

ATHENA COMPUTERS, INC. AND JOSELITO R. JIMENEZ, PETITIONERS, VS. WESNU A. REYES,

G.R. No. 156905. September 05, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari seeking the reversal of the Resolutions dated September 5, 2002[1] and January 13, 2003[2] of the Court of Appeals in CA-G.R. SP No. 72284.

On September 1, 1996, Athena Computers, Inc. (Athena), petitioner, hired Wesnu A. Reyes, respondent, as a computer technician. In less than a year, he was promoted as manager of Athena's engineering and technical department. Under his direct supervision were computer technicians. He had full access to all Athena's computer equipment and those entrusted to him by its clients.

In January 1998, Athena conducted an inventory of its computer equipment. Allegedly, respondent committed certain anomalies and admitted misappropriating payments for several computers and the burning of records to conceal his misappropriation. A computer monitor entrusted to respondent for repair as well as parts of LX 300 printers were missing.

Athena's board of directors terminated respondent's services. However, Joselito R. Jimenez, also a petitioner, convinced the board to defer its decision to give respondent another chance to rectify his inefficiencies. It is at this point that respondent indicated his desire to resign on the ground that the pressures of his work have affected his health and that he intends to seek employment abroad. Thereupon, he and Jimenez agreed to discuss the phase-out and turn-over procedure of respondent's accountabilities on July 28, 1998.

The phase-out and turn-over did not materialize since respondent did not report for work anymore despite numerous pager messages sent to him by Athena. On August 1, 1998, Jimenez issued a memorandum placing respondent under preventive suspension for fifteen (15) days and directing him to submit a written explanation on his absence without leave. On August 16, 1998, Jimenez issued another memorandum terminating respondent's employment.

For his part, respondent claimed that he did an excellent job while he was employed in Athena. In fact, three (3) months after his probationary period of employment, he was given a salary increase. Jimenez commended him for his performance and attitude. On July 24, 1998, he verbally asked permission from Jimenez to go on leave starting July 29, 1998 in order to apply for a job abroad. But on July 31, 1998, Jimenez announced to all Athena's internet subscribers that respondent was placed under preventive suspension due to his absence without leave and warned the public to refrain from making any transaction with him since it will not be honored by Athena.

On August 5, 1998, respondent filed with the Labor Arbiter a complaint for illegal suspension, harassment, non-payment of salaries and damages, backwages, and attorney's fees. Later, he filed an amended complaint[3] to include the charge of illegal dismissal.

On September 30, 1999, the Labor Arbiter promulgated a Decision dismissing respondent's complaint, thus:

WHEREFORE PREMISES CONSIDERED, judgment is hereby rendered DISMISSING the case for lack of merit but ordering the respondent to pay the complainant his unpaid salary for the period from July 15 to 27, 1998.

SO ORDERED.[4]

On appeal, the National Labor Relations Commission (NLRC) promulgated its Decision dated May 10, 2002 reversing the Labor Arbiter's judgment and declaring that the preventive suspension and dismissal from employment of respondent are illegal. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, complainant's appeal is GRANTED. The Labor Arbiter's Decision is REVERSED. It is hereby declared that complainant's preventive suspension and dismissal from employment are illegal. Respondents are ordered to jointly and severally pay complainant the amount of P292,500.00 as backwages and separation pay, plus ten percent (10%) thereof as attorney's fees. The Labor Arbiter's Decision ordering Respondents to pay complainant his unpaid salary for the period covering July 15 to 27, 1998 is hereby AFFIRMED.

SO ORDERED.[5]

Both petitioners seasonably filed with the Court of Appeals a petition for certiorari alleging that in reversing the Decision of the Labor Arbiter, the NLRC committed grave abuse of discretion. In a Resolution[6] dated September 5, 2002, the appellate court dismissed the petition, thus:

After a careful examination of the instant petition for certiorari, it reveals that the Verification of the petition and Certification of non-forum shopping were executed and signed by Joselito R. Jimenez without authority to act for and in behalf of his co petitioner (Digital Microwave Corp. v. Court of Appeals, 328 SCRA 287) in violation of Sections 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure. Moreover, the copies of pertinent pleadings are not attached to the petition in violations of Section 1, par. 2, Rule 65 Rules of Civil Procedure.

WHEREFORE, the instant petition for certiorari is hereby DENIED DUE COURSE AND DISMISSED for being insufficient in form and substance.

SO ORDERED.

Petitioners filed a motion for reconsideration but it was subsequently denied by the appellate court in its Resolution[7] dated January 13, 2003.

Hence, the instant petition.

The issue for our resolution is whether the appellate court erred in dismissing the petition due to defective verification and certification on non-forum shopping and for petitioners' failure to attach to the same petition pertinent pleadings as required by Section 1, Rule 65 of the 1997 Rules of Civil Procedure, as amended.

The petition is without merit.

Certiorari, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law.[8]

Section 1, Rule 65 of the same Rules provides:

SECTION 1. Petition for certiorari.- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the

ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Section 3, Rule 46, likewise provides:

SECTION 3. Contents and filing of petition; effect of non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing 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.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

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

The acceptance of a petition for certiorari as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the court has absolute discretion to reject and dismiss a petition for certiorari, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars.[9] Clearly, petitioners in their petition before the Court of Appeals committed procedural errors.

The verification of the petition and certification on non-forum shopping before the Court of Appeals were signed only by Jimenez. There is no showing that he was authorized to sign the same by Athena, his co-petitioner.

Section 4, Rule 7 of the Rules states that 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 knowledge and belief. Consequently, the verification

should have been signed not only by Jimenez but also by Athena's duly authorized representative.

In *Docena v. Lapesura*,^[10] we ruled that the certificate of non-forum

shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient. The attestation on non-forum shopping requires personal knowledge by the party executing the same,^[11] and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.

The certification against forum shopping in CA-G.R. SP No. 72284 is fatally defective, not having been duly signed by both petitioners and thus warrants the dismissal of the petition for certiorari. We have consistently held that the certification against forum shopping must be signed by the principal parties.^[12] With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.^[13]

While the Rules of Court may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures, nevertheless they must be faithfully followed.^[14] In the instant case, petitioners have not shown any reason which justifies relaxation of the Rules. We have held that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except for the most persuasive of reasons when they may be relaxed.^[15] Not one of these persuasive reasons is present here.

In fine, we hold that the Court of Appeals did not err in dismissing the petition for certiorari in view of the procedural lapses committed by petitioners.

WHEREFORE, we DENY the petition. The assailed twin Resolutions of the Court of Appeals in CA-G.R. SP No. 72284 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, amd Garcia, JJ., concur.

[1] Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justice Eloy R. Bello, Jr. (both retired) and Associate Justice Josefina Guevara-Salonga; rollo, p. 26.

[2] *Id.*, pp. 28-29.

[3] Docketed as NLRC Case No. Sub-RAB-05-08-00093-98.

[4] Rollo, p. 75.

[5] *Id.*, p. 88.

[6] *Id.*, p. 26.

[7] *Id.*, pp. 28-29.

[8] *Manila Midtown Hotels & Land Corp. v. NLRC*, G.R. No. 118397, March 27, 1998, 288 SCRA 259.

[9] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 151833, August 7, 2003, 408 SCRA 523.

[10] G.R. No. 140153, March 28, 2001, 355 SCRA 658.

[11] *Id.*, citing *Sps. Valentin Ortiz, et al. v. Court of Appeals*, G.R. No. 127393, December 4, 1998, 299 SCRA

708.

[12] Development Bank of the Philippines v. Court of Appeals, G.R. No. 147217, October 7, 2004, 440 SCRA 200, citing Mendigorin v. Cabantog, G.R. No. 136449, August 22, 2002, 387 SCRA 655.

[13] Id., citing National Steel Corporation v. Court of Appeals, G.R. No. 134468, August 29, 2002, 388 SCRA 85.

[14] Navarro v. Metropolitan Bank and Trust Co., G.R. No. 138031, May 27, 2004, 429 SCRA 439.

[15] Meatmasters International Corporation v. Lelis Integrated Development Corporation, G.R. No. 163022, February 28, 2005, 452 SCRA 626, citing Lazaro v. Court of Appeals, 330 SCRA 208 (2000).

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