

FERNANDO “DINGDONG” V. AVANZADO, PROVINCIAL VICE GOVERNOR, PROVINCE OF SIKUIJOR, PETITIONER, VS. HON. ALEJANDRO S. BAHONSUA JR., PRES. JUDGE RTC BRANCH 46 LARENA SIKUIJOR, MR. P...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before this Court is a petition for certiorari[1] under Rule 65 of the Rules of Civil Procedure. A circumspect evaluation of the instant petition reveals the following infirmities:

1. Petitioner assails the December 23, 2014 Order of the Regional Trial Court Branch 46 of Larena Siquijor. He elevated the instant case to this Court on a petition for certiorari under Rule 65 of the Rules of Civil Procedure without previously utilizing a motion for reconsideration of the December 23, 2014 assailed Order.
2. Petitioner failed to allege the facts of the case with certainty and the grounds and arguments relied upon for the relief prayed for, in violation of Section 1 of Rule 65 in relation with Section 3 of Rule 46 of the 1997 Rules of Civil Procedure[2].
3. Petitioner failed to indicate in the petition the material date showing when notice of the assailed December 23, 2014 Order of the RTC Branch 46 of Larena Siquijor was received, in violation of Section 3 of Rule 46 of the 1997 Rules of Civil Procedure. Resultantly the timeliness of the filing of the instant Petition for Certiorari cannot be determined.
4. Petitioner failed to attach copies of all pleadings and documents which are necessary for a thorough understanding and resolution of the instant petition pursuant to Section 3 of Rule 46 of the 1997 Rules of Civil Procedure such as, but not limited to the following:
 - a. The complete set of annexes to the Petition for Mandamus filed by the petitioner before the trial court;
 - b. Copy of Resolution No.2013-254 and Ordinance No.096 passed by the Sangguniang Panlalawigan of Siquijor;
 - c. Private Respondents' Answer, including annexes to the Petition for Mandamus filed with the trial court;
 - d. Petitioner's Reply, including annexes, to the Petition for Mandamus filed with the trial court; and
 - e. The parties' respective memoranda, including annexes, filed with the trial court.
5. Petitioner's counsel failed to indicate in the January 24, 2015 Petition his Mandatory Continuing Legal Education (MCLE) Compliance number for the fourth compliance period, in violation of Bar Matter No. 1922 dated September 2, 2008;
6. The Notarial Certificate in the Verification did not contain the place of issuance of the professional tax receipt (PTR) of the notary public, in violation of Section 2 (d) of Rule VIII of the 2004 Rules on Notarial Practice. Further the Notarial Certificate in the Certification of Non-Forum Shopping did not contain the serial number of the commission of the notary public, the province/city where the notary public was commissioned, the office address of the notary public, and the place of issuance of the professional tax receipt of the notary public, in violation of Section 2 (b), (c) and (d) of Rule VIII of the 2004 Rules on Notarial Practice;

7. There was an excess payment of docket and other lawful fees in the amount of Php 270.00.

In numerous occasions, the Supreme Court had ruled that the extraordinary remedy of certiorari is available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law, such as a motion for reconsideration. The writ of certiorari does not lie where another adequate remedy is available for the correction of the error[3].

Although there are exceptions[4] to where a petition for certiorari will lie without the prior filing of a motion for reconsideration, in the instant petition, petitioner failed to give any explanation why his petition would be classified into any of the exceptions. In the case of *Delos Reyes v. Honorable Waldo Q. Flores*[5], the Supreme Court upheld the dismissal by this Court of a petition for certiorari filed without the prior filing of a motion for reconsideration on the ground of prematurity, saying that:

“The procedural shortcut taken by petitioners finds no justification either in law or in jurisprudence. It is fatal to their cause of action. Accordingly, we rule that the Court of Appeals committed no error in dismissing for prematurity the petition for certiorari and mandamus filed by petitioners.”

In addition, Section 3 of Rule 46 of the 1997 Rules of Civil Procedure provides that:

“x x x.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.”

Pursuant to the abovementioned rules, petitioner’s failure to comply with the requirements laid down under Rule 46 is also a sufficient ground for the dismissal of the petition. In the same manner, there are also exceptions to the strict observation of the rules of procedure in case of exceptional circumstances, in the instant case petitioner also has offered no explanation why he was not able to comply with the rules laid down by the Rules of Court in the filing of a petition for certiorari.

In view of the foregoing, for being premature due to petitioner’s failure to avail of the remedy of a motion for reconsideration, and for failing to comply with Section 3 Rule 46 in relation with Section 1 of Rule 65 of the Rules of Civil Procedure, without just cause, the instant petition for certiorari is hereby **DISMISSED**.

The Accounting and Disbursement Unit of this Court is **DIRECTED** to return the Php 270.00 excess payment of docket and other lawful fees to petitioner. Petitioner is **DIRECTED** to coordinate with Accounting and Disbursement Unit of this Court within five (5) days from notice for the release of the excess payment of docket and other lawful fees.

SO ORDERED.

Ingles, G.T., Chairperson and Lagura-Yap, M.B., JJ., concur.

[1] Rollo, pp.3-11

[2] Section. 3. Contents and filing of petition; effect of non-compliance with requirements. - The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly

legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[3] G.R. No.141008, January 16, 2001.

- [4] a. where the order is a patent nullity, as where the court a quo has no jurisdiction;
- b. where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- c. where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;
- d. where, under the circumstances, a motion for reconsideration would be useless;
- e. where petitioner was deprived of due process and there is extreme urgency for relief;
- f. where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- g. where the proceedings in the lower court are a nullity for lack of due process;
- h. where the proceedings was ex parte or in which the petitioner had no opportunity to object; and
- i. where the issue raised is one purely of law or where public interest is involved.

[5] Delos Reyes v. Honorable Waldo Q. Flores, G.R. No.168726, March 5, 2010.

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