

**ANTONIO T. DONATO, PETITIONER, VS. COURT OF APPEALS,
FILOMENO ARCEPE, TIMOTEO BARCELONA, IGNACIO BENDOL,
THELMA P. BULICANO, ROSALINDA CAPARAS, ROSITA DE COSTO,
FELIZA DE GUZMAN...**

G.R. No. 129638. December 08, 2003

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a "petition for review on certiorari" filed on July 17, 1997 which should be a petition for certiorari under Rule 65 of the Rules of Court. It assails the Resolutions[1] dated March 21, 1997 and June 23, 1997 issued by the Court of Appeals in CA-G.R. SP No. 41394.[2]

The factual background of the case is as follows:

Petitioner Antonio T. Donato is the registered owner of a real property located at Ciriaco Tuason Street, San Andres, Manila, covered by Transfer Certificate of Title No. 131793 issued by the Register of Deeds of the City of Manila on November 24, 1978. On June 7, 1994, petitioner filed a complaint before the Metropolitan Trial Court (Branch 26) of Manila (MeTC) for forcible entry and unlawful detainer against 43 named defendants and "all unknown occupants" of the subject property.[3]

Petitioner alleges that: private respondents had oral contracts of lease that expired at the end of each month but were impliedly renewed under the same terms by mere acquiescence or tolerance; sometime in 1992, they stopped paying rent; on April 7, 1994, petitioner sent them a written demand to vacate; the non-compliance with said demand letter constrained him to file the ejectment case against them.[4]

Of the 43 named defendants, only 20 (private respondents,[5] for brevity) filed a consolidated Answer dated June 29, 1994 wherein they denied non-payment of rentals. They contend that they cannot be evicted because the Urban Land Reform Law guarantees security of tenure and priority right to purchase the subject property; and that there was a negotiation for the purchase of the lots occupied by them but when the negotiation reached a passive stage, they decided to continue payment of rentals and tendered payment to petitioner's counsel and thereafter initiated a petition for consignment of the rentals in Civil Case No. 144049 while they await the outcome of the negotiation to purchase.

Following trial under the Rule on Summary Procedure, the MeTC rendered judgment on September 19, 1994 against the 23 non-answering defendants, ordering them to vacate the premises occupied by each of them, and to pay jointly and severally P10,000.00 per month from the date they last paid their rent until the date they actually vacate, plus interest thereon at the legal rate allowed by law, as well as P10,000.00 as attorney's fees and the costs of the suit. As to the 20 private respondents, the MeTC issued a separate judgment[6] on the same day sustaining their rights under the Land Reform Law, declaring petitioner's cause of action as not duly warranted by the facts and circumstances of the case and dismissing the case without prejudice.

Not satisfied with the judgment dismissing the complaint as against the private respondents, petitioner appealed to the Regional Trial Court (Branch 47) of Manila (RTC).[7] In a Decision[8] dated July 5, 1996, the RTC sustained the decision of the MeTC.

Undaunted, petitioner filed a petition for review with the Court of Appeals (CA for brevity), docketed as CA-G.R. SP No. 41394. In a Resolution dated March 21, 1997, the CA dismissed the petition on two grounds: (a) the certification of non-forum shopping was signed by petitioner's counsel and not by petitioner himself, in violation of Revised Circular No. 28-91;[9] and, (b) the only annex to the petition is a certified copy of the questioned decision but copies of the pleadings and other material portions of the record as would support the allegations of the petition are not annexed, contrary to Section 3, paragraph b, Rule 6 of the Revised Internal Rules of the Court of Appeals (RIRCA).[10]

On April 17, 1997, petitioner filed a Motion for Reconsideration,[11] attaching thereto a photocopy of the certification of non-forum shopping duly signed by petitioner himself[12] and the relevant records of the MeTC and the RTC.[13] Five days later, or on April 22, 1997, petitioner filed a Supplement[14] to his motion for reconsideration submitting the duly authenticated original of the certification of non-forum shopping signed by petitioner.[15]

In a Resolution[16] dated June 23, 1997 the CA denied petitioner's motion for reconsideration and its supplement, ruling that "petitioner's subsequent compliance did not cure the defect in the instant petition." [17]

Hence, the present petition anchored on the following grounds:

I.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION BASED ON HYPER-TECHNICAL GROUNDS BECAUSE:

- PETITIONER HAS SUBSTANTIALLY COMPLIED WITH SUPREME COURT CIRCULAR NO. 28-91. MORE, PETITIONER SUBSEQUENTLY SUBMITTED DURING THE PENDENCY OF THE PROCEEDINGS A DULY AUTHENTICATED CERTIFICATE OF NON-FORUM SHOPPING WHICH HE HIMSELF SIGNED AND EXECUTED IN THE UNITED STATES.

- PETITIONER HAS SUBSTANTIALLY COMPLIED WITH SECTION 3, RULE 6 OF THE REVISED INTERNAL RULES OF THE COURT OF APPEALS. MORE, PETITIONER SUBSEQUENTLY SUBMITTED DURING THE PENDENCY OF THE PROCEEDINGS COPIES OF THE RELEVANT DOCUMENTS IN THE CASES BELOW.

- PETITIONER HAS A MERITORIOUS APPEAL, AND HE STANDS TO LOSE SUBSTANTIAL PROPERTY IF THE APPEAL IS NOT GIVEN DUE COURSE. THE RULES OF PROCEDURE MUST BE LIBERALLY CONSTRUED TO DO SUBSTANTIAL JUSTICE.

II.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT ALL THE ELEMENTS OF UNLAWFUL DETAINER ARE PRESENT IN THE CASE AT BAR.

III.

RESPONDENT COURT OF APPEALS ERRED IN NOT RULING THAT THE RTC MANILA, BRANCH 47, COMMITTED REVERSIBLE ERROR IN AFFIRMING THE FINDING OF MTC MANILA, BRANCH 26, THAT PRIVATE RESPONDENTS CANNOT BE EJECTED FROM THE SUBJECT PROPERTY WITHOUT

VIOLATING THEIR SECURITY OF TENURE EVEN IF THE TERM OF THE LEASE IS MONTH-TO-MONTH WHICH EXPIRES AT THE END OF EACH MONTH. IN THIS REGARD.

- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN NOT RULING THAT TENANTS UNDER P.D. 1517 MAY BE EVICTED FOR NON-PAYMENT OF RENT, TERMINATION OF LEASE OR OTHER GROUNDS FOR EJECTMENT.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN NOT RULING THAT THE ALLEGED "PRIORITY RIGHT TO BUY THE LOT THEY OCCUPY" DOES NOT APPLY WHERE THE LANDOWNER DOES NOT INTEND TO SELL THE SUBJECT PROPERTY, AS IN THE CASE AT BAR.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN RULING THAT THE SUBJECT PROPERTY IS LOCATED WITHIN A ZONAL IMPROVEMENT AREA OR APD.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN NOT RULING THAT PRIVATE RESPONDENTS' NON-COMPLIANCE WITH THE CONDITIONS UNDER THE LAW RESULT IN THE WAIVER OF PROTECTION AGAINST EVICTION.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN NOT RULING THAT PRIVATE RESPONDENTS CANNOT BE ENTITLED TO PROTECTION UNDER P.D. 2016 SINCE THE GOVERNMENT HAS NO INTENTION OF ACQUIRING THE SUBJECT PROPERTY.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN FINDING THAT THERE IS AN ON-GOING NEGOTIATION FOR THE SALE OF THE SUBJECT PROPERTY AND THAT IT RENDERS THE EVICTION OF PRIVATE RESPONDENTS PREMATURE.
- RESPONDENT COURT OF APPEALS SHOULD HAVE RULED THAT THE RTC MANILA COMMITTED REVERSIBLE ERROR IN NOT RULING THAT THE ALLEGED CASE FOR CONSIGNATION DOES NOT BAR THE EVICTION OF PRIVATE RESPONDENTS.

IV.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT RESPONDENTS SHOULD PAY PETITIONER A REASONABLE COMPENSATION FOR THEIR USE AND OCCUPANCY OF THE SUBJECT PROPERTY IN THE AMOUNT OF AT LEAST P10,000.00 PER MONTH FROM THE DATE THEY LAST PAID RENT UNTIL THE TIME THEY ACTUALLY VACATE THE SAME, WITH LEGAL INTEREST AT THE MAXIMUM RATE ALLOWED BY LAW UNTIL PAID.

V.

RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT RESPONDENTS SHOULD PAY PETITIONER ATTORNEY'S FEES AND EXPENSES OF LITIGATION OF AT LEAST P20,000.00, PLUS COSTS.[18]

Petitioner submits that a relaxation of the rigid rules of technical procedure is called for in view of the attendant circumstances showing that the objectives of the rule on certification of non-forum shopping and the rule requiring material portions of the record be attached to the petition have not been glaringly violated and, more

importantly, the petition is meritorious.

The proper recourse of an aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Rules of Court. However, if the error, subject of the recourse, is one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for certiorari under Rule 65 of the said Rules. As enunciated by the Court in *Fortich vs. Corona*:^[19]

Anent the first issue, in order to determine whether the recourse of petitioners is proper or not, it is necessary to draw a line between an error of judgment and an error of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. This error is correctible only by the extraordinary writ of certiorari.^[20] (Emphasis supplied).

Inasmuch as the present petition principally assails the dismissal of the petition on ground of procedural flaws involving the jurisdiction of the court a quo to entertain the petition, it falls within the ambit of a special civil action for certiorari under Rule 65 of the Rules of Court.

At the time the instant petition for certiorari was filed, i.e., on July 17, 1997, the prevailing rule is the newly promulgated 1997 Rules of Civil Procedure. However, considering that the CA Resolution being assailed was rendered on March 21, 1997, the applicable rule is the three-month reglementary period, established by jurisprudence.^[21] Petitioner received notice of the assailed CA Resolution dismissing his petition for review on April 4, 1997. He filed his motion reconsideration on April 17, 1997, using up only thirteen days of the 90-day period. Petitioner received the CA Resolution denying his motion on July 3, 1997 and fourteen days later, or on July 17, 1997, he filed a motion for 30-day extension of time to file a "petition for review" which was granted by us; and petitioner duly filed his petition on August 15, 1997, which is well-within the period of extension granted to him.

We now go to the merits of the case.

We find the instant petition partly meritorious.

The requirement regarding the need for a certification of non-forum shopping in cases filed before the CA and the corresponding sanction for non-compliance thereto are found in the then prevailing Revised Circular No. 28-91.^[22] It provides that the petitioner himself must make the certification against forum shopping and a violation thereof shall be a cause for the summary dismissal of the multiple petition or complaint. The rationale for the rule of personal execution of the certification by the petitioner himself is that it is only the petitioner who has actual knowledge of whether or not he has initiated similar actions or proceedings in other courts or tribunals; even counsel of record may be unaware of such fact.^[23] The Court has ruled that with respect to the contents of the certification, the rule on substantial compliance may be availed of. This is so because the requirement of strict compliance with the rule regarding the certification of non-forum shopping simply underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.^[24]

The petition for review filed before the CA contains a certification against forum shopping but said certification was signed by petitioner's counsel. In submitting the certification of non-forum shopping duly signed by himself in his motion for reconsideration,^[25] petitioner has aptly drawn the Court's attention to the physical impossibility of filing the petition for review within the 15-day reglementary period to appeal considering that he is a resident

of 1125 South Jefferson Street, Roanoke, Virginia, U.S.A. were he to personally accomplish and sign the certification.

We fully agree with petitioner that it was physically impossible for the petition to have been prepared and sent to the petitioner in the United States, for him to travel from Virginia, U.S.A. to the nearest Philippine Consulate in Washington, D.C., U.S.A., in order to sign the certification before the Philippine Consul, and for him to send back the petition to the Philippines within the 15-day reglementary period. Thus, we find that petitioner has adequately explained his failure to personally sign the certification which justifies relaxation of the rule.

We have stressed that the rules on forum shopping, which were precisely designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective^[26] which is simply to prohibit and penalize the evils of forum-shopping.^[27] The subsequent filing of the certification duly signed by the petitioner himself should thus be deemed substantial compliance, *pro hac vice*.

In like manner, the failure of the petitioner to comply with Section 3, paragraph b, Rule 6 of the RIRCA, that is, to append to his petition copies of the pleadings and other material portions of the records as would support the petition, does not justify the outright dismissal of the petition. It must be emphasized that the RIRCA gives the appellate court a certain leeway to require parties to submit additional documents as may be necessary in the interest of substantial justice. Under Section 3, paragraph d of Rule 3 of the RIRCA,^[28] the CA may require the parties to complete the annexes as the court deems necessary, and if the petition is given due course, the CA may require the elevation of a complete record of the case as provided for under Section 3(d)(5) of Rule 6 of the RIRCA.^[29] At any rate, petitioner attached copies of the pleadings and other material portions of the records below with his motion for reconsideration.^[30] In *Jaro vs. Court of Appeals*,^[31] the Court reiterated the doctrine laid down in *Cusi-Hernandez vs. Diaz*^[32] and *Piglas-Kamao vs. National Labor Relations Commission*^[33] that subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance which calls for the relaxation of the rules of procedure. We find no cogent reason to depart from this doctrine.

Truly, in dismissing the petition for review, the CA had committed grave abuse of discretion amounting to lack of jurisdiction in putting a premium on technicalities at the expense of a just resolution of the case.

Needless to stress, "a litigation is not a game of technicalities."^[34] When technicality deserts its function of being an aid to justice, the Court is justified in exempting from its operations a particular case.^[35] Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal.^[36]

The Court's pronouncement in *Republic vs. Court of Appeals*^[37] is worth echoing: "cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be better served."^[38] Thus, what should guide judicial action is that a party litigant is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor or property on mere technicalities.^[39] This guideline is especially true when the petitioner has satisfactorily explained the lapse and fulfilled the requirements in his motion for reconsideration,^[40] as in this case.

In addition, petitioner prays that we decide the present petition on the merits without need of remanding the case to the CA. He insists that all the elements of unlawful detainer are present in the case. He further argues that the alleged "priority right to buy the lot they occupy" does not apply where the landowner does not intend to sell the subject property, as in the case; that respondents cannot be entitled to protection under P.D. No. 2016 since the

government has no intention of acquiring the subject property, nor is the subject property located within a zonal improvement area; and, that assuming that there is a negotiation for the sale of the subject property or a pending case for consignment of rentals, these do not bar the eviction of respondents.

We are not persuaded. We shall refrain from ruling on the foregoing issues in the present petition for certiorari. The issues involved are factual issues which inevitably require the weighing of evidence. These are matters that are beyond the province of this Court in a special civil action for certiorari. These issues are best addressed to the CA in the petition for review filed before it. As an appellate court, it is empowered to require parties to submit additional documents, as it may find necessary, or to receive evidence, to promote the ends of justice, pursuant to the last paragraph of Section 9, B.P. Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, to wit:

The Intermediate Appellate Court shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings.

WHEREFORE, the petition is PARTLY GRANTED. The Resolutions dated March 21, 1997 and June 23, 1997 of the Court of Appeals in CA-G.R. SP No. 41394 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals for further proceedings in CA-G.R. No. 41394, entitled, "Antonio T. Donato vs. Hon. Judge of the Regional Trial Court of Manila, Branch 47, Filomeno Arcepe, et al."

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Justice Ramon A. Barcelona and concurred in by Justices Artemon D. Luna and Hilarion L. Aquino.

[2] Entitled, "Antonio T. Donato vs. Hon. Judge of the Regional Trial Court of Manila, Branch 47, Filomeno Arcepe, et al."

[3] Docketed as Civil Case No. 144362, entitled "Antonio T. Donato vs. Erlinda Aguilar, Remedios Arcelis, Elsa Arcepe, Filomeno Arcepe, Erlinda Avellano, Anita Barcelona, Bienvenido Barcelona, Timoteo Barcelona, Severa Basco, Ignacio Bendol, Thelma P. Bulicano, Rosalinda Caparas, Rosita de Costo, Feliza de Guzman, Dominador de Guzman, Leticia de los Reyes, Angelo de los Reyes, Rogelio Gaddi, Paulino Gajardo, Mercedita Y. Gonzales, Emmanuel Imperial, Geronimo Imperial, Homer Imperial, Elvira Leslie, Ceferino Lugana, Eleuterio Malto, Marife Maramara, Criselda Pimentel, Hector Pimentel, Nimfa Pimentel, Aurelia G. Rocero, Lamberto Sison, Zenaida Sunga, Dominador Tara, Iluminada Tara, Benosa Tomas, Ines Trinidad, Ligaya Usi, Carlito Varallo, Hena Valespin, Juanito Valespin, Milagros Yabut, Narciso Yabut and All Unknown Occupants of the property covered by Transfer Certificate of Title No. 151795 of the Registry of Deeds of Manila, with address at Ciriaco Tuason Street, San Andres District, Manila."

[4] Rollo, p. 96.

[5] Namely: Filomeno Arcepe, Timoteo Barcelona, Ignacio Bendol, Thelma P. Bulicano, Rosalinda Caparas, Rosita De Costo, Feliza De Guzman, Leticia De Los Reyes, Rogelio Gaddi, Paulino Gajardo, Geronimo Imperial, Homer Imperial, Elvira Leslie, Ceferino Lugana, Hector Pimentel, Nimfa Pimentel, Aurelio G. Rocero, Iluminada Tara, Juanito Vallespin, and Narciso Yabut; *id.*, p. 101.

[6] Penned by Judge Reinato G. Quilala, *Id.*, p. 147.

[7] Docketed as Civil Case No. 95-72700.

[8] Penned by Judge Lorenzo B. Veneracion.

[9] Otherwise known as "Additional Requisites for Petitions filed with the Supreme Court and the Court of Appeals to Prevent Forum-Shopping or Multiple Filing of Petitions and Complaints".

[10] Section 3 (b), Rule 6 of the RIRCA reads as follows:

(b) The petition shall be accompanied by a certified true copy of the disputed decisions, judgments, or orders of the lower courts, together with true copies of the pleadings and other material portions of the record as would support the allegations of the petition.

[11] Court of Appeals (CA) Rollo, p. 74.

[12] Id., p. 88.

[13] Id., pp. 90-286.

[14] Id., p. 287.

[15] Id., p. 291.

[16] Rollo, p. 91.

[17] Id., p. 93.

[18] Id., pp. 29-32.

[19] 289 SCRA 624 (1998).

[20] Id., p. 642.

[21] Lapulapu Development & Housing Corporation vs. Risos, 261 SCRA 517, 526 (1996).

[22] Now found in Section 2, Rule 42 of the 1997 Rules of Civil Procedure.

[23] Mendigorin vs. Cabantog, G.R. No. 136449, August 22, 2002; Digital Microwave Corporation vs. Court of Appeals, 328 SCRA 286, 290 (2000).

[24] MC Engineering, Inc. vs. National Labor Relations Commission, 360 SCRA 183, 189-190 (2001), citing Dar vs. Alonzo-Legasto, 339 SCRA 306 (2000); Kavinta vs. Castillo, Jr., 249 SCRA 604 (1995); Loyola vs. Court of Appeals, 245 SCRA 477 (1995); and, Gabionza vs. Court of Appeals, 234 SCRA 192 (1994).

[25] See Note Nos. 12 and 15, supra.

[26] Cavile vs. Heirs of Cavile, G.R. No. 148635, April 1, 2003.

[27] BA Savings Bank vs. Sia, 336 SCRA 484, 490 (2000).

[28] Section 3 (d), Rule 3 of the RIRCA reads as follows:

- When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division.

[29] Section 3(d)(5), Rule 6 of the RIRCA reads as follows:

(5) The Court may order the Clerk of the Regional Trial Court to elevate the original record of the case including the documentary evidence and transcript of stenographic notes to this Court within ten (10) days from notice.

[30] See Note No. 13, *supra*.

[31] *Jaro vs. Court of Appeals*, 377 SCRA 282, 297 (2002).

[32] 336 SCRA 113 (2000).

[33] 357 SCRA 640 (2001).

[34] *Aguam vs. Court of Appeals*, 332 SCRA 784, 789 (2000).

[35] *PHHC vs. Tiongco*, 12 SCRA 471, 475-476 (1964).

[36] *Twin Towers Condominium Corporation vs. Court of Appeals*, G.R. No. 123552, February 27, 2003; *Shipside Incorporated vs. Court of Appeals*, 352 SCRA 334, 347 (2001).

[37] 292 SCRA 243 (1998).

[38] *Id.*, pp. 251-252.

[39] *Government Service Insurance System vs. Bengson Commercial Buildings, Inc.*, 375 SCRA 431, 445 (2002); *Apex Mining, Inc. vs. Court of Appeals*, 319 SCRA 456, 468 (1999).

[40] *Bank of the Philippine Islands vs. Court of Appeals*, G.R. No. 146923, April 30, 2003.

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