

MYRNA ROQUE, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Before Us is the Petition for Review[1] ("Petition" for brevity) filed by petitioner Myrna Roque ("petitioner" for brevity) under Rule 42 of the Rules of Court.

To begin with, a perusal of the Petition[2] at bench reveals that it suffers from the following infirmities:

First, petitioner failed to furnish the Office of the Solicitor General ("OSG" for brevity) a copy of the Petition[3]. This, considering that the OSG is the statutory counsel for the People of the Philippines in all criminal cases pending with the Court of Appeals, ("CA" for brevity). That the Office of the Solicitor General shall represent the Government of the Philippines in the Supreme Court and in the Court of Appeals in all criminal proceedings is in accordance with Section 35(1), Chapter 12, Title III of Book IV of Executive Order No. 292, otherwise known as "The Administrative Code of 1987", which provides:

"Section 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party." (Emphasis supplied)

The failure of a party, such as petitioner, to furnish the OSG a copy of the Petition[4] renders the Petition[5] dismissible under Section 3, Rule 42 of the Rules of Court, as is in accordance with the following declaration of the Supreme Court in *Merliza A. Muñoz vs. People of the Philippines*, G.R. No. 162772, March 14, 2008:

"Rule 42 prescribes the following requirements for the filing with the CA of a petition for review from a decision of the RTC:

Section 1. How appeal taken; time for filing. A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said Court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. xxx.

Clearly, therefore, the timeliness of a petition depends not only on its seasonable filing but also on the prompt service of copy thereof on the adverse party and the RTC. Thus, the petition must be accompanied by proof of

service as prescribed under Rule 13 xxx

xxx

Failure to serve copy of the petition on the adverse party or to show proof of service thereof is a fatal defect, for which the petition can be dismissed under Section 3, Rule 42, xxx

xxx

In the present case, petitioner failed to serve copy of her petition on the Solicitor General as counsel of the adverse party, the People of the Philippines. Hence, the CA did not commit any reversible error in dismissing her petition." (Emphasis supplied)

Second, petitioner failed to attach a written explanation of her failure to personally file the Petition. This is in violation of Section 11, Rule 13 of the Rules of Court, which provides:

"Section 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed." (Emphasis supplied)

The failure of a party, such as petitioner, to attach a written explanation of "non-personal filing" as required under Section 11, Rule 13 of the Rules of Court, results to the expunction of the Petition. This is pursuant to following declaration of the Supreme Court in *Alex M. Cadornigara vs. National Labor Relations Commission, et. al.*, G.R. No. 158073, November 23, 2007:

"When we crafted Section 11, Rule 13 of the Rules of Court:

Priorities in modes of service and filing. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may be cause to consider the paper as not filed. (Emphasis and Italics were made in the original)

We did not intend it to be just some silly rule the parties can ignore when convenient, and the courts disregard when expedient. We designed it to serve a very real purpose: to ensure that pleadings, motions and other papers reach the courts directly and promptly, so that they may be acted upon expeditiously; and to forestall the deplorable practice among some lawyers of serving or filing pleadings by mail to catch their opposing counsel off-guard. Thus, these lawyers leave the opposing counsel with little or no time to respond accordingly; or, upon receiving notice from the post office of the registered parcel containing the pleading or other papers from the adverse party, the latter may unduly procrastinate before claiming said parcel -- or, worse, not claim it at all -- and thereby cause undue delay in the disposition of such pleading or other papers.

Under said rule, personal service and filing of pleadings and other papers is a mandatory mode, especially when the peculiar circumstances of the case -- such as the proximity of the office of a party's counsel to the court or to the office of the opposing party's counsel -- make such mode practicable. If another mode is employed, there must be attached to the pleading or paper, a written explanation of such recourse. Omission of a written explanation will give the court cause to expunge the pleading or paper not personally served or filed. xxx

xxx

In fine, the CA acted within the bounds of its discretion under Section 11 of Rule 13 in refusing to accept the petition for certiorari for failure of petitioner to attach a written explanation of non-personal filing." (Emphasis

and Italicize Supplied)

GIVEN ALL THESE, the Petition is DISMISSED.

SO ORDERED.

Didican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 9-16.

[2] Rollo, pp. 9-16.

[3] Rollo, pp. 9-16.

[4] Rollo, pp. 9-16.

[5] Rollo, pp. 9-16.

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