

**FIVE STAR BUS COMPANY INC., AND IGNACIO TORRES,
PETITIONERS, VS. COURT OF APPEALS, JUDGE JAIME F. BAUTISTA,
RTC-BR. 75, VALENZUELA, METRO MANILA AND SAMUEL KING
SAGARAL II, RESP...**

G.R. No. 127064. August 31, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The threshold issue in this petition for review on certiorari is whether the Court of Appeals can summarily dismiss a petition on the ground that the certification on non-forum shopping required by Supreme Court Circular No. 28-91 was signed by counsel and not by petitioners themselves.

On 9 November 1991, at around 11:00 o'clock in the evening, along the MacArthur Highway in Valenzuela, Metro Manila, the Suzuki Supercarry Mini-Van driven by private respondent Samuel King Sagaral II collided with a passenger bus owned and operated by petitioner Five Star Bus Company and driven by co-petitioner Ignacio Torres.[1]

On 1 April 1992 private respondent Sagaral filed a civil action for damages against petitioners and the case was assigned to Branch 171 of the Valenzuela Regional Trial Court and docketed as Civil Case No. 3812-V-92.

When amicable settlement failed, trial ensued with private respondent Sagaral (plaintiff in the court a quo) initially presenting his evidence. Several years passed and on 26 December 1996 Sagaral finally rested his case.[2] On 12 March 1996 the trial court ordered petitioners herein (defendants in the court a quo) to present their evidence on 25 April 1996 and 9 May 1996.[3]

The presentation of evidence by petitioners was snagged by several postponements. The first was when Presiding Judge Adriano R. Osorio reset the 25 April 1996 hearing to 9 May 1996 as he had to go on forced vacation leave from 23 April 1996 to 25 April 1996.[4] But during the 9 May 1996 hearing, petitioner Ignacio Torres failed to appear prompting the lower court to cancel the hearing. According to petitioners, Torres was then detained in jail due to a separate pending criminal case filed against him by Sagaral before Br. 172 of the RTC of Valenzuela. Petitioners further explained that Torres could not post bail earlier for his provisional liberty since no notice was sent to him regarding the criminal complaint.[5]

On 4 June 1996 Judge Osorio ordered the civil case to be unloaded in view of his court's designation as a permanent special court to exclusively try heinous crimes under RA 7659.[6] On 17 June 1996 the case was re-raffled to Br. 75 of the same RTC, this time under Judge Jaime F. Bautista who immediately scheduled a hearing for the initial presentation of petitioners' evidence on 8 August 1996.[7] Nonetheless on 9 July 1996 petitioners filed a motion to reset the hearing scheduled on 8 August 1996 to 15 August 1996 citing as reason their counsel's conflict of schedule.[8]

It seemed however that even prior to the scheduled hearing of 8 August 1996, former Presiding Judge Osorio had

already set a hearing for 2 July 1996 and 16 July 1996. But instead of conducting a hearing on said dates, Judge Bautista issued an order on 2 July 1996, thus -

It appearing from the records that this case had been previously set by Branch 171 today and July 16, 1996 and considering the Urgent Motion to Reset filed by the defendants thru counsel, the hearing set for today is hereby cancelled and is reset to July 16, 1996 as previously scheduled and August 8, 1996 both at 8:30 a.m. x x x x[9]

When the case was called for hearing on 16 July 1996, counsel for petitioners was not present. In fact he arrived twenty (20) minutes late. Thus, upon motion of respondent Sagara, the trial court issued the disputed Order-

There being no certainty as to what time defendants' counsel would be in court, and upon manifestation of plaintiff's counsel that lawyer should be aware of his time x x x as prayed for, the defendants' right to present their evidence is deemed waived and the case is now submitted for decision x x x x (underscoring supplied).[10]

Petitioners forthwith filed a motion for reconsideration of the above-mentioned Order arguing that the right to be heard was a basic tenet guaranteed by the Constitution which the courts could not impinge upon in the absence of any justifying reason to do so. They also blamed the heavy traffic for their lawyer's tardiness.

To simplify the proceedings due to the various motions filed by petitioners, Judge Bautista cancelled the 8 August 1996 hearing and reset it to 20 August 1996. He also set for hearing petitioner's motion for reconsideration on 20 August 1996.[11]

However, as if trying to test the patience of the trial court, petitioners once again filed on 5 August 1996 an Urgent Motion to Reset the 20 August 1996 hearing. Their counsel pleaded that he could not make it on such date because he had previously committed himself to appear before the Antipolo Regional Trial Court. He prayed that the hearing be moved to 2 September 1996.[12]

The hearing set for 20 August 1996 was cancelled[13] and the trial court on that day issued instead its Order denying petitioners' motion for reconsideration of its Order dated 16 July 1996 which considered the case submitted for resolution. The lower court noted that the case had been pending for more than four (4) years and it had always been at the "mercy" of petitioners when it acted favorably on their motions. There would be no end to this litigation if the court would give due course to this motion.[14]

Undeterred, petitioners sought recourse in the Court of Appeals through a petition for certiorari. But in the assailed Resolution dated 23 September 1996 the appellate court summarily dismissed their petition on the ground that the affidavit of non-forum shopping was signed and executed by counsel for petitioners and not by petitioners themselves, or one of them, as required by Circular No. 28-91 of the Supreme Court.[15]

Petitioners moved for reconsideration which the Court of Appeals rejected in its Resolution of 31 October 1996.[16] Petitioners are now before us contending that the appellate court erred in affirming the Order of the trial court dated 16 July 1996 and in dismissing their petition for non-compliance with the requirement of Circular No. 28-91. They pray that the appellate court remand the case to the court of origin for further proceedings.

Circular No. 28-91, which took effect on 1 April 1994, provides inter alia:

- (1) (I)n every petition filed with the Supreme Court or the Court of Appeals, the petitioner, aside from complying with the pertinent provisions of the Rules of Court and existing circulars, must certify under oath all of the following facts or undertakings x x x x;
- (2) Any violation of this revised Circular will entail the following sanctions: (a) it shall be a cause for the summary dismissal of the multiple petitions or complaints; x x x x (underscoring supplied).

Circular No. 28-91 has its roots in the rule that a party-litigant shall not be allowed to pursue simultaneous remedies in two (2) different fora, for such practice works havoc upon orderly judicial procedure. Forum shopping has been characterized as an act of malpractice that is prohibited and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts.[17]

Nonetheless, we are not unmindful of this Court's ruling in *Gabionza v. Court of Appeals*,[18] *Loyola v. Court of Appeals*,[19] and *Kavinta v. Castillo, Jr.*[20] that substantial compliance with Circular No. 28-91 is sufficient:

It is scarcely necessary to add that Circular No. 28-91 must be so interpreted and applied to achieve the purposes projected by the Supreme Court when it promulgated that circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure - which is to achieve substantial justice as expeditiously as possible.

The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.

In the instant case, we cannot apply the "substantial compliance" rule to petitioners and be as liberal minded. For one thing, counsel for petitioners gave a rather frail excuse for his non-compliance, i.e., oversight and haste in ensuring that the petition would be filed at the earliest possible time for the protection of his clients' interests thereby overlooking the aforesaid circular.[21]

In *Ortiz v. Court of Appeals*[22] which involves a similar set of facts, we ruled -

(I)t should be recalled that Revised Circular No. 28-91 provides that the party must certify under oath that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, and that to the best of his knowledge, no such action or proceeding is pending in the Supreme Court x x x x

Petitioners admit that their lawyer x x x signed the Certification on Non-Forum Shopping. Allegedly, Atty. Paulite has personal knowledge that the Ortizes had not commenced any other action or proceeding involving the same parties and causes of action. Petitioners now assert that their lawyer's signature must be accepted as substantial compliance with the requirements of the Circular.

Regrettably, we find that substantial compliance will not suffice in a matter involving strict observance as provided for in Circular No. 28-91. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. To merit the Court's consideration, petitioners here must show reasonable cause for failure to personally sign the certification. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice. However, the petitioners did not give any explanation to warrant their exemption from the strict application of the rule utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction x x x x

Finally, petitioners argue that the delay in the proceedings in the court below was not entirely their fault "as various circumstances and incidents beyond (their) control contributed to the delay." [23]

Contrary to petitioners's assertions, their failure to present their evidence was their own undoing. A review of the records shows that the trial court had scheduled a total of six (6) hearing dates for the presentation of their evidence. These were 25 April 1996, 9 May 1996, 2 July 1996, 16 July 1996, 8 August 1996 and 20 August 1996.

Five (5) of these trial dates were cancelled at the instance of petitioners. They themselves admitted that the 9 May 1996 hearing was postponed when Isagani Torres failed to appear in court because he was then incarcerated. Likewise, through a motion petitioners were able to have the hearing on 2 July 1996 moved to 16 July 1996. However on said date petitioners' counsel failed to appear on time, thus prompting the trial court to declare petitioners' right to present evidence as waived. As to the 8 August 1996 hearing, they moved to have the same reset, citing as reason the conflict of schedule of their counsel. And when the trial court granted the motion and transferred the hearing to 20 August 1996, petitioners once again submitted a motion praying that the hearing be reset to 2 September 1996. From these repeated resettings, it can be gleaned that the delay in the proceedings was largely, if not mainly, due to petitioners.

We also do not miss the fact that petitioners were represented by a law firm which meant that any of its members could lawfully act as their counsel during the trial. As such petitioners' frequent motions to reset hearings by reason of their counsel's unavailability should be cautiously considered to make sure that these were not mere dilatory tactics. As observed by the lower court, a perusal of the records shows that the case has been pending for a long period of time, with the court often accommodating petitioners. Thus there could be no grave abuse of discretion when the trial court finally ordered petitioners' right to present evidence as waived to put an end to their foot dragging. Indeed, it is never too often to say that justice delayed is justice denied.

WHEREFORE, there being no reversible error committed by the Court of Appeals, the petition for review on certiorari is DENIED and the assailed Resolution of 23 September 1996 summarily dismissing the petition for certiorari and the Resolution of 31 October 1996 denying reconsideration are AFFIRMED. Consequently, the Regional Trial Court of Valenzuela, Metro Manila, is DIRECTED forthwith to render its decision in Civil Case No. 3812-V-92 without delay. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

[1] CA Records, p. 18.

[2] Rollo, pp. 41-43.

[3] Id., p. 71.

[4] Id., p. 72.

[5] Id., p. 13.

[6] Id., p. 73.

[7] Id., p. 74.

[8] Id., p. 75.

[9] Id., p. 77.

[10] Id., p. 78.

[11] Id., p. 83.

[12] Id., p. 84.

[13] Id., p. 86.

[14] Id., p. 87.

[15] Fifth Division, CA-G.R. SP No. 41880, with Justice Romeo J. Callejo, Sr. as ponente and Justices Pedro A. Ramirez and Pacita Cañizares-Nye concurring; Rollo, p. 104.

[16] Rollo, p. 111.

[17] Gabionza v. Court of Appeals, G. R. No. 112547, 18 July 1994, 234 SCRA 192.

[18] Ibid.

[19] G.R. No. 117186, 29 June 1995, 245 SCRA 477.

[20] G.R. No. 117083, 27 October 1995, 249 SCRA 604.

[21] Rollo, p. 105-106.

[22] G.R. No. 127393, 4 December 1998, p. 3.

[23] Rollo, p. 106.

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