

**ISIDRA VDA. DE VICTORIA SUBSTITUTED BY MARIO VICTORIA,
PETITIONER, VS. HON. COURT OF APPEALS, HON. JUANITA T.
GUERRERO, PRESIDING JUDGE OF REGIONAL TRIAL COURT,
BRANCH 37, CALAM...**

G.R. NO. 147550. January 26, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Through his appeal by certiorari,[1] petitioner Mario Victoria seeks to set aside the Resolutions of the Court of Appeals promulgated on May 25, 2000 and July 12, 2000, which (1) dismissed petitioner’s special civil action for certiorari[2] and (2) denied petitioner’s motion for reconsideration, respectively.

The antecedents of the case are as follows:

On October 27, 1993, respondent spouses Luis and Zenaida Gibe filed a Complaint for “Ejectment and Damages with a Writ of Preliminary Mandatory Injunction” [3] against Isidra Vda. de Victoria (the mother of herein petitioner Mario Victoria), Eusebio Arida, Juan Becina and Guillermo Becina with the Municipal Trial Court (MTC) of Calauan, Laguna, docketed as Civil Case No. 261 (the Ejectment Case). In their Complaint, the Gibe spouses alleged, among other things, the following:

1. In 1992 they acquired a parcel of land (the property) from the heirs of the late Judge Gregorio Lantin, designated as Lot 1-B-153-A with an area of approximately 27,064 square meters (sq. m.).
2. The property was originally part of Lot 1-B-153 with an area of approximately 34,829 sq. m., which was subdivided into seven parcels in 1989 among Judge Lantin and four of his tenants as follows:

Lot No.

Tenant/Owner/Claimant

Area
(in sq. m.)

1-B-153-A Gregorio Lantin

27,064

1-B-153-B Felix Victoria

883

1-B-153-C Guillermo Becina

3,900

1-B-153-D Juan Becina

2,019

1-B-153-E Felix Victoria

624

1-B-153-F Eusebio Arida

224

1-B-153-G Gregorio Lantin

115

Total Area

34,829

Felix Victoria, now deceased, was the husband of Isidra Victoria. All the defendants in the Ejectment Case, as former tenants, were given home lots, while Lot 1-B-153-A which was allotted to Gregorio Lantin was sold to the spouses Gibe.

3. In the course of fencing Lot 1-B-153-A, it was discovered that the Victoria house was standing on the northwestern portion of the property; that Mrs. Victoria was harvesting and picking fruits from the citrus trees planted in that area without the knowledge and permission of the Gibe spouses; and that Eusebio Arida, Juan Becina and Guillermo Becina were also surreptitiously planting palay on the northwestern portion.

4. The fencing was discontinued after the children of Mrs. Victoria threatened to shoot at the workers of the Gibe spouses with an armalite rifle, leaving approximately 8,000 sq. m. of the northwestern portion of Lot 1-B-153-A open and unfenced.

In her Answer (With Motion to Dismiss),[4] Mrs. Victoria denied having entered Judge Lantin's lot alleged to have been purchased by the spouses Gibe, claiming that her farmhouse was constructed on the very lot awarded to her family by the DAR. Moving thus for the dismissal of the Ejectment Case for lack of cause of action, she interposed a counterclaim praying that, as a tenant of Judge Lantin, she be maintained in the peaceful possession and cultivation of her lot or, in the alternative, awarded disturbance compensation; and, in either event, reimbursed for the expenses she incurred as a result of the Ejectment Case.

At the Preliminary Conference of the Ejectment Case, the parties mutually agreed to a relocation survey of the property to be conducted by a geodetic engineer.

After the court-appointed geodetic engineer had submitted the results of the relocation survey, Mrs. Victoria and her co-defendants in the Ejectment Case filed a Manifestation with Motion[5] requesting the trial court to allow them to engage the services of an independent surveyor, at their expense, to conduct another survey. Although the motion was granted, no resulting survey plan was, however, submitted by them.

By Decision of May 21, 1998, the MTC, finding in favor of the plaintiffs-spouses Gibe, disposed as follows:

WHEREFORE in the light of the foregoing, this Court on the basis of the evidences [sic], the [sic] mutually submitted before it by both the plaintiffs and the defendants, this Court has to rule as follows:

1. That since it clearly appeared that the plaintiffs are the real owners of the real property with an area of 27,064 square meters, including the real property with an area of 5,825 square meters which is in possession of all the defendants, they have the absolute right to obtain the proper possession thereof and to eject all of them thru legal means;
2. That in as much as all the defendants are at present and also the real owners of the real properties and also in the possession thereof as evidence[d] by their respective emancipation patents, each of them is hereby ordered by this Court to properly and absolutely abandoned [sic] the portions of the real property covered by Transfer Certificate of Title No. T-140417 and immediately delivered its possession to the plaintiffs;
3. That considering the possession of the defendant Isidra Vda. de Victoria of the real properties with a total area of 1,508 square meters which she did not own, [she] is ordered by this Court to pay and remit to the above plaintiffs the sum of P45,000.00 as reasonable compensation for the use and occupation of the portion above mentioned as it belong[s] to the plaintiffs and the defendant Becina together with two other defendants Juan and Arida are in possession of the real property owned by the plaintiffs with an area of 4,327 square meters, they are hereby ordered [to] jointly pay the plaintiffs the sum of P50,000.00 jointly as reasonable compensation.
4. That all the defendants are hereby ordered to pay the counsel for the plaintiffs the sum of P20,000.00 jointly as attorney's fees;
5. That in view of failure of the plaintiffs to prove their entitlement to preliminary mandatory injunction and to the set the same for hearing as required by law, the same is hereby denied.
6. The defendants are hereby ordered to pay the costs of suit.

SO ORDERED.[6] (Underscoring supplied)

On May 22, the spouses Gibe, without notice to the defendants in the Ejectment Case, filed a Motion for Immediate Execution and Demolition[7] praying that "a writ of execution be issued to enforce and satisfy the judgment, for the ejectment and demolition of the house of the Defendants."

Eight days after promulgation and receipt of the MTC decision or on May 29, 1998, the defendants in the Ejectment Case filed a Notice of Appeal[8] without, however, filing a supersedeas bond to stay the immediate execution of the decision and depositing monthly rentals.

By Order of June 1, 1998,[9] the MTC granted the Motion for Immediate Execution and Demolition and accordingly issued a Writ of Execution.[10]

A Petition for Certiorari and Prohibition (With Prayer for Issuance of a Temporary Restraining Order [TRO] and a Writ of Preliminary Injunction)[11] was filed on July 13, 1998 with the Regional Trial Court (RTC) of Calamba, Laguna, docketed as Civil Case No. 2625-98-C (the Petition for Certiorari).

The Petition assailed the MTC Decision, its Order of June 1, 1998, and the Writ of Execution, contending that the MTC had no jurisdiction over the Ejectment Case and committed grave abuse of discretion in deciding the case in favor of the spouses Gibe and in issuing the said Order and Writ of Execution pending appeal.[12]

Mrs. Victoria, it turned out, had passed away shortly before the MTC promulgated its May 21, 1998 Decision. Her son, petitioner Mario Victoria, thus substituted for her.[13]

Branch 37 of the RTC Calauan, to which the Petition for Certiorari was raffled, issued a Writ of Preliminary Injunction.[14]

In the meantime, the appeal filed by the defendants in the Ejectment Case before the RTC of Calauan, Laguna

was dismissed by Branch 92 thereof by Order of October 7, 1998[15] for failure to file their appeal memorandum.[16]

By its Decision dated August 13, 1999,[17] the RTC dismissed the Petition for Certiorari in light of the following ratiocination:

The petitioner contends that the lower court has no jurisdiction to try the case and to issue the questioned decision because the subject parcels of land have been subjected and covered by P.D. 27 known as Operation Land Transfer and any dispute involving said lands must be referred to the Honorable Department of Agrarian Reform Adjudication Board (DARAB) for proper disposition.

Jurisdiction of a court is determined by the allegations in the complaint. The complaint filed by the private respondents was for Ejectment and Damages With a Writ of Preliminary Mandatory Injunction. Ejectment proceedings are within the exclusive original jurisdiction of the Municipal Trial Court.

x x x

The Answer and the Position Paper of the petitioner Victoria in the case below show that she claimed ownership over the portion of the lot, by virtue of the Operation Land Transfer, which the private respondents Gibe alleged to have been occupied by the farm house of the petitioner. Petitioner Victoria did not question the jurisdiction of the Court but prayed for the dismissal of the case below for lack of cause of action. So much so, that when the respondent Court took into consideration the issue of ownership over the portion of the property allegedly transgressed, it did so only to determine who is better entitled to possession over said portion. And when it ordered the resurvey of the property to determine its actual boundaries and the admission of the Engineer's report to aid it in the issuance of the questioned decision. It did not determine the question of ownership, i.e. as to who the real owner is which the petitioner may do so in a separate complaint before the proper forum.

x x x

The Decision of the Court below is therefore not an error of jurisdiction but an error of judgment which is not reviewable by certiorari proceedings. In other words, certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment as its function is to keep and inferior court within its jurisdiction.

Having found [the MTC] to have jurisdiction to issue the decision dated May 28, 1998, the respondent judge likewise has jurisdiction to direct the execution of the same pending appeal pursuant to Section 19, Rule 70 of the 1997 Rules of Civil Procedure.[18] (Underscoring supplied)

Herein petitioner, Mario Victoria, received a copy of the foregoing Decision of the RTC on September 18, 1999 and filed a Motion for Reconsideration of the same on September 28, 1999.[19] In due course, the RTC denied petitioner's Motion for Reconsideration by Order dated December 7, 1999.[20]

On March 28, 2000, petitioner instituted another special civil action for certiorari, this time with the Court of Appeals (CA), questioning both the August 13, 1999 Decision of the RTC and the May 21, 1998 Decision of the MTC with prayer for the issuance of a TRO and/or a Writ of Preliminary Injunction.[21] This case was docketed as C.A. G.R. S.P. No. 47964 (the CA Certiorari Petition).

By Resolution of May 25, 2000,[22] the CA dismissed the CA Certiorari Petition in this wise:

The petition is flawed for the following reasons viz:

1. The correct remedy from a decision of a Regional Trial Court in a petition for certiorari is an ordinary appeal pursuant to Section 1, Rule 41 of the 1997 Rules of Civil Procedure and section 5, Rule 6 of the

Revised Internal Rules of the Court of Appeals;

2. The instant petition is filed out of time. The assailed RTC decision was received on September 18, 1999 while the Motion for Reconsideration was filed on September 28, 1999. (Rollo P. 152). Thus a period of nine (9) days had elapsed. The Order dated December 7, 1999 was received by petitioner on January 29, 2000 while the instant petition was filed only on March 28, 2000. Thus a period of fifty eight (58) days had passed. Hence, petitioner had consumed a period of 67 days, well beyond the 60-day period allowed by the rules as amended by Supreme Court En Banc resolution dated July 21, 1998.[23] Plainly, the petition was filed out of time.

3. The statement of material dates as to timeliness of the filing of the petition is incomplete as it failed to state when the motion for reconsideration was filed in violation of Section 3, Rule 46.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.[24]

Petitioner's Motion for Reconsideration[25] having been denied by the CA by Resolution of July 12, 2000[26] for being filed 2 days beyond the reglementary period, he filed the petition at bar after he was granted, on his motion, an extension of thirty days to file the petition, conditioned upon the timeliness of the motion for extension.[27]

Petitioner anchored his petition on the following grounds:

- PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN [sic] EXCESS OF JURISDICTION BY NOT GIVING DUE COURSE TO THE PETITIONER'S PETITION FOR CERTIORARI ON GROUND OF TECHNICALITY INSTEAD OF RESOLVING THE CASE ON THE MERITS.

- PUBLIC RESPONDENT REGIONAL TRIAL COURT OF CALAMBA, LAGUNA, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN [sic] EXCESS OF JURISDICTION BY RULING THAT THIS CASE FALLS WITHIN THE JURISDICTION OF THE MUNICIPAL TRIAL COURT, AND THAT THE DECISION OF THE COURT A QUO WAS NOT AN ERROR [OF] JURISDICTION BUT AN ERROR OF JUDGMENT WHICH IS NOT REVIEWABLE IN CERTIORARI [P]ROCEEDINGS.[28]

The appeal must be denied.

As earlier noted, this Court granted petitioner an extended period to file the petition, conditioned, however, on the timeliness of the filing of the Motion for Extension of Time to File Petition for Review on Certiorari. It is a basic rule of remedial law that a motion for extension of time must be filed before the expiration of the period sought to be extended.[29] Where a motion for extension of time is filed beyond the period for appeal, the same is of no effect since there would no longer be any period to extend, and the judgment or order to be appealed from will have become final and executory.[30]

In the case at bar, an examination of the records reveals that the reglementary period to appeal had in fact expired almost 10 months prior to the filing of petitioner's motion for extension of time on April 10, 2001. The Registry Return Receipt[31] of the Resolution of the CA dismissing the CA Certiorari Petition shows that the same was received by counsel for petitioner's agent on June 5, 2000. Hence, petitioner had only until June 20, 2000 within which to file an appeal or a motion for new trial or reconsideration.[32]

Clearly, the Court of Appeals committed no error when it denied petitioner's Motion for Reconsideration for having been filed two days after the expiration of the reglementary period on June 22, 2000.

Similarly, the instant petition for review must likewise be denied for having been filed on May 12, 2001, almost 11 months after the expiration of the period to appeal on June 20, 2000.[33]

In fact, a closer inspection of the records indicates that this case should have been terminated as early as January 4, 2000 with the lapse of the period within which petitioner could have appealed from the RTC Decision.

By his own account, petitioner received a copy of the Decision of the RTC dismissing the Petition for Certiorari on September 18, 1999 and filed a Motion for Reconsideration of the same on September 28, 1999. As correctly pointed out by the CA, by that time a period of 9 days had already elapsed.[34] Thus, upon receipt of the notice of the denial of the motion for reconsideration, which was admitted to be on December 29, 1999,[35] petitioner only had 6 days or until January 4, 2000[36] within which to file a notice of appeal.

However, petitioner failed to do so, and he instead, on March 28, 2000, filed a petition for certiorari under Rule 65 with the Court of Appeals. As the Court of Appeals again correctly pointed out, “[t]he correct remedy from a decision of a Regional Trial Court in a petition for certiorari is an ordinary appeal pursuant to Section 1, Rule 41 of the 1997 Rules of Civil Procedure xxx.” It is well settled that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.[37] Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[38]

To be sure, petitioner has regularly invoked, before this Court and the lower courts, the policy in favor of a liberal interpretation of the Rules of Procedure.

Apropos on this point are this Court’s observations in *Duremdes v. Duremdes*:[39]

Although it has been said time and again that litigation is not a game of technicalities, that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved, this does not mean that procedural rules may altogether be disregarded. Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[40] (Emphasis supplied; italics in the original; citations omitted)

In the case at bar, petitioner has not provided any cogent explanation that would absolve him of the consequences of his repeated failure to abide by the rules.

Moreover, petitioner’s principal substantive argument that the Ejectment Case properly falls within the jurisdiction of the DARAB and not of the MTC is without merit.

The MTC does not automatically lose its exclusive original jurisdiction over ejectment cases by the mere allegation of a tenancy relationship. As thoroughly discussed in *Rivera v. Santiago*,[41] the party alleging tenancy must prove the existence of all the essential requisites of tenancy in order to oust the MTC of its jurisdiction over the case:

Jurisdiction is determined by the allegations in the complaint. That is basic. Unquestionably, petitioner lodged an action for ejectment before the MTC. Under BP 129, the allegations in the complaint conferred initiatory jurisdiction on that first level court.

x x x

However, when tenancy is averred as a defense and is shown *prima facie* to be the real issue, the MTC must dismiss the case for lack of jurisdiction. Under RA 6657, it is the DAR that has authority to hear and decide

when tenancy is legitimately involved.

In the instant case, respondents averred tenancy as an affirmative and/or special defense in their Answer with Counterclaim. Under the RSP [Revised Rule on Summary Procedure], the MTC was supposed to conduct a preliminary conference to determine if such relationship was indeed the real issue. We emphasize that the MTC did not automatically lose its jurisdiction simply because respondents raised tenancy as a defense. It continued to have the authority to hear the case precisely to determine whether it had jurisdiction to dispose of the ejectment suit on its merits.

x x x

An agrarian dispute refers to any controversy relating to, inter alia, tenancy over lands devoted to agriculture. To determine whether the CA was correct in its reversal of the trial court, it is necessary to keep in mind the essential requisites of tenancy which are as follows: (1) The parties are the landowner and the tenant or agricultural lessee; (2) The subject of the relationship is agricultural land; (3) There is mutual consent to the tenancy between the parties; (4) The purpose of the relationship is agricultural production; (5) There is personal cultivation by the tenant or agricultural lessee; and (6) There is a sharing of harvests between the parties.

All these elements must concur. It is not enough that they are alleged; to divest the MTC of jurisdiction, they must all be shown to be present. x x x [42] (Emphasis and underscoring supplied; italics in the original; citations omitted)

In *Duremdes v. Duremdes*, [43] where a similar argument was raised under factual circumstances analogous to the case at bar, this Court held:

First. For the DARAB to have jurisdiction over the case, there must be a tenancy relationship between the parties. In order for a tenancy agreement to take hold over a dispute it is essential to establish all its indispensable elements, to wit: (1) [T]hat the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.

Second. The trial court found that no such tenancy agreement existed between the respondent and Herminio Tara, and that such allegation was a mere ploy to prevent the respondent from exercising dominion and ownership over the subject property. This was affirmed by the Court of Appeals. We find no cogent reason to reverse such finding.

Third. The petitioner is barred from raising the issue of jurisdiction. The petitioner actively participated in all stages of the instant case, setting up a counterclaim and asking for affirmative relief in his answer. He failed, however, to question the court's jurisdiction over the suit. After relying on the jurisdiction of the regular courts, he cannot be permitted to turn around and question it. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction. [44] (Emphasis supplied; italics in the original; citations omitted)

In the present case, neither petitioner nor his predecessor-in-interest submitted evidence to substantiate the existence of the essential requisites of tenancy. Thus, there is no basis at all to support petitioner's claim that the MTC was without jurisdiction to render the questioned Decision.

What is more, as in *Duremdes* and unlike in *Rivera*, petitioner's predecessor-in-interest never questioned the jurisdiction of the MTC. Instead, she based her prayer for the dismissal of the Ejectment Case on respondents' alleged lack of cause of action; with a counterclaim praying that she be maintained in the peaceful possession and

cultivation of the subject property or, in the alternative, awarded disturbance compensation; and, in either event, reimbursed for the expenses she incurred. Considering that petitioner's predecessor-in-interest actively participated in the proceedings before the MTC and invoked its jurisdiction to secure an affirmative relief, petitioner cannot now turn around and question that court's jurisdiction.

Finally, this Court notes with consternation petitioner's attempts, with the aid of his counsel, Atty. Abdul A. Basar, to deliberately mislead this Court as to the material dates and status of the decision appealed from, thereby impeding if not frustrating the ends of justice.

In his Motion for Extension of Time to File Petition for Review on Certiorari, petitioner declared under oath that: (1) he had "filed a timely Motion for Reconsideration" of the CA Resolution dismissing his petition for certiorari, and (2) the notice of the denial by the CA of his Motion for Reconsideration "was received by petitioner only [on] March 28, 2001," thus making it appear that he had until April 12, 2001 within which to perfect his appeal.

Significantly, petitioner did not disclose, either in his motion for extension of time or in his subsequent petition, the date on which he received the Resolution of the CA denying his petition for certiorari, thereby concealing the actual period for appeal from the Court processor.

As already noted, petitioner's motion for reconsideration failed to suspend the running of the reglementary period since it was filed two days too late. Worse, the Registry Return Receipt^[45] of the CA Resolution denying petitioner's motion for reconsideration shows that it was received by counsel for petitioner's agent on September 20, 2000, and not March 28, 2001 as claimed by petitioner. In fact, by Resolution dated May 7, 2001,^[46] the CA had ordered the issuance of an Entry of Judgment in this case, which was later withdrawn by Resolution of October 23, 2001^[47] following receipt by it of the instant Petition on May 15, 2001.

It cannot be overemphasized that parties and their counsel are duty-bound to observe honesty and truthfulness in all their pleadings, motions and statements before the courts. Canon 10 of the Code of Professional Responsibility states, "A lawyer owes candor, fairness and good faith to the court;" while Rules 10.01 and 10.03 of the same provide:

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

x x x

Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Petitioner and his counsel, Atty. Abdul A. Basar, are thus hereby directed TO SHOW CAUSE, within 10 days from receipt of a copy of this Decision, why they should not be held in contempt of court and disciplinarily dealt with for violation of Canon 10 of the Code of Professional Responsibility, respectively.

WHEREFORE, the petition is hereby DENIED.

Petitioner MARIO VICTORIA and his counsel, Atty. Abdul A. Basar, are hereby ORDERED TO SHOW CAUSE, within ten (10) days from receipt of a copy of this Decision, why they should not be held in contempt of court and disciplinarily dealt with for violation of Canon 10 of the Code of Professional Responsibility, respectively.

Treble costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Under Rule 65 of the Rules of Court.

[3] Rollo at 22-25; Records at 43-46.

[4] Id., at 26-33; Id., at 58-65.

[5] Records at 71-74.

[6] Rollo at 50-51; Records at 35-36.

[7] Records at 84.

[8] Id., at 81-82.

[9] Id., at 292.

[10] Id., at 38-40.

[11] Rollo at 52-68; Records at 1-18.

[12] Id., at 58; Id., at 7.

[13] Records 211 -217.

[14] Rollo at 69; Records at 240.

[15] Records at 234-235.

[16] Vide Rules of Court, Rule 40, sec. 7, par. (b).

[17] Rollo at 70-72; Records at 344-351.

[18] Id., at 71-72; Id., at 345-346; citations omitted.

[19] Id., at 73-76; Id., at 347-351.

[20] Court of Appeals (CA) Rollo at 361; Records at 361.

[21] Rollo at 77-95; CA Rollo at 2-20.

[22] Id., at 97-98; Id., at 165-166.

[23] Under this Resolution, the filing of a motion for reconsideration interrupted the 60-day period for the filing of a petition for certiorari under Rule 65. If the motion was denied, the aggrieved party could file the petition within the remaining period, which would not be less than 5 days in any event. Section 4 of Rule 65, as amended by this Resolution read:

Sec. 4. Where petition filed. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether

or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall be not less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Underscoring supplied)

The foregoing was again amended by SC Admin. Memo. No. 00-2-3 dated Sept 1, 2000, which prescribes that the 60-day period shall be counted from the notice of the denial of a motion for reconsideration, should one have been filed. Thus, Section 4 of Rule 65 now reads:

Sec. 4. Where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by the law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Underscoring supplied)

[24] Rollo at 97-98; CA Rollo at 165-166.

[25] *Id.*, at 99-105; *Id.*, at 169-175.

[26] *Id.*, at 107; *Id.*, at 177.

[27] Rollo at 7.

[28] *Id.*, at 13.

[29] *Phil. Long Distance Telephone Co., Inc. v. Court of Appeals*, 178 SCRA 94, 102 (1989) citing *Galima, et al. v. Court of Appeals, et al.*, 16 SCRA 140 (1966) and *Tuazon v. Court of Appeals, et al.*, 43 SCRA 664 (1972).

[30] *Ditching v. Court of Appeals*, 263 SCRA 343, 354-355 (1996); *vide Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*, 143 SCRA 643 (1986); Rules of Court, Rule 36, sec. 2.

[31] Affixed to the reverse of page 164 of the CA Rollo.

[32] Rules of Court, Rule 45, sec. 2; B.P. Blg. 129 (1980), sec. 39.

[33] *Vide Ditching v. Court of Appeals, supra*; *Javier v. Madamba, Jr.*, 174 SCRA 495 (1989).

[34] As explained in *Lloren v. De Veyra* (4 SCRA 637, 641 [1962]), the day on which the motion for reconsideration (which interrupts the period to appeal) is filed is not computed as part of the reglementary period; *vide: Refugia v. Court of Appeals*, 258 SCRA 347, 354-355 (1996); Rules of Court, Rule 22, sec. 2:

Sec. 2. Effect of interruption. – Should an act be done which effectively interrupts the running of the period, the

allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded in the computation of the period. (n)

[35] Curiously, while petitioner clearly states in his Petition, following the heading “Antecedent Facts,” that he received notice of the denial of his motion for reconsideration on December 29, 1999 (Rollo at 10), he later claims in his “Brief Statement of Facts” that said notice “was only received by petitioner in person on January 31, 2000” (Rollo at 13). Stranger still, in his Petition before the Court of Appeals, petitioner alleged that he received the same notice on January 29, 2000 (Rollo at 78; CA Rollo at 3).

Unfortunately, the Registry Return Receipt of the notice of the RTC’s denial of petitioner’s Motion for Reconsideration was not attached to the records forwarded to this Court. However, whether petitioner received the subject notice on December 29, 1999, January 29, 2000 or January 31, 2000, the ultimate result is still the same.

[36] Until February 4, 2000, if he received the notice of the denial of his Motion for Reconsideration on January 29, 2000. Until February 6, 2000, if he received said notice on January 31, 2000.

[37] *Cuevas v. Bais Steel Corp.*, 391 SCRA 192, 202 (2002); *Dayrit v. Phil. Bank of Communications*, 386 SCRA 117, 125 (2002);

[38] *Presidential Commission on Good Government v. Sandiganbayan*, 290 SCRA 639, 646 (1998); *vide Government Service Insurance System v. Olisa*, 304 SCRA 421, 425 (1999); *Cornejos v. Court of Appeals*, 387 SCRA 142, 147 (2002).

[39] 415 SCRA 684 (2003).

[40] *Id.*, at 695.

[41] 410 SCRA 113 (2003).

[42] *Id.*, at 121-123.

[43] *Supra*.

[44] *Id.*, at 697-698.

[45] Affixed to the reverse of page 176 of the CA Rollo.

[46] CA Rollo at 183.

[47] *Id.*, at 287.

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