

**MERLINDA MARQUESES (MOTHER), KAIZER JOHN MARQUESES AND KYRON DAVE MARQUESES, PETITIONERS, VS. CLARO A. ARELLANO, (PROSECUTOR GENERAL OF DOJ), MCLYN MARIA COMPETENTE, SERRANDO AT...**

Ponente: LAMPAS PERALTA, J.

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**LAMPAS PERALTA, J.:**

Before the Court is a petition for certiorari filed under Rule 65, 1997 Rules of Civil Procedure, as amended, seeking the nullification of the Resolution dated October 13, 2014[1] of public respondent Prosecutor General, Department of Justice which dismissed petitioners' petition for review of the Resolution dated June 5, 2013 of the City Prosecutor, Antipolo City for having been filed beyond the prescribed period and for utter lack of merit. Records bear that the petition was filed on February 23, 2015. On the same date, a "Motion for Exemption of Payment for Filing Fee" and "Motion for Extension/Fresh Period of Time" were also filed.

Petitioners' "Motion for Extension/Fresh Period of Time" prayed for an extension of fifteen (15) days from February 8, 2015, or until February 23, 2015, within which to file the petition for certiorari. The Court finds no valid basis to grant the extension prayed for.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended, does not anymore contain any provision on extension of period to file a petition for certiorari. Thus, a petition for certiorari must be filed within sixty (60) days from notice of the judgment, order or resolution sought to be assailed. It is only under exceptional circumstances, and subject to the sound discretion of the Court, that said period may be extended. As held:

In *Laguna Metts Corporation v. Court of Appeals*, we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for certiorari in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition, for compelling reasons. Instead, we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. Consequently, we pronounced that when the CA granted the motion for extension, it in effect disregarded and modified, if not outrightly reversed, the Supreme Court En Banc Resolution in A.M. No. 07-7-12-SC. We then said that in so doing, the appellate court arrogated unto itself "a power it did not possess, a power that only this Court may exercise. Consequently, we ruled that petitions for certiorari must now be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*, we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, ipso facto, make the filing of a motion for extension to file a Rule 65 petition absolutely prohibited. We held in *Domdom* that if absolute prescription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.[2]

(Underlining supplied)

In the present case, the reasons for the extension of period prayed for, such as the alleged traffic encountered, the eye ailment, and the busy schedule of the unspecified party in attending hearings, are not highly meritorious, much less plausible. In any event, the petition is fatally defective for the following reasons:

1. There is no showing that a motion for reconsideration was filed prior to the filing of the present petition.
2. There is no affidavit of service of the petition upon respondents.[3]
3. There is no written explanation as to why the service and filing of the petition were not done personally;[4]
4. The assailed Resolution attached to the petition is a mere photocopy. Apart from this, the petition is also insufficient in substance and patently without merit. As the City Prosecutor resolved:

After a careful scrutiny of the evidence presented, the undersigned does not find probable cause in the instant complaint. Firstly, as regards the charge of Unsanitary Waste Disposal, it appears from the records of the complaint that a settlement had already been reached as between the complainant and respondents Arco, Atacador, Competente and Tundag way back in July 14, 2010 regarding the improper waste disposal of the latter. Such agreement, however, was violated by the respondents for some reason. Under Section 417 of the 1991 Local Government Code, the amicable settlement or arbitration award may be enforced by execution by the lupon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court. The proper remedy therefore, is for the complainant to have such settlement enforced. The records are, however, bereft of any proof as to whether or not the complainant has exhausted such remedy, be that as it may, it is futile on her part to file a complaint nearly two (2) years after the said settlement was agreed upon.

Secondly, there is no such crime as Negligence of Duty Resulting to Damage of Health and Property. Also, such charge is prompted by the construction of a canal near her house. Such action in turn, cannot be corrected by this Office as it is without any authority to do so. If anything, such problem should be addressed to the Zoning Board of Barangay Cupang.[5]

Also, noteworthy is the following disquisition of the Prosecutor General in the assailed Resolution dated October 13, 2014:

In this case, appellants admitted to have received the assailed resolution on June 17, 2013. Accordingly, they had until July 2, 2013 (Tuesday) within which to file a petition for review. They only filed the instant petition on July 4, 2013. Clearly, the petition was filed beyond the prescribed period, hence, it may be dismissed based on the ground (see Section 12, 2000 NPS Rule on Appeal).

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Finally, after a thorough evaluation of the petition and the grounds relied upon therein, we find no cogent reason to revise, reverse or set aside the assailed resolution, it being in accord with existing laws and prevailing jurisprudence. Relevantly, Section 7 of the 2000 NPS Rule on Appeal provides: “[T]he Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raise therein are too unsubstantial to require consideration” (see Section 12, *supra*).[6]

In view of the foregoing considerations, there is no more need to address petitioners' “Motion for Exemption of Payment for Filing Fee,” and the same is merely noted.

WHEREFORE, petitioners' “Motion for Extension/Fresh Period of Time” is denied, and the petition is dismissed. This case is considered closed and terminated.

The “Motion for Exemption of Payment for Filing Fee” is merely noted.

**SO ORDERED.**

Cruz, S.C., and Hernando, R.P.L., JJ., concur.

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[1] pp. 31-33, Rollo

[2] Mid-Islands Power Generation Corporation vs. Court of Appeals, et al., 667 SCRA 342 (2012)

[3] Section 13, Rule 13, *ibid.*

[4] Section 11, Rule 13, 1997 Rules of Civil Procedure

[5] p. 40, Rollo

[6] p. 32, *ibid.*

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