the decision and resolution being in accord with the rules and jurisprudence.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

*Valenzuela, and **Laguilles, JJ., concur.

* Vice J. R.F. Barza, who is on leave, per Office Order No. 155-14-RSF dated April 22, 2014.

** Vice J. R.A. Cruz, who is on leave, per Office Order No. 151-14-RSF dated April 21, 2014.

[1] Rollo, pp. 30-33.

[2] Id. at 35-37.

[3] Id. at 53-54.

[4] Id. at 82-83.

[5] Id. at 63-73.

[6] Id. at 24-25.

[7] Id. at 97-117.

[8] See Note 1.

[9] Rollo, pp. 35-37.

[10] Id. at 11.

[11] Id. at 11-13.

[12] Id. at 181.

[13] Mediserv, Inc. vs. Court of Appeals (Special Former 13th Division), et. al., 617 SCRA 284, 297 (2010), citing Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, 170 SCRA 246, 254 (1989).

[14] Rollo, p. 32.

[15] Id. at 11-13.

[16] See Note 1.

[17] See Note 2.

[18] Philippine Transmarine Carriers, Inc. vs. Cortina, 415 SCRA 714, 718 (2003), citing Imperial Textile Mills, Inc. vs. NLRC, 217 SCRA 237 (1993).

[19] 467 SCRA 441, 445-446 (2005).

[20] Id. at 31.

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