

TATA MALAWI, PETITIONER, VS. REGIONAL TRIAL COURT OF BAGUIO CITY – BRANCH VII AND MUNICIPAL TRIAL COURT IN CITIES BRANCH III OF BAGUIO CITY, PUBLIC RESPONDENTS,

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Aggrieved by the appellate court's rejection of petitioner's Motion for Reconsideration[1] and Motion to Admit Memorandum of Appeal,[2] the current Petition[3] was utilized premised on the ascription of wanton exercise of the faculty conferred by evidentiary norms upon public respondent's judicial function.[4]

The legal tussle arose from a Complaint[5] for desahucio[6] filed by petitioner against private respondents. Dismayed by the adverse Decision of the Baguio MTCC, petitioner filed a Notice of Appeal before the RTC.[7]

In default of the required Memorandum of Appeal despite due notice,[8] and at the instance of co-private respondent Lilian Tioco, the lower court dismissed[9] the appeal of petitioner through the Order[10] dated May 30, 2012.

Aggrieved, petitioner filed a Motion for Reconsideration[11] with a Motion to Admit Memorandum of Appeal,[12] but the subject Motion was rebuffed[13] by the court for improper notice to the parties for the slated hearing thereof.

Hence, We now have the instant recourse at hand.

Unlike the trial court's belief, petitioner argued that private respondents were notified and given copies of the Motion as evidenced by registry receipts attached on the Motion.[14] Malawi maintained that she rightfully filed a Petition for Certiorari on the ground of grave abuse of discretion on the part of the trial court. While conceding that certiorari is available only if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, petitioner justified the mode of appeal she adopted in that under the Rules of Court, no appeal may be taken from an order denying a motion for reconsideration, i.e., the June 26, 2012 Resolution of the RTC.

On the other hand, co-private respondent Victor Garay,[15] insisted that neither he nor his counsel were furnished with a copy of the Motion. For private respondents Lacap,[16] Chan[17] and Tioco,[18] they asserted that a Petition for Certiorari is not a substitute for a lost appeal and that the court a quo acted well within its discretion when it brushed aside petitioner's Motion for Reconsideration for failure to comply with the required notice to all parties.

Independently of an extensive discourse on the propriety of pursuing the special civil action of certiorari under Rule 65,[19] We find no grave abuse of discretion on the part of the public respondent.

In repudiating petitioner's Motion for Reconsideration, the trial court observed that:

“...but the accompanying notice was addressed only to the Clerk of Court. It is important to note that in the case of Bonificacio Obrero vs. Atty. Ma. Victoria Acidera x x x x x, the Supreme Court held that:

Section 5. Notice of Hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

It is an elementary rule of procedure that any motion which does not comply with the above procedural requisites is a mere scrap of paper, should not be accepted for filing and, if filed, is not entitled to judicial cognizance. As such, it produces no effect on the reglementary period for the filing of the required pleading. Thus, where the motion is directed to the clerk of court, not to the parties, and merely states that the same is to be submitted "for the resolution of the court upon receipt thereof," such a motion is fatally defective. Any subsequent action of the court thereon will not cure the flaw, for a motion with a fatally defective notice is a "useless piece of paper."

WHEREFORE, the Court resolves to take no action on said motion for failure of the movant to strictly comply with the cited Rule.

SO ORDERED."

Indeed, a perusal of the Motion[20] revealed that the subject Motion for Reconsideration and Motion to Admit Memorandum on Appeal was addressed to the Clerk of Court of RTC, Branch 7, Baguio City, unlike the specific requirement of notice addressed to all parties concerned as mandated by Section 5, Rule 15 of the 1997 Rules of Civil Procedure.[21]

Even if We were to ignore the preliminary defect of the Motion on the necessity of a Motion to be addressed to all parties in the light of the ensuing passage from Mr. Justice Regalado that:

"... The provisions of Sec. 4 requiring the notice to be addressed to the opposing party is merely directory. What is mandatory is the service of the motion on the opposing counsel indicating the time and place of hearing..."[22]

it appeared that of the five defendants haled to court below,[23] there was no certainty as to the alleged notice to Atty. Michelle Ruth C. Arciaga, who represented co-defendant Victor Garay,[24] inasmuch as the photocopy of the subject Motion on file contained an erasure of her name underneath the portion for the notice at page two of the Motion.[25] Withal, inasmuch as there were only photocopies of what appeared to be three registry receipts presumably for the Motion, the Court will be in a quandary to determine as to who were the intended recipients thereof, especially so when there were three names of other lawyers apart from Atty. Arciaga.

As part and parcel of procedural due process,[26] Section 5, Rule 15 of the Rules of Court mandated that all motions should be addressed to all parties concerned. For having been remiss with the duty to comply with the rules, petitioner cannot blame the court nor attribute grave abuse of discretion thereon, for the dismissal of her Motion.

Irrespective of the technical flaw on the Motion of petitioner before the Regional Trial Court, and even if We accede to petitioner's principal submission on the Petition for Certiorari, We can hardly ignore that the reason advanced by counsel for petitioner before the Regional Trial Court, towards disclaimer of the notice to file a Memorandum,[27] did not jibe with the categorical representation from petitioner's new counsel on the face of the Petition itself before Us, relative to recognition of receipt by the former counsel of the notice to file the Memorandum.[28]

In the light of what appeared to Us as irreconcilable vacillation of petitioner's counsel in regard to the aspect of cognition of the notice to file memorandum on appeal before the Regional Trial Court, the Order of dismissal dovetailed with Section 7 (b), Rule 40 of the 1997 Rules of Civil Procedure,[29] and yes, whatever perceived infirmity in the resolution by the appellate court on petitioner's subsequent Motion for Reconsideration, following

the rejection of the appeal, was practically a harmless error[30] which can not alter the outcome of the current Petition.

We then reiterate that for certiorari to lie, it must be convincingly proved that the tribunal committed grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law, or that the trial court or tribunal exercised its power in an arbitrary and despotic manner by reason of passion and personal hostility.[31]

On the basis of these criteria, We hold that the public respondent did not commit grave abuse of discretion inasmuch as it merely complied with procedural rules.

Per the Petition,[32] Malawi tenaciously argued that she has a valid and just claim over the subject property per the Memorandum of Agreement entered between her and private respondent Lilian Tioco and that she should not be held responsible for the negligence of her counsel. Again, the determination of this issue is not necessary in the disposition of the present case in the light of the diametrically opposed claim of petitioner's former counsel and petitioner's new counsel on the Petition.

It is an oft-repeated ruling that a writ of certiorari may be issued only for correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior courts within the bounds of its jurisdiction.[33] Where the issue in question involves or affects the wisdom and legal soundness of the decision – not jurisdiction of the court to render said decision – the same is beyond the province of a Petition for Certiorari.[34]

To echo acknowledged axiom in remedial law, the remedies in Rule 65 are extraordinary, and their use is restricted to truly extraordinary cases.[35]

WHEREFORE, with the foregoing disquisition, the Petition for Certiorari dated July 11, 2012 is hereby DISMISSED for lack of merit.

SO ORDERED.

Reyes, Jr. J.C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015 effective February 2, 2015.

[1] Annex "E", Rollo, pp. 48-49.

[2] Annex "F", Rollo, pp. 50-58.

[3] Dated July 11, 2012, Rollo, pp. 3-33.

[4] Section 3 (m) (n), Rule 131, Revised Rules on Evidence.

[5] Rollo, pp. 110-114.

[6] 1 Regalado, Remedial Law Compendium, 10th edition, 2010, page 871.

[7] Dated March, 5, 2012, Rollo, page 418.

[8] See Order dated May 30, 2012, Rollo, page 46.

[9] Upon Motion to Dismiss filed by private respondent Lilian Tioco, Rollo, pp. 427-428.

[10] Annex "C", Rollo, page 46.

[11] Annex “E”, Rollo, pp. 48-49.

[12] Annex “F”, Rollo, pp. 50-58.

[13] Annex “A”, dated June 26, 2012, Rollo, page 37.

[14] Petition, pp. 15-16, Rollo, pp. 17-18.

[15] Comment dated September 17, 2012, Rollo, pp. 487-495.

[16] Comment dated September 7, 2012, Rollo, pp. 458-472.

[17] Id.

[18] Comment dated September 10, 2012, Rollo, pp. 478-485.

[19] Section 1, Rule 41, 1997 Rules of Civil Procedure which pertinently reads:

No appeal may be taken from:

x x x

(c) an order disallowing or dismissing an appeal;

x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

[20] Annex “E”, Rollo, page 49.

[21] 1 Regalado, Remedial Law Compendium, 10th edition, 2010, page 266 – “Any motion that does not comply with Secs. 4,5 and 6 of this Rule is a mere scrap of paper, should not be accepted for filing and, if filed, is not entitled to judicial cognizance and does not affect any reglementary period involved for the filing of the requisite pleading. Thus, where the motion is (a) directed to the clerk of court, not to the parties, and (b) merely states that the same is submitted “for the resolution of the court upon receipt thereof,” said motion is fatally defective. (Cledera, et al. v. Sarmiento, et al., L-32450-51, June 10, 1971)...”

[22] 1 Regalado, Vide, page 267, citing Estipona v. Navarro, et al., L-41825, January 30, 1976, Maturan v. Araula, G.R. No. 57392, January 30, 1982.

[23] Annaliza Lacap, Victor Garay, Mark Trinidad, Felipe Chan and Lilian Tioco, per the Complaint, Rollo, page 110.

[24] Per the Answer, Position Paper, Rollo, pp. 127, 136, 343, 348.

[25] Rollo, page 49.

[26] 1 FERIA and Noche, Civil Procedure Annotated, 2013 edition, page 474, citing KKK Foundation, Inc. v. Calderon-Burgos, G.R. No. 163785, December 27, 2007.

[27] Paragraph 2, Motion for Reconsideration, ,... , Rollo, page 48

[28] Paragraph 1, page 6, Petition for Certiorari, Rollo, page 8; Section 4, Rule 129, Section 2 (a), Rules 131, Revised Rules on Evidence; Article 1431, New Civil Code.

[29] 1 Regalado, Vide, page 543, citing Enriquez vs. CA, G.R. No. 140473, January 28, 2003.

[30] Section 6, Rule 51, 1997 Rules of Civil Procedure; 1 Feria and Noche, Vide, at page 425- “It is a well-established rule that departures from procedure may be forgiven where they do not appear to have impaired the substantial rights of the parties.” [citing *Alonso vs. Villamor*, 16 Phil. 315 and other cases]

[31] *Inc Shipmanagement, Inc. et al., v. Moradas*, G.R. No. 178564, January 15, 2014 citing *Yu v. Hon. Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348. *Atong Paglum, Inc. v. COMELEC*, G.R. No. 203766, April 2, 2013 citing *Mitra v. COMELEC*, G.R. No. 191938, July 2, 2010.

[32] Rollo, pp. 24-26.

[33] *Beluso v. COMELEC*, G.R. No. 180711, June 22, 2010 citing *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, G.R. No. 156067, August 11, 2004

[34] *Beluso v. COMELEC*, G.R. No. 180711, June 22, 2010 citing *Fajardo v. Court of Appeals*, G.R. No. 157707, October 29, 2008.

[35] 1 Regalado, Vide, 10[th] edition, 2010, page 795 citing *Republic v. Villarama, Jr., etc.*, G.R. No. 117733, September 5, 1997.

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