

TERESA, MARIA CHRISTINA, GENARO III, MARIA LUISA, CRISPIN JR., VINCENT AND RASCHEL, ALL SURNAMED GABRIEL, PETITIONERS, VS. HON. COURT OF APPEALS, EMMA, CORAZON AND RAMONA, ALL S...

G.R. No. 149909. October 11, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari,[1] questioning Resolutions[2] dated May 25, 2001 and September 11, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 64127, entitled "TERESA, MARIA CHRISTINA, GENARO III, MARIA LUISA, CRISPIN JR., VINCENT and RASCHEL, all surnamed GABRIEL v. HON. REGIONAL TRIAL COURT OF PASIG CITY, EMMA, CORAZON and RAMONA, all surnamed RONQUILLO."

Petitioners are the heirs of the late Atty. Crispin F. Gabriel (Atty. Gabriel), who was designated as the sole executor of the last will and testament of the deceased Genaro G. Ronquillo (Ronquillo) whose will was probated in 1978 before the Regional Trial Court of Pasig City in Sp. Proc. No. 8857.[3] On the other hand, respondents are the heirs of the testator Ronquillo.

On July 26, 1993, the probate court issued an Order[4] fixing the amount of compensation of Atty. Gabriel as executor in the amount of Php426,000.00 as of December 1992, plus Php3,000.00 a month thereafter until the final liquidation of the estate. At the time of the filing of the present petition, there has been no final liquidation of the Ronquillo estate. Upon the death of Atty. Gabriel on March 19, 1998, his uncollected compensation reached Php648,000.00.[5]

While still acting as executor, Atty. Gabriel, with prior approval of the probate court, sold three parcels of land situated at Quiapo, Manila to William Lee for Php18,000,000.00.[6] Due to certain disagreements between Atty. Gabriel and the respondents, a portion of the proceeds in the amount of Php1,422,000.00 was deposited with the probate court. The said sum included the compensation of Atty. Gabriel. Allegedly, to prevent the release of the compensation, respondents filed a notice with the probate court that there was a pending tax investigation with the Bureau of Internal Revenue concerning unpaid taxes of the estate from the sale of the land.[7]

On April 3, 2001, petitioners filed a Petition for Certiorari, Prohibition and Mandamus with Preliminary Injunction and Prayer for Temporary Restraining Order in the CA.[8] Petitioners questioned the twin orders of the probate court, particularly (1) the court's refusal to order the release of the amount of Php648,000.00 representing the compensation of Atty. Gabriel as the executor of the last will and testament; and (2) the court's insistence to hear respondents' allegation of non-payment of taxes resulting from the sale of the properties located at Quiapo, Manila, for which reason the compensation of Atty. Gabriel should not be released until resolution by the probate court on this matter.[9]

In the meantime, the parties came to an agreement to divide the amount deposited in court. Petitioners received Php284,400.00, and thus, there still remained a balance of Php363,600.00.[10]

On May 25, 2001, the first questioned Resolution[11] was rendered by the CA, the pertinent portion of which reads:

An examination of the instant petition for certiorari, prohibition and mandamus reveals that:

- The verification and certification of non-forum shopping was signed by only one (Teresa S. Gabriel) of the seven petitioners, and there is no showing or proof that she was duly authorized to sign on behalf of her co-petitioners; and
- There is no written explanation why copies of the petition had to be furnished the respondents by way of registered mail rather than through the preferred personal service.

WHEREFORE, premises considered, for being insufficient in form and substance pursuant to Section 1, 2 & 3, par. 2, Rule 65, in relation to Section 3 pars. 3 & 5, Rule 46 and Section 11, Rule 13 both of the 1997 Rules of Civil Procedure, the petition for certiorari, prohibition and mandamus is hereby DENIED DUE COURSE and accordingly DISMISSED.

SO ORDERED.[12]

On September 11, 2001, the second assailed Resolution[13] was issued by the CA, the relevant portion of which reads:

For failure of petitioners to cure the defects that resulted in the dismissal of their petition, per Resolution dated May 25, 2001, the "Motion for Reconsideration" of the Resolution dated June 6, 2001, is hereby DENIED for lack of merit.

SO ORDERED.

Petitioners presented the following issues in their Memorandum: 1) whether there was substantial compliance with the certification of non-forum shopping before the CA; 2) whether the written explanation of why personal service was not done is a mandatory requirement in pleadings filed before the CA; 3) whether the remaining balance of compensation of Atty. Gabriel should be released; and 4) whether the probate court can take cognizance of the tax controversies.[14]

The petition is devoid of merit. The CA committed no reversible error in issuing the assailed Resolutions.

On the first issue regarding the certification against forum shopping, the Rules of Court provides that the plaintiff or the principal party shall certify under oath in the complaint or other initiatory pleading the requirements as mandated under Section 5, Rule 7.[15] The said requirements are mandatory, and therefore, strict compliance thereof is necessary for the proper administration of justice.

In the petition filed by the petitioners in the CA, the verification and the certification against forum shopping were signed by Teresa Gabriel alone, albeit there were seven petitioners therein.[16] In their Memorandum,[17] petitioners proffer the view that the signature of Teresa, being the mother of the rest of the petitioners, should be considered as substantial compliance, for she was willing to take the risk of contempt and perjury should she be found lying. According to petitioners, what is fatal is the utter lack of signatory in the certification.[18]

In numerous decisions,[19] this Court has been consistent in stringently enforcing the requirement of verification[20] and certification of non-forum shopping. When there is more than one petitioner, a petition signed solely by one of them is defective, unless he was authorized by his co-parties to represent them and to sign the

certification. The attestation contained in the certification of non-forum shopping requires personal knowledge by the party who executed the same.[21]

In the instant case, the records are bereft of anything that would show that Teresa was authorized by the other petitioners to file the petition. In the certification against forum shopping, the principal party is required to certify under oath as to the matters contained therein and failure to comply with the requirements shall not be curable by amendment but shall be a ground for the dismissal of the case. Personal knowledge of the party executing the same is important and a similar requirement applies to the verification. Thus, the verification and certification signed only by Teresa are utterly defective, and it is within the prerogative of the court to dismiss the petition.

As aptly stated in *Ortiz v. CA*,[22] substantial compliance will not suffice in a matter involving strict observance. The attestation contained in the certification of non-forum shopping requires personal knowledge by the party who executed the same. To deserve the Court's consideration, petitioners must show reasonable cause for failure to personally sign the certification. They must convince the Court that the outright dismissal of the petition would defeat the administration of justice. In this case, the petitioners did not give any explanation to warrant their exemption from the strict application of the rule. Downright disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[23]

On the second issue, the written explanation why another mode of service was resorted to is a mandatory and indispensable requirement in pleadings or papers filed before all the courts of the land. Parties must exert their best to effect personal service. The Rules of Court[24] provides that personal service of petitions and other pleadings is the general rule, while a resort to other modes of service and filing is the exception.[25] Strictest compliance with Section 11 of Rule 13 is mandated by the Court,[26] and noncompliance therewith is a ground for the denial of the petition or the expulsion of the pleading from the records.

This Court will no longer dwell on the third issue because it is a matter that should be ventilated before the probate court.

As to the fourth issue, the probate court can rightfully take cognizance of the unpaid taxes of the estate of the deceased; if the estate is found liable, the probate court has the discretion to order the payment of the said taxes.[27]

Finally, petitioners should bear in mind that the right to appeal is not a natural right or a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the remedy of appeal must comply with the requirements of the rules; otherwise, the appeal is lost. Rules of procedure are required to be followed, except only when, for the most persuasive of reasons, they may be relaxed to relieve the litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[28]

WHEREFORE, in view of the foregoing, the petition is DENIED for lack of merit. The Resolutions of the Court of Appeals dated May 25, 2001 and September 11, 2001 are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Godardo A. Jacinto and Eliezer R. De Los Santos, concurring; rollo, pp. 21-23.

[3] Rollo, p. 25.

[4] Penned by Judge Manuel S. Padolina, Regional Trial Court, Pasig City, Branch 162; id. at 42-43.

[5] Rollo, p. 10.

[6] Id. at 26.

[7] Id. at 201.

[8] Id. at 11.

[9] Id. at 200.

[10] Id. at 201.

[11] Id. at 21-22.

[12] Id.

[13] Id. at 23.

[14] Id. at 201.

[15] RULES OF COURT, Rule 7, Sec. 5.

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[16] Rollo, p. 34.

[17] Id. at 200-204.

[18] Id. at 202.

[19] Chua v. Torres, G.R. No. 151900, August 30, 2005, 468 SCRA 358, 370-371; Pagtalunan v. Manlapig, G.R. No. 155738, August 9, 2005, 466 SCRA 285, 287; Barcenas v. Tomas, G.R. No. 150321, March 31, 2005, 454 SCRA 593, 605; Ortiz v. CA, 360 Phil. 95, 100 (1998).

[20] RULES OF COURT, Rule 7, Sec. 4.

SEC. 4. Verification. - Except when otherwise specifically required by law or rule, pleadings need not be under

oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[21]Pagtalunan v. Manlapig, supra note 19.

[22] Supra note 19, at 99.

[23] Id.

[24] RULES OF COURT, Rule 13, Sec. 11.

SEC. 11. Priorities in modes of service and filing. - Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[25] Tagabi v. Tanque, G.R. No. 144024, July 27, 2006, 496 SCRA 622, 629.

[26]Solar Team Entertainment, Inc. v. Ricafort, 355 Phil. 404, 415 (1998).

[27]Marcos II v. CA, G.R. No. 120880, June 5, 1997, 273 SCRA 47, 62; Pineda v. Court of First Instance of Tayabas, 52 Phil. 803 (1929).

[28] Ortiz v. CA, supra note 19, at 101.

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