

REMEDIOS R. MALONE, PETITIONER, VS. SPOUSES ANANIAS GALVES, MINDA GALVEZ AND THE HONORABLE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 1, TAGUM CITY, DAVAO DEL NORTE, RE...

Ponente: CAMELLO, J.

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CAMELLO, J.:

Petitioner comes to this Court via Petition for Certiorari with prayer for temporary restraining order and writ of preliminary injunction under Rule 65 of the Rules of Court, seeking to annul the Decision dated 12 September 2013[1] rendered by the Regional Trial Court, Branch 1, Tagum City, Davao del Norte in Civil Case No. 4079 for quieting of title.

Records, however, reveals that petitioned failed to strictly comply with Rule 65 of the Rules of Court and other related provisions of law in filing this petition.

First, petitioner failed to attach an Affidavit of Service as proof of service of copies of the petition on the court of origin and the adverse party in violation of Section 13 Rule 13 of the Rules of Court.

Second, petitioner failed to attach to the petition pertinent pleadings and material portions of the records such as the Complaint, Answer, Pre-Trial Briefs, and such other pleadings filed before the RTC in contravention of Section 3, Rule 46 in relation to Rule 65 of the Rules of Court.

Third, the Verification/Certification (of non-forum shopping) signed by petitioner does not indicate the pendency of CA G.R. SP No. 043772 involving the same parties and related issues, although the petition repeatedly cites said pending case in relation to this case.

Fourth, the notarial certificate of the Verification/Certification does not indicate (a) the serial number of the notary public's commission; (b) the province or city where he is commissioned; and (c) the expiration date of his commission in non-compliance with Section 2, Rule VIII of the 2004 Rules on Notarial Practice.

Most importantly, petitioner failed to file a motion for reconsideration. It is a well-established rule that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court.

In *Novateknika Land Corporation v. Philippine National Bank*,[3] the Supreme Court pointed out that before a petition for certiorari can prosper, the petitioner must be able to show, among others, that he or she does not have any other “plain, speedy and adequate remedy in the ordinary course of law” — which referred to a motion for reconsideration of the questioned order, resolution or decision. The Supreme Court explained that before filing a petition for certiorari in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. The reason for this is to afford the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case.[4]

In *Sim v. National Labor Relations Commission*,^[5] the Supreme Court had the occasion to say:

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.

[Emphasis supplied.]

The Supreme Court, in *Republic v. Pantranco North Express, Inc.*^[6] opined, though, that the rule is not absolute and jurisprudence has laid down exceptions when the filing of a petition for certiorari is proper notwithstanding the failure to file a motion for reconsideration. In *Pantranco*, the Supreme Court enumerated these exceptional circumstances:

- (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 proceedings 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 of the petitioner or the subject matter of the petition 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 proceeding 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 public interest is involved.

In this case, petitioner failed to show that this case falls under any of the exceptions. Thus, this petition must be denied outright.

There is another reason to deny this petition outright, that is, petitioner resorted to a wrong mode of review.

Supreme Court Circular No. 2-90^[7] clearly lays down the proper modes of appeal to the Court of Appeals from the Regional Trial Courts:

- Appeals to the Court of Appeals. – On the other hand, appeals by certiorari will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:

- a) by writ of error (ordinary appeal) – where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or
- b) by petition for review – where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction.

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

- Erroneous Appeals. – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or

inappropriate mode shall be dismissed.

[Emphasis supplied.]

The RTC decided Civil Case No. 4079 for quieting of title in the exercise of its original jurisdiction. Thus, the RTC Decision dated 12 September 2013 should have been appealed to the Court of Appeals by ordinary appeal under Rule 41 of the Rules of Court.

Under Rule 41, Rules of Court, an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules of Court to be appealable. The manner of appealing an RTC judgment or final order is also provided in Rule 41 as follows:

Section 2. Modes of appeal.-

(a) Ordinary appeal.- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review.- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

[Emphasis supplied.]

The Rules of Court is clear and explicit. Thus, petitioner's recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. This conclusion still stands if, as petitioner claims that the issue in this case is purely of law because in that case the appeal by certiorari to the Supreme Court, not to this Court, should have been the proper remedy.

In fine, by petitioner's error in choice of review, the assailed Decision has already become immutable and unalterable. It may no longer be reviewed, or in any way modified directly or indirectly, by this Court, not even by the Supreme Court.

FOR THESE REASONS, this petition is DISMISSED outright.

The Division Clerk of Court is DIRECTED to return the excess payment of Three Hundred Twenty (Php 320.00) Pesos.

SO ORDERED.

Lopez and Inting, JJ., concur.

[1] Rollo, pp. 21-34.

[2] Captioned “Remedios R. Malone v. Sps. Ananias G. Galvez and Minda Galvez”, which assails the issuance of the Board of Liquidators and the Office of the President. This case was raffled to Justice Henri Jean Paul B. Inting, and was declared submitted for decision on 20 July 2012.

[3] G.R. No. 194104, 13 March 2013.

[4] See Philippine National Bank v. Arcobillas, G.R. No. 179648, 07 August 2013.

[5] G.R. No. 157376 , 02 October 2007 citing Cervantes v. Court of Appeals, G.R. No. 166755, 18 November 2005.

[6] G.R. No. 178593, 15 February 2012.

[7] Guidelines to be observed in appeals to the Court of Appeals and to the Supreme Court effective 09 March 1990.

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