

SPOUSES RUBEN AND MYRNA LEYNES, PETITIONERS, VS. FORMER TENTH DIVISION OF THE COURT OF APPEALS, REGIONAL TRIAL COURT, BRANCH 21, BANSALAN, DAVAO DEL SUR, MUNICIPAL CIRCUIT TRIAL...

G.R. No. 154462. January 19, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court assails the (1) Resolution[1] dated December 20, 2001 of the Court of Appeals in CA-G.R. SP No. 4420-UDK, dismissing the Petition for Certiorari with prayer for a temporary restraining order (TRO) and preliminary injunction of petitioners spouses Ruben and Myrna Leynes (spouses Leynes); and (2) Resolution dated May 7, 2002 of the appellate court in the same case, denying the spouses Leynes' Motion for Reconsideration.

This case originated from a Complaint[2] for forcible entry, damages, and attorney's fees filed by respondents spouses Gualberto and Rene Cabahug Superales (spouses Superales) against the spouses Leynes before the Municipal Circuit Trial Court (MCTC), Branch 1 of Bansalan-Magsaysay, Davao del Sur, and docketed as Civil Case No. 471 (2000)-B. The Complaint alleged the following material facts:

3. That the [spouses Superales] were the actual occupants and possessors, being lawful owners of that certain parcel of a residential lot within the Nebraska Subd., Bansalan, Davao del Sur, known as Lot No. 2423-B-5-K-2, Psd-11-050478, being a portion of lot 2423-B-5-K, Psd-11-008104, covered by Transfer Certificate of Title No. T-41240, containing an area of Three Hundred Thirty Six (336) Square Meters, more or less, and registered in the name of Rene Cabahug Superales, in the Register of Deeds for the Province of Davao del Sur;

x x x x

4. That sometime in February 2000, the [spouses Leynes] through force, stealth and strategy encroached upon and occupied a portion of the [spouses Superales'] titled property consisting of 76 square meters, more or less, dispossessed the [spouses Superales] and constructed therein a comfort room as an extension of their house without first obtaining the required building permit from the Municipal Engineer's Office, of Bansalan, Davao del Sur;

5. That the [spouses Superales] promptly called the attention of the [spouses Leynes] and protested their intrusion into their property but notwithstanding their protestations the [spouses Leynes] continued on their construction and occupation of a portion of the [spouses Superales'] property;

6. That the [spouses Superales] reported to the Barangay Captain of Brgy. Poblacion, Bansalan, Davao del Sur, the [spouses Leynes'] encroachment on their titled property and the illegal construction being made on a portion of their property and their complaint was docketed as Brgy. Case No. 1649;

7. That Amicable Settlement of the dispute was however, repudiated by the [spouses Leynes] when they

refused to recognize the relocation survey conducted on the property of the [spouses Superales] and prevented the [spouses Superales'] surveyor from planting monuments on the boundary between the [spouses Superales] and the [spouses Leynes'] lot;

x x x x

8. That as per relocation survey conducted, the [spouses Leynes] have encroached and occupied a total of Seventy Six (76) Square Meters, of the [spouses Superales'] titled property, thereby reducing the area of the [spouses Superales'] lot from 336 Square Meters, more or less to 260 Square Meters, more or less;

x x x x

9. That the [spouses Superales] also complained to the Municipal Engineer's Office in order to stop the illegal construction undertaken by the [spouses Leynes], but [spouses Superales'] complaint fell on deaf ears as no action has been taken by the Municipal Engineer's Office on the said illegal construction;

x x x x

10. That the [spouses Leynes] have unlawfully occupied and are continuously occupying illegally a portion of the [spouses Superales'] property consisting of 76 Square Meters, thereby denying the [spouses Superales] the use and enjoyment of the said property being unlawfully withheld by the [spouses Leynes];

11. That the [spouses Superales] must be promptly restored to the full and peaceful possession of the portion of 76 Square Meters, of their property taken forcibly and illegally by the [spouses Leynes], by ordering the [spouses Leynes] to remove and/or demolish their construction and improvements erected on the lot of the [spouses Superales], and should they fail or refuse to do so, [spouses Superales] be given the authority to cause the removal of the [spouses Leynes'] improvements at the expense of the [spouses Superales];

12. That in the meantime that the [spouses Leynes] are occupying a portion of the [spouses Superales'] property, [spouses Leynes] be made to pay the [spouses Superales] the amount of P500.00 per month as reasonable rental for the property until they shall have restored the property to the full and peaceful possession of the [spouses Superales].^[3]

Summons together with a copy of the aforementioned Complaint was served on the spouses Leynes on May 10, 2000, giving them ten (10) days from receipt within which to file their answer pursuant to Section 6 of the Rules on Summary Procedure. The 10-day period for the filing of the spouses Leynes' answer prescribed on May 20, 2000, a Saturday.

The spouses Leynes filed their Answer with Counterclaim on May 22, 2000, and their Motion to Admit Belatedly Filed Answer with attached Answer with Counterclaim the day after, on May 23, 2000. The spouses Leynes explained that they were not able to file their Answer with Counterclaim on May 20, 2000, even though there were court employees on duty that Saturday, because they had to serve first a copy of said pleading on the spouses Superales' counsel, whose office was located in Davao City. Davao City is approximately one-hour ride by bus from Digos City. The spouses Leynes added that they were not even sure if the office of the spouses Superales' counsel was open on Saturdays.^[4]

The spouses Superales opposed the spouses Leynes' Motion to Admit Belatedly Filed Answer contending that the answer should have been filed within 10 days from receipt of a copy of the complaint; and the spouses Leynes' motion to admit is in the nature of a motion for extension of time to file an answer, which is a prohibited pleading in summary proceedings. The spouses Superales further pointed out that the spouses Leynes' motion to admit was not set for hearing and was, thus, a pro forma motion which should be denied outright.

The spouses Superales subsequently filed an Ex Parte Motion for Judgment on May 23, 2000, in which they

prayed that since the spouses Leynes failed to file their answer to the Complaint within the prescribed period, then judgment could now be rendered based on the evidence and allegations contained in the Complaint.

On May 29, 2000, the MCTC rendered its Judgment denying the spouses Leynes' Motion to Admit Belatedly Filed Answer and resolving Civil Case No. 471 (2000)-B entirely in the spouses Superales' favor. Said MCTC judgment reads:

This treats the ex-parte motion for judgment filed by Atty. Rogelio E. Sarsaba, counsel for the [spouses Superales] alleging in substance that the last day of filing of answer for the [spouses Leynes] was on May 20, 2000 and [the spouses Leynes] did not file any. Be it noted on such date although it was Saturday the Court was opened and Court personnel, Benedicta Abagon and Anastacia Vale were present at that time to receive cases and motions filed in Court. On May 22, 2000 [spouses Leynes] filed [their] answer which answer was filed out of the time prescribed by law. Under Section 7 of Rule 70, 1997 Rules of Civil Procedure, the law provides: "Should the defendants fail to answer the complaint within the period above provided, the court, motu proprio or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. The Court, may in its discretion reduce the amount of damages and attorneys fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of Section 3 (c), Rule 9 if there are two or more defendants."

From the foregoing facts, the [spouses Leynes] really failed to answer the complaint within the period prescribed by law, which period under the rules cannot be extended.

WHEREFORE, the ex-parte motion for judgment filed by the [spouses Superales] is hereby APPROVED, AND judgment is hereby rendered ordering the [spouses Leynes]:

- To remove their construction and/or improvements on the 76 square meters lot belonging to the [spouses Superales] and surrendered (sic) the same area promptly and peacefully to the [spouses Superales];
- To pay the [spouses Superales] the amount of P500.00 per month as reasonable rentals of the 76 square meters lot occupied by the [spouses Leynes] from February 2000 until the said area shall have been delivered to the full possession and control of [the spouses Superales] in the concept of damages;
- To pay the [spouses Superales] the sum of P4,000.00 as reimbursement for the cost of the survey and the relocation of [the spouses Superales'] property; and
- To pay the [spouses Superales] the sum of P15,000.00 as reimbursement for attorney fees.[5]

Aggrieved, the spouses Leynes appealed the foregoing MCTC Judgment to the Regional Trial Court (RTC), Branch 21 of Bansalan, Davao del Sur. Their appeal was docketed as Civil Case No. XXI-228 (00). In its Decision dated July 9, 2001, the RTC affirmed the appealed MCTC Judgment, ruling thus:

The lower court was right when it did not allow or entertain the belatedly filed Answer with Counterclaim of the [spouses Leynes]. The "Motion to Admit Belated Answer" partakes of a motion for extension of time to file pleading which is not allowed as explicitly provided in Section 19 of the 1991 Revised Rules on Summary Procedure. Since the law on this matter is unambiguous, unequivocal, its application is imperative.

Wherefore, the judgment rendered by the Municipal Circuit Trial Court is hereby affirmed, with the sole modification that the amount of monthly rental for the Seventy-Six (76) square meter-lot be reduced from P500.00 to P200.00.[6]

The spouses Leynes filed with the RTC a Motion for Reconsideration in which they sought the recall of the Decision dated July 9, 2001 and the remand of the case to the MCTC for trial on the merits. However, the RTC, in a Resolution also "strangely" dated July 9, 2001, refused to reconsider its earlier decision. The RTC stressed that:

This case falls under the "Rules on Summary Procedure". As such, the answer should be filed within ten (10) days from the service of summons and must be served on the plaintiff.

The [spouses Leynes], in filing a "Motion to Admit Belated Answer" in effect admitted that their Answer was filed out of time. Having made that admission, they may no longer be heard to claim otherwise.

Wherefore, premises considered, the motion for reconsideration is hereby denied.[7]

On October 11, 2001, the spouses Superales filed with the RTC a Motion for Execution pursuant to Rule 70, Section 21 of the Revised Rules of Court[8] which provides for the immediate execution of the RTC judgment against the defendant notwithstanding further appeal of the same before the Court of Appeals or the Supreme Court. Expectedly, the spouses Leynes opposed the spouses Superales' Motion for Execution.

The spouses Leynes then filed a Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order and Preliminary Injunction with the Court of Appeals on November 17, 2001. The petition was docketed as CA-G.R. SP No. 4420-UDK.

In its Resolution dated December 20, 2001, the Court of Appeals dismissed the spouses Leynes' petition outright for being the wrong remedy and for failure to state the material dates. The appellate court explicated that:

(1) It is a wrong remedy. Under the heading "Timeliness Of This Petition" [spouses Leynes] alleged that the petition is directed against "the decision of the Regional Trial Court, Branch 21 in Bansalan, Davao del Sur in the exercise of its appellate jurisdiction. This case originated from the Municipal Circuit Trial Court, Branch 1, Bansalan-Magsaysay, Davao del Sur (docketed as Civil Case No. 471 [2000]-B where, herein Respondents, Spouses Gualberto and Rene Superales filed a Complaint for Forcible Entry against Petitioners, Spouses Ruben and Myrna Leynes." If that be so, then the correct and appropriate mode of review should be appeal by way of a petition for review under Rule 42 of the 1997 Rules. Under paragraph 4 of Supreme Court Circular No. 2-90, an appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

(2) Upon the other hand, if the present petition for certiorari were to be regarded as the correct or appropriate remedy - (which it is not) - still it is procedurally flawed because [the spouses Leynes] violated the amendment introduced to Section 3, Rule 46 of the 1997 Rules, as amended, by Supreme Court Circular No. 39-98, effective September 11, 1998, which states as follows ---

Section 3. Contents and filing of petition; effect of non-compliance with requirements ---

x x x x

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Here, [the spouses Leynes] did not indicate just when it was that they received the notice of the denial of the motion for reconsideration that they allegedly filed with the RTC of Bansalan, Davao del Sur, Branch 21, on August 18, 2001, the resolution whereon, denying their motion for reconsideration was allegedly "strangely" dated July 9, 2001.

WHEREFORE, the present petition must be denied due course and consequently DISMISSED. Needless to say, inasmuch as the prayer for a temporary restraining order and preliminary injunction is merely an adjunct

to the main petition, the same must be pro tanto DENIED.[9]

On January 28, 2002, the RTC issued an Order granting the spouses Superales' Motion for Execution. The RTC observed that the Court of Appeals did not issue a TRO as prayed for by the spouses Leynes in their petition in CA-G.R. SP No. 4420-UDK. Instead, the RTC referred to the Resolution dated December 20, 2001 of the Court of Appeals dismissing outright the spouses Leynes' petition in CA-G.R. SP No. 4420-UDK.

Subsequently, the RTC issued a Writ of Execution on February 2, 2002, for the satisfaction of its Decision dated July 9, 2001.

On February 11, 2002, the spouses Leynes filed with the RTC a Manifestation with motion to hold in abeyance the enforcement of the writ of execution, considering their pending Motion for Reconsideration of the Resolution dated December 20, 2001 of the Court of Appeals in CA-G.R. SP No. 4420-UDK. In its Order dated February 15, 2002, the RTC directed the Sheriff to hold in abeyance the implementation of the Writ of Execution until said trial court has resolved the spouses Leynes' latest motion.

In a Resolution dated May 7, 2002, the Court of Appeals found no reason to modify or overturn its earlier Resolution dated December 20, 2001, which dismissed the spouses Leynes' petition in CA-G.R. SP No. 4420-UDK. The dispositive portion of said Resolution states:

WHEREFORE, the motion for reconsideration, for lack of merit, must be as it hereby is DENIED. Accordingly, the appended Petition for Certiorari is ordered expunged from the records, and the enclosed Postal Money Orders Nos. J 7318284 and B 2678220, both dated 19 November 2001, in the amount of P500.00 and P1,000.00, respectively, posted at the Ateneo University, Davao City, payable to the clerk of court of this Court from a certain Ruben Leynes, are hereby ordered returned to the sender/payee.[10]

Not long thereafter, on May 13, 2002, the RTC issued an Order resolving the issue of execution of its Decision dated July 8, 2001. The RTC reasoned that:

[I]n an ejectment case, the appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirmed decision. The only exception to that is when said appellate court grants an execution pending appeal.

x x x x

Considering that this does not involve a motion for execution pending appeal, this Court (sitting as an appellate court) cannot decree its execution.[11]

Thus, the RTC decreed:

Wherefore, this case is hereby remanded to the court of origin, that is, the Municipal Circuit Trial Court (Br. 001) Bansalan-Magsaysay with which the motion for execution shall be filed.[12]

On May 17, 2002, the spouses Leynes received a copy of the Court of Appeals Resolution dated May 7, 2002 denying their Motion for Reconsideration of the dismissal of their petition in CA-G.R. SP No. 4420-UDK. Thereafter, on July 17, 2002, the spouses Leynes filed the instant Petition for Certiorari charging the Court of Appeals, as well as the RTC and the MCTC, with grave abuse of discretion, particularly committed as follows:

I

IN DISMISSING [the spouses Leynes'] EARLIER PETITION, THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION CONSIDERING THAT IT DENIED THE PETITION ON A MERE TECHNICALITY WITHOUT CONSIDERING THAT THE ISSUES RAISED ARE NOVEL AND HIGHLY MERITORIOUS.

II

THE MCTC BRANCH 1 AND THE RTC BRANCH 21 BOTH COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED TO ADMIT [the spouses Leynes'] ANSWER AND RULING THAT SINCE THE LAST DAY FOR FILING [the spouses Leynes'] ANSWER FELL ON A SATURDAY, THE SAME SHOULD HAVE BEEN FILED ON THE SAID DAY SINCE THERE WERE COURT PERSONNEL ON DUTY.

III

THE MCTC BRANCH 1 AND THE RTC BRANCH 21 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECIDED TO ADMIT [the spouses Superales'] COMPLAINT FOR FORCIBLE ENTRY NOTWITHSTANDING THAT THE SAME WAS FILED MORE THAN ONE YEAR FROM ITS SUPPOSED HAPPENING.[13]

Procedural Matters

The Court of Appeals dismissed the spouses Leynes' Petition for Certiorari in CA-G.R. SP No. 4420-UDK for being the wrong mode of appeal and for failure to state a material date.

Supreme Court Circular No. 2-90 clearly lays down the proper modes of appeal to the Court of Appeals from the RTCs:

3. Appeals to the Court of Appeals. - On the other hand, appeals by certiorari will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:

a) by writ of error (ordinary appeal) - where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or

b) by petition for review - where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction.

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

4. Erroneous Appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed. (Emphases ours.)

The RTC decided Civil Case No. XXI-228 (00) in its appellate jurisdiction. Hence, the RTC Decision dated July 9, 2001, which affirmed the MCTC Judgment of May 29, 2000 against the spouses Leynes, and Resolution inadvertently also dated July 9, 2001, which denied the spouses Leynes' Motion for Reconsideration, should have been appealed to the Court of Appeals by means of a petition for review under Rule 42 of the Rules of Court.

The spouses Leynes, however, went before the Court of Appeals via a Petition for Certiorari under Rule 65 of the Rules of Court. In *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*,^[14] we presented the following discourse distinguishing between an appeal (whether an ordinary appeal or a petition for review) and a petition for certiorari, to wit:

A writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.

For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

"Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

Appeal and Certiorari Distinguished

Between an appeal and a petition for certiorari, there are substantial distinctions which shall be explained below.

As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

"When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari."

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court - on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact - a mistake of judgment - appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for certiorari is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for certiorari are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declare are appealable. Since the issue is jurisdiction, an original action for certiorari may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by certiorari, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for certiorari should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for certiorari, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.

Certiorari Not the Proper Remedy if Appeal Is Available

Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[15]

The remedy of appeal to the Court of Appeals was available to the spouses Leynes, only that they failed to avail of it in time. This much is clear from the following explanation of the counsel for the spouses Leynes:

10. Until the proceedings before the Regional Trial Court Branch 21, [the spouses Leynes] were represented by their former counsel of record, Atty. Christopher Abarilla. Aggrieved by the way their case was handled by their former counsel of record, [the spouses Leynes] engaged the services of the undersigned Counsel in the second week of November 2001 for the purpose of elevating their case to the Court of Appeals. Since no other remedy under the Rules of Court was no longer available to [the spouses Leynes] because the 15-day period within which to file a Certiorari under Rule 42 had already lapsed, recourse under Rule 65 was instead resorted to as there was no appeal, or any plain, speedy and adequate remedy in the ordinary course of law by which [the spouses Leynes] could question the assailed decisions of both the lower court and the RTC Branch 21.[16] (Emphasis ours.)

We reiterate the well-settled rule that certiorari is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that certiorari cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right to appeal are antithetical to the availment of the special civil action for certiorari. These two remedies are mutually exclusive.[17] The special civil action of certiorari cannot be used as a substitute for an appeal which the petitioner already lost.[18]

Furthermore, as the Court of Appeals held, the spouses Leynes' Petition for Certiorari in CA-G.R. SP No. 4420-UDK failed to comply with the requirement under Rule 46, Section 3 of the Rules of Court that a petition for certiorari should indicate material dates, such as when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received. The spouses Leynes did not refute that their Petition for Certiorari before the Court of Appeals did not state the date they received a copy of the RTC Resolution denying their Motion for Reconsideration. That the said Resolution was strangely dated July 9, 2001, the same date as the RTC Decision sought to be reconsidered, is immaterial. The timeliness of the filing by the spouses Leynes of their petition before the Court of Appeals is determined from the date they received the challenged RTC resolution and not the date the RTC issued the same.

Seeking recourse from this Court, the spouses Leynes once more filed a Petition for Certiorari under Rule 65 of the Rules of Court. The spouses Leynes yet again availed themselves of the wrong remedy.

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for certiorari under Rule 65 of the Rules of Court. As provided in Rule 45 of

the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[19]

Nevertheless, we bear in mind that the acceptance of a petition for certiorari, as well as the grant of due course thereto, in general, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations. Where a rigid application of the rule that certiorari cannot be a substitute for appeal will result in a manifest failure or miscarriage of justice, it is within our power to suspend the rules or exempt a particular case from its operation.[20]

We pronounced in *Tanenglian v. Lorenzo*[21] that:

All things considered, however, we do not agree in the conclusion of the Court of Appeals dismissing petitioner's Petition based on a procedural faux pax. While a petition for certiorari is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In *Sebastian v. Morales*, we ruled that rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure, thus:

[C]onsidering that the petitioner has presented a good cause for the proper and just determination of his case, the appellate court should have relaxed the stringent application of technical rules of procedure and yielded to consideration of substantial justice.

The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[22] (Emphases ours.)

Given the peculiar circumstances extant in the case at bar, the dismissal of the spouses Leynes' Petition for Certiorari would result in the miscarriage of justice. The spouses Leynes were unjustly declared in default by the MCTC and deprived of the opportunity to present arguments and evidence to counter the spouses Superales' Complaint. Hence, we are accepting and giving due course to the spouses Leynes' petition in the interests of substantial justice and equity.

Reglementary Period

The MCTC rendered its Judgment dated May 29, 2000 ex parte, declaring the spouses Leynes in default for their failure to file their answer to the spouses Superales' Complaint within the reglementary period for doing so. According to the MCTC, the spouses Leynes only had until May 20, 2000 to file an answer; and although May 20, 2000 was a Saturday, the court was open and court personnel Benedicta Abagon and Anastacia Vale were present at that time to receive cases and motions filed with the court.

We disagree.

Sections 6, Rule 70 of the 1991 Revised Rules on Summary Procedure gives a defendant 10 days from service of summons to file his/her answer:

Section 6. Answer. - Within ten (10) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except lack of jurisdiction over the subject matter. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be served and filed within ten (10) days from service of the answer in which they are pleaded.

In computing said 10-day period, we resort to Rule 22, Section 1 of the Rules of Court, which reads:

Section 1. How to compute time. In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (Emphases ours.)

We emphasized in *Bank of the Philippine Islands v. Court of Appeals*,^[23] that non-working days (Saturdays, Sundays, and legal holidays) are excluded from the counting of the period only when the last day of the period falls on such days. Rule 22 does not provide for any other circumstance in which non-working days would affect the counting of a prescribed period.

The spouses Leynes were served with the summons on May 10, 2000. The last day of the 10-day period within which the spouses Leynes should have filed their answer, May 20, 2000, fell on a Saturday. The next working day was May 22, 2000, a Monday, on which the spouses Leynes did file their Answer with Counterclaim. Based on the aforequoted rules, the spouses Leynes' answer was filed within the reglementary period, and they were not in default. The MCTC should not have rendered an ex parte Judgment against them.

Court personnel were at the MCTC on May 20, 2000, a Saturday, in compliance with the Supreme Court Administrative Circular No. 2-99, on Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness, which took effect on February 1, 1999. Pertinent provisions of said circular are reproduced below:

- Executive Judges of the Regional Trial Courts shall assign by rotation, Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts in multiple sala stations within their respective territorial areas, to be on duty on Saturdays from 8:00 A.M. to 1:00 P.M., assisted by a skeletal force, also on rotation, primarily to act on petitions for bail and other urgent matters.

x x x x

- Court offices, (e.g., Office of the Clerk) and units which deal directly with the public, such as receiving, process-serving and cashier's units, shall maintain a skeletal force on Saturdays from 8:00 A.M. to noon, and from 12:30 P.M. to 4:30 P.M. Those assigned to work on Saturdays shall be notified of their assignment at least three days in advance. An employee so assigned shall have a full day-off the following week, on a day to be specified by the Justice/Judge concerned. (Manual for Clerk of Courts, Chapter II, Section A, 1) (Emphases ours.)

Administrative Circular No. 2-99 should not affect the manner by which periods set by the rules or the courts are computed under Rule 22, Section 1 of the Rules of Court. Administrative Circular No. 2-99 is an administrative issuance signed by then Chief Justice Hilario G. Davide to govern the attendance of judiciary officials and

employees. It cannot amend or take precedence over the Rules of Court, duly approved by the Court en banc and published for the information of and compliance by the public. In fact, Administrative Circular No. 2-99 itself states that "it supersedes and modifies accordingly any previous Orders or Circulars on the matter," but not the Rules of Court.

Moreover, Administrative Circular No. 2-99 requires certain trial court judges and employees to be present on Saturdays "primarily to act on petitions for bail and other urgent matters." We fail to see an answer to a complaint for forcible entry as among such urgent matters that would have required filing by the party and action by the court not a day later. In addition, Administrative Circular No. 2-99 directs the Office of the Clerk of Court to maintain a skeletal force on Saturdays. Civil Case No. 471 (2000)-B, the spouses Superales' complaint for forcible entry against the spouses Leynes, was already raffled to and pending before the MCTC-Branch 1 of Bansalan-Magsaysay, Davao del Sur; thus, the answer and other pleadings in said case should already be filed with the said Branch and not with the Office of the Clerk of Court. There is no showing that the Office of the Branch Clerk of Court was also open on May 20, 2000.

MCTC Jurisdiction

We do not subscribe, however, to the spouses Leynes' argument that the spouses Superales' Complaint for forcible entry had already prescribed.

Rule 70, Section 1 of the Rules of Court provides:

Sec. 1. Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis ours.)

In forcible entry cases, the action must be brought within one year from the date of actual entry on the land. In paragraph 4 of their Complaint, the spouses Superales alleged that the spouses Leynes, through force, stealth, and strategy, encroached upon and occupied a portion of the spouses Superales' titled property, consisting of 76 square meters, sometime in February 2000. The spouses Superales already filed their Complaint for forcible entry, damages, and attorney's fees, three months thereafter, in May 2000.

Even so, the MCTC rendered judgment against the spouses Leynes ex parte. The spouses Leynes' Answer with Counterclaim was not admitted by the MCTC and they had no opportunity to present evidence in support of their defenses.

The spouses Leynes averred before us that:

48. It is clear from the language of the law that [the spouses Superales'] cause of action accrued from the very moment they found in 1995 that [the spouses Leynes'] buildings allegedly intruded into their supposed property when they acquired title over the same. But for the next five years or so, [the spouses Superales] never raised a howl of protest over the alleged encroachment. Not having acted on their rights within the limits stipulated under the law, then the complaint for Forcible Entry should also be considered as belatedly filed before the MCTC Branch.

49. [The spouses Superales], however, have been very careful to allege that [the spouses Leynes'] structures

were built in the year 2000 to enable them to get around the prescriptive period imposed by the Rules. But the truth is, and the same could have been very well established had a trial on the merits proceeded, the comfort rooms were built in 1985 and the bunkhouse followed two years later. [The spouses Superales] then were not yet claimants or possessors of the land they now say is theirs. In 1995 when they surreptitiously acquired title over Jose Cabahug's property, they contested for the first time, the location of [the spouses Leynes'] buildings. Yet, after having done so, [the spouses Superales] never filed the complaint for Forcible Entry within the one (1) year period as mandated. At the onset therefore, [the spouses Superales'] cause of action was already tainted with a serious congenital infirmity which, had a trial been convened, would have necessarily resulted in the unwarranted complaint against [the spouses Leynes].[24]

These averments obviously involve factual matters which the spouses Leynes must back up with evidence. We cannot rule on the same since this Court is not a trier of facts. Consequently, it is only prudent that the case be remanded to the MCTC for further proceedings.

WHEREFORE, the Petition is GRANTED. The ex parte Judgment dated May 29, 2000 of the Municipal Circuit Trial Court, Branch 1 of Bansalan-Magsaysay, Davao del Sur, in Civil Case No. 471 (2000)-B, is ANNULLED and SET ASIDE. The case is REMANDED to the same court which is DIRECTED to admit the Answer with Counterclaim of the spouses Ruben and Myrna Leynes and accordingly conduct further proceedings.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Abad,[*] and Perez, JJ., concur.

[*] Per Raffle dated January 10, 2011.

[1] Rollo, pp. 23-24; penned by Associate Justice Renato C. Dacudao with Associate Justices Ruben T. Reyes and Mariano C. del Castillo (now Supreme Court Associate Justice), concurring.

[2] Id. at 45-50.

[3] Id. at 45-47.

[4] Id. at 6.

[5] Id. at 64-65.

[6] Id. at 67.

[7] Id. at 73.

[8] Sec. 21. Immediate execution on appeal to Court of Appeals or Supreme Court. - The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[9] Rollo, pp. 23-24.

[10] Id. at 33.

[11] Id. at 94.

[12] Id.

[13] Id. at 10-11.

[14] 479 Phil. 768 (2004).

[15] Id. at 778-783.

[16] Rollo, p. 7.

[17] Caballes v. Court of Appeals, 492 Phil. 410, 420 (2005).

[18] People v. Sandiganbayan, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216.

[19] Fortune Guarantee and Insurance Corporation v. Court of Appeals, 428 Phil. 783, 791 (2002).

[20] Tan v. Bausch and Lomb, Inc., G.R. No. 148420, December 15, 2005, 478 SCRA 115, 120-121.

[21] G.R. No. 173415, March 28, 2008, 550 SCRA 348.

[22] Id. at 367-368.

[23] G.R. No. 142731, June 8, 2006, 490 SCRA 168.

[24] Rollo, pp. 18-19.

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