HUN HYUNG PARK, PETITIONER, VS. EUNG WON CHOI, RESPONDENT.

G.R. NO. 165496. June 29, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

This resolves petitioner's Motion for Reconsideration dated March 21, 2007.

For the first time, petitioner raises the matter of inadvertence with respect to the improper verification of his petition. This Court notes that petitioner has softened his previously adamant stance[1] as he now claims to have simply overlooked the failure to include the words "or based on authentic records" in verifying the petition.

This Court takes cognizance of petitioner's humble submission and finds his invocation of honest mistake to be well-taken in explaining the lapse in the verification.

The relaxation of the rule on verification notwithstanding, petitioner's motion must nonetheless fail.

In asserting that he was not required to attach the MeTC Orders, petitioner tries to impress upon this Court that he was not questioning the Orders of the MeTC. Such attempt does not persuade.

Rule 42 explicitly mandates that a clearly legible duplicate original or certified true copy of both lower courts' judgments or final orders must be attached to the petition, except where, as in the case of Ramos v. Court of Appeals,[2] the MeTC Order was rendered in favor of the petitioner in which case only a true or plain copy thereof is required to be attached.

In this case, the February 27, 2003 MeTC Order was not submitted to the appellate court when, in fact, such Order dismissing the entire case was undoubtedly adverse to petitioner. If petitioner deemed the MeTC Order favorable as he now claims, he should not have appealed to the RTC in the first place. Clearly, petitioner's failure to attach the MeTC Order runs counter to the rules.

In insisting on the application of Rule 33 to buttress his claim that respondent waived his right to present evidence, petitioner underscores the silence of Section 23 of Rule 119 in cases where the demurrer to evidence

was granted by the MeTC but reversed on appeal by the RTC. Suffice it to state that the granting of a demurrer in criminal cases is tantamount to an acquittal and may not be reversed on appeal without violating the proscription against double jeopardy. Succinctly stated, there is no waiver to speak of in such case since an accused's acquittal on demurrer may not be reversed on appeal.

It must be noted that the RTC decided the appeal only insofar as the MeTC dismissed sub silentio the civil aspect of the case without finding that the act or omission from which the civil liability may arise did not exist. Since the parties do not even dispute the existence of the act or omission from which the civil liability may arise, there was absolutely no reason for the dismissal of the civil aspect of the case.

A finding of sufficiency of evidence as to the civil aspect, where a demurrer to evidence is filed with leave of court, does not authorize the trial court to terminate the proceedings and immediately render a decision. As this Court ruled, if the evidence so far presented is insufficient as proof beyond reasonable doubt, it does not follow that the same evidence is insufficient to establish a preponderance of evidence.

It was thus incorrect for the MeTC to dismiss the civil aspect of the case without any basis. And it was thus premature for the RTC, in its initial decision, to adjudicate the merits of the civil aspect of the case.

WHEREFORE, the Motion for Reconsideration is DENIED.

SO ORDERED.

Carpio, Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), on official leave.

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[1]Previously, petitioner firmly asserted that he chose to employ only "personal knowledge" in his verification since the term "or" as used in Sec. 4, Rule 7 of the Rules of Court bears a plainly disjunctive connotation. In fact, petitioner even stated that "[i]f he says it is based upon his personal knowledge, then so be it. If it turned out later on that he had no personal knowledge thereof then that is his lookout." See Reply dated March 18, 2005, rollo, p. 237.

[2]341 Phil. 157 (1997).

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