

**DESIREE L. PAGE-TENORIO, PETITIONER, VS. WILFREDO C. TENORIO AND PRESIDING JUDGE JOSE R. HERNANDEZ OF REGIONAL TRIAL COURT, BRANCH 158, PASIG CITY, RESPONDENTS.**

*G.R. No. 138490. November 24, 2004*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to nullify and set aside the Order of the Regional Trial Court (RTC), Branch 158, Pasig City, dated 10 March 1999[9][1] denying petitioner's formal offer of exhibits for her failure to furnish copies thereof to the Office of the Solicitor General (OSG) and the City Prosecutor, and the Order[2] of the RTC dated 13 April 1999 denying petitioner's Motion for Reconsideration.

Stripped of circumlocution, the factual antecedents are -

On 07 August 1998, petitioner Desiree L. Page-Tenorio filed a petition for the declaration of nullity of her marriage to respondent Wilfredo C. Tenorio.[3] On 20 August 1998, a copy of the summons, together with the petition and its annexes, was served upon private respondent and was received by him personally. On 02 December 1998, petitioner completed her testimony on direct and cross-examination. On 05 February 1999, Mrs. Regina Togores, Clinical Psychologist of the Judicial and Bar Council, Supreme Court, finished her testimony. On the same day, Julieta C. Tobias, the court-appointed Social Worker, was also presented and she, likewise, concluded her testimony.[4] On 15 February 1999,[5] petitioner, through counsel, filed a formal offer of evidence furnishing private respondent with a copy thereof by registered mail. As earlier stated, the trial court, acting on the offer, denied the same on the ground that petitioner failed to furnish copies of said formal offer of evidence to the OSG and the office of the City Prosecutor. Petitioner's motion for reconsideration was further denied in the Order dated 13 April 1999.

Hence, this Petition.

Petitioner assigns a single error[6] (of the trial court) for our resolution:

THE HONORABLE COURT GRAVELY ABUSED HIS (sic) DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE ORDER DATED 5 FEBRUARY 1999 GIVEN THE FACT THAT THERE WAS ALREADY SUBSTANTIAL COMPLIANCE WITH THE SAME.

In a resolution of this Court dated 16 June 1999, we resolved, without giving due course to the petition, to require respondents to Comment within ten (10) days from notice.[7]

In its Compliance, the OSG prayed for the dismissal of the petition on the ground that the order was not tainted with grave abuse of discretion and the fact that the petition should have been filed with the Court of Appeals.[8]

Replying[9] to this Comment, petitioner, through counsel, countered that in her motion for reconsideration dated

18 March 1999 seeking to set aside the Order of the trial court dated 10 March 1999[9][10] denying her formal offer of evidence, counsel sincerely apologized and attached proof of compliance to the trial court's order and explained that the failure to furnish copies of said formal offer was due to mere oversight brought about by daily court appearances and counsel's treatment for hypertension at that time.

In his Comment,[11] private respondent Wilfredo Tenorio manifested that he just wants to be left alone in peace. He has no comment or opposition to the petition and will abide by the decision of this Court.

The petition is not meritorious.

It is noteworthy that on 30 April 1999, the trial court issued an Order[12] dismissing this case on grounds that petitioner's Formal Offer of Exhibits was denied admission and that her other evidence was not preponderant enough to entitle her to a declaration of nullity of marriage under Article 36 of the Family Code.

Petitioner in the main cites that since the OSG and the Public Prosecutor were subsequently furnished copies of her formal offer of evidence, the same constitutes substantial compliance with the 05 February 1999 Order of the trial court. Besides, no damage or prejudice was caused by her belated compliance and, more importantly, technical rules should be relaxed in order to obtain a speedy and efficient administration of justice.

The Order of the trial court dated 05 February 1999 reads:

The testimonies of witnesses Regina Beltran Togores and Julieta Tobias were terminated and as prayed for, counsel for petitioner is given a period of ten (10) days from today within which to file her formal offer of evidence, copy furnished the offices of the Solicitor General and Public Prosecutor, which are given a similar period of time from their receipt of the offer to file their comments/objections, after which, the incident is submitted for resolution.

After the petitioner shall have rested her case, set the initial presentation of oppositor's evidence, if any, on March 16, 1999 at 8:30 o'clock in the morning.[13]

In denying Petitioner's motion for reconsideration, the trial court rationalized:[14]

This resolves petitioner's Motion for Reconsideration.

The motion is denied. This Court could not fathom why petitioner failed to furnish the Office of the Solicitor General and the Public Prosecutor's Office of Pasig City a copy of its offer of exhibits. It is not only contained in the Order of February 5, 1999 but very obvious in Article 48 of the Family Code and in the Molina case decided by the Supreme Court.

Consequently, the Order of March 10, 1999[9][15] stays.

In the earlier case of Vergara, Sr. v. Suelto,[16] this Court made a ruling on the propriety of filing directly to this Court an application for a writ of mandamus or other extraordinary writ against a municipal trial court considering that jurisdiction to issue these writs is also possessed by the Court of Appeals as well as the RTC, thus-

We turn now to the second question posed in the opening paragraph of this opinion, as to the propriety of a direct resort to this Court for the remedy of mandamus or other extraordinary writ against a municipal court, instead of an attempt to initially obtain that relief from the Regional Trial Court of the district or the Court of Appeals, both of which tribunals share this Court's jurisdiction to issue the writ. As a matter of policy such a direct recourse to this Court should not be allowed. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be

exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.

Resolutely, this Court has consistently decreed that a deviation from the strict observance of the principle of judicial hierarchy may be justified only in case of special and important reasons clearly and specifically set forth in the petition. The petitioner, in the instant petition, has not shown to the satisfaction of this Court, by any degree, such special and important reason warranting a disregard of this well-established principle or to rationalize the obvious procedural gaffe committed therein.

At the outset, it is necessary to stress that a direct recourse to this court is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts. We need to reiterate, for the guidance of petitioner, that this Court's original jurisdiction to issue a writ of certiorari (as well as prohibition, mandamus, quo warranto, habeas corpus and injunction) is concurrent with the Court of Appeals (CA), as in the present case, and with the RTCs in proper cases within their respective regions. However, this concurrence of jurisdiction does not grant a party seeking any of the extraordinary writs the absolute freedom to file his petition with the court of his choice. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. The hierarchy of courts determines the appropriate forum for such petitions. Thus, petitions for the issuance of such extraordinary writs against the first level ("inferior") courts should be filed with the RTC, and those against the latter, with the CA. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is the established policy. It is a policy that is necessary to prevent inordinate demands upon this Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of its docket.[17] (Emphasis ours)

This same principle was laid down in the case of *People v. Cuaresma*,[18] where it was held:

. . . A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, supra – resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" – was evidently intended precisely to relieve this Court pro tanto of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the appellate court's corresponding jurisdiction, would have had to be filed with it.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of certiorari sought against a City Court was brought directly to this Court although there is no discernible special and important reason for not presenting it to the Regional Trial Court.

The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.

This is not to say though that petitioner is left without any remedy under the law as *res judicata* does not apply in

this case considering that a dismissal on the ground of petitioner's failure to furnish copies of her formal offer of evidence to the city prosecutor and the solicitor general does not constitute an adjudication on the merits. The case was dismissed not on the merits, but on a technicality -- the petitioner's failure to comply with an order of the court.[19] It was not an order or judgment determinative of an issue of fact pending before the Court. It was an interlocutory order, because it required the parties to perform certain acts for final adjudication of awards.[20] A judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.[21] The decision having resolved only an interlocutory matter, *res judicata* cannot be applied.[22]

We find pertinent the ruling of this Court in the case of *Macahilig v. Heirs of Grace M. Magalit*: [23]

A judgment or an order on the merits is one rendered after a determination of which party is upheld, as distinguished from an order rendered upon some preliminary or formal or merely technical point. Dismissal of a case for failure of plaintiff to comply with a "notice of case status" signed by an officer-in-charge does not have the effect of an adjudication on the merits. Strictly speaking, *res judicata* does not apply to decisions or orders adjudicating interlocutory motions.

Regrettably, while *res judicata* does not apply, the case cannot be revived because the action is barred by the finality of the order of dismissal rendered by the trial court on 30 April 1999 which the petitioner never questioned. Petitioner may, however, avail herself of the remedy as pronounced in the case of *Madarieta v. RTC-Br. 28, Mambajao, Camiguin*: [24]

Upon finality of the order of dismissal, the case could no longer be revived. The trial court has lost authority over the case. Squarely applicable is the decision where this Court emphatically said that after the dismissal has become final through the lapse of the fifteen-day reglementary period, the only way by which the action may be resuscitated or "revived," is by the institution of a subsequent action through the filing of another complaint and the payment of the fees prescribed by law. This is so because upon attainment of finality of a dismissal through the lapse of said reglementary period, the Court loses jurisdiction and control over it and can no longer make any disposition in respect thereof inconsistent with such dismissal.

WHEREFORE, premises considered, the instant Petition for Certiorari is DENIED for lack of merit.

### **SO ORDERED.**

Puno, (Acting C.J.) Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] The Order of Judge Jose Hernandez was erroneously dated as 10 March 1998 instead of 10 March 1999; Rollo, 18.

[2] Annex A, Rollo, p. 17.

[3] Annex E, Rollo, p. 21.

[4] Annex 1, Rollo, p. 71.

[5] Annex G, Rollo, pp. 30-33.

[6] Rollo, p. 8.

[7] Rollo, p. 58.

[8] Rollo, pp. 66-69.

[9] Rollo, pp. 74-79.

[10] See note 1.

[11] Rollo, pp. 107-108.

[12] Annex 2, Rollo, p. 72.

[13] Rollo, p. 71.

[14] Annex A, Rollo, p. 17.

[15] See note 1.

[16] G.R. No. L-74766, 21 December 1987, 156 SCRA 753, 766.

[17] *Ouano v. PGTT International Investment Corp.*, G.R. No. 134230, 17 July 2002, 384 SCRA 589, 592-593; *La Bugal-B'Laan Tribal Association, Inc. v. Victor O. Ramos*, G.R. No. 127882, 27 January 2004.

[18] G.R. No. 67787, 18 April 1989, 172 SCRA 415, 424-425.

[19] *Madarieta v. RTC-Br. 28, Mambajao, Camiguin*, G.R. No. 126443, 28 February 2000, 326 SCRA 479, 483.

[20] *Phil. Coal Miner's Union v. Cebu Portland Cement Co.*, G.R. No. L-19007, 30 April 1964, 119 Phil. 1063, 1069.

[21] *Santos v. IAC*, G.R. No. L-66671, 28 October 1986, 145 SCRA 238, 245.

[22] *Perez v. Court of Appeals*, G.R. No. 107737, 01 October 1999, 316 SCRA 43, 47.

[23] G.R. No. 141423, 15 November 2000, 344 SCRA 838, 853.

[24] *Supra*, note 19 at 484.

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