

**SPOUSES WILFREDO CEZAR AND ZENaida SOMBILON CEZAR,
PETITIONERS, VS. HONORABLE JEMENA L. ABELLAR-ARBIS, IN HER
CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH
6, KALIBO...**

Ponente: DIY, J.

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DIY, J.:

Before the Court is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, with prayer for issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed by petitioners, assailing the Order of Branch 6, Regional Trial Court of Kalibo, Aklan, dated September 17, 2013,[1] as well as its Order dated December 2, 2013 denying petitioners Motion for Reconsideration.[2]

At the outset, it bears stressing that the instant Petition for Certiorari is fatally defective since it suffers from the following infirmities:

1. Petitioners failed to show any competent proof of identity pursuant to Section 12 (a), Rule II of the 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC dated February 19, 2008;[3] and
2. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping did not contain the serial number of the commission of the notary public and the province and city where he was commissioned, in violation of Section 2(b) and (c), Rule VIII of the 2004 Rules on Notarial Practice.[4]

Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:

SECTION 1. Petition for certiorari.- When any tribunal,

board or officer exercising judicial or quasi-judicial functions has acted without or in excess of 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 annulling or modifying the proceedings of such tribunal, board or officers, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

(Emphases supplied)

Furthermore, under Section 3, paragraph 3, Rule 46 of the same Rules, as amended, petitions for certiorari must be verified and accompanied by a sworn certification of non-forum shopping, viz:

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.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

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 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.

(Emphases supplied)

The failure of petitioners to comply with the basic procedural requirement of providing competent proof of identity in the jurat and the failure of the notary public to indicate the serial number of his commission and office address, as provided in the 2004 Rules on Notarial Practice,[5] makes the verification and certification of non-forum shopping defective. Hence, in effect, the instant Petition for Certiorari failed to comply with the verification and certification of non-forum shopping requirement as specifically provided for under Section 1, Rule 65 the 1997 Rules of Civil Procedure.

It is already a well-settled rule in our laws that Certiorari is an extraordinary, prerogative remedy that is never issued as a matter of right. As such, strict compliance with requirements laid down by the Rules of Court is imposed upon a party who who wishes to avail of the same remedy.[6] Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.[7]

Even if We are to assume in arguendo that the instant petition is devoid of any fatal infirmity, the application made by petitioner for a temporary restraining order or writ of preliminary injunction should still be denied for lack of merit.

Rule 58 of the 1997 Rules of Civil Procedure governs the issuance of a writ of preliminary injunction and TRO. Hence, We glean upon said rule for guidelines in the issuance of an injunctive writ.

Section 3, Rule 58 provides:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence lays down the requisites which must be proven before a writ of preliminary injunction, be it mandatory or prohibitory, will issue, to wit:

- (1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse;
- (2) There is a material and substantial invasion of such right;
- (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[8]

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable.[9] The applicant must possess a clear legal right -- meaning one clearly founded in or granted by law or is "enforceable as a matter of law." [10]

After a careful consideration of the instant application for TRO and/or writ of preliminary injunction, We are not convinced that petitioner stands to suffer grave and irreparable injury or that it has a clear legal right which ought to be protected. As a matter of fact, the Writ of Execution[11] was not solely directed upon herein petitioners alone as it involves all the other defendants in Civil Case No. 6068 entitled "Andrea T. Castillo, Jukirini Attar and Errol M. Santillan vs. Wilfredo Cezar, Zenaida Sombilon Cezar, Arthur Mondoy, Julian Torres and Alfredo Tubiera".

Furthermore, the Supreme Court held in the recent case of PNB vs. Castalloy Technology Corporation[12] that an injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.

In the case at bench, the Court finds that the injury that petitioners are bound to suffer due to the execution of the Decision of the court a quo is susceptible of mathematical computation.

The Supreme Court has elucidated as follows:

A writ of preliminary injunction is a provisional remedy that may be resorted to by litigants, only to protect or preserve their rights or interests during the pendency of the principal action. To authorize a temporary injunction, the plaintiff must show, at least prima facie, a right to the final relief. Moreover, it must show that the invasion of the right sought to be protected is material and substantial, and that there is an urgent and paramount necessity for the writ to prevent serious damage.

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.[13]

(Emphasis supplied)

WHEREFORE, premises considered, the Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Maxino, and Diy, JJ., concur.

[1] Rollo, p. 25.

[2] Ibid., p. 26.

[3] SEC. 12. Competent Evidence of Identity. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; xxx.

[4] SEC. 2. Contents of the Concluding Part of the Notarial Certificate. - The notarial certificate shall include the following:

(a) the name of the notary public as exactly indicated in the commission; x x x

(c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; x x x

[5] 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC dated February 19, 2008.

[6] Eagle Ridge Golf and Country Club v. Court of Appeals & Eagle Ridge Employees Union (EREU), G.R. No. 178989, March 18, 2010.

[7] Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals, G.R. No. 189151, January 25, 2012.

[8] St. James College of Parañaque v. Equitable PCI Bank, G.R. No. 179441, August 9, 2010.

[9] Power Sites and Signs v. United Neon, G.R. No. 163406, November 24, 2009.

[10] Boncodin v. National Power Corporation Employees Consolidated Union (NECU), G.R. NO. 162716, September 27, 2006, citing Napocor Employees Consolidated Union (NECU) v. The National Power Corporation, G.R. No. 157492, March 10, 2006.

[11]

[12] G.R. No. 178367, March 19, 2012.

[13]Selegna Management and Development Corporation v. United Coconut Planters Bank, G.R. No. 165662, May 3, 2006.

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