

**VILMA C. TAN, GERARDO “JAKE” TAN and GERALDINE TAN,  
REPRESENTED BY EDUARDO NIERRAS, Petitioners, vs. THE HON.  
FRANCISCO C. GEDORIO, JR., IN HIS CAPACITY AS PRESIDING JUDGE  
OF TH...**

*G.R. No. 166520. March 14, 2008*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166520/>

---

**CHICO-NAZARIO, J.:**

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated 29 July 2004 of the Court of Appeals in CA-G.R. SP No. 79335. The assailed Decision of the Court of Appeals affirmed the Order[2] dated 17 July 2003 of the Regional Trial Court (RTC) of Ormoc City in SP. PROC. No. 4014-0 denying reconsideration of its Order dated 12 June 2003 whereby it appointed Romualdo D. Lim as special administrator to the estate of the late Gerardo Tan.

The factual and procedural antecedents of this case are as follows:

Gerardo Tan (Gerardo) died on 14 October 2000, leaving no will. On 31 October 2001, private respondents, who are claiming to be the children of Gerardo Tan, filed with the RTC a Petition for the issuance of letters of administration. The Petition was docketed as Special Proceeding No. 4014-0 and was raffled to Branch 12. Petitioners, claiming to be legitimate heirs of Gerardo Tan, filed an Opposition to the Petition.

Private respondents then moved for the appointment of a special administrator, asserting the need for a special administrator to take possession and charge of Gerardo's estate until the Petition can be resolved by the RTC or until the appointment of a regular administrator. They prayed that their attorney-in-fact, Romualdo D. Lim (Romualdo), be appointed as the special administrator. Petitioners filed an Opposition to private respondents' Motion for Appointment, arguing that none of the private respondents can be appointed as the special administrator since they are not residing in the country. Petitioners contend further that Romualdo does not have the same familiarity, experience or competence as that of their co-petitioner Vilma C. Tan (Vilma) who was already acting as de facto administratrix of his estate since his death.

On 18 March 2002, Atty. Clinton Nuevo (Nuevo), as court-appointed commissioner, issued directives to Vilma, in her capacity as de facto administratrix, to wit:

- b.1.) requiring the de facto administratrix Ms. Vilma Tan to deposit in the fiduciary account of the Court all money and or cash at hand or deposited in the bank(s) which rightfully belong to the estate of the decedent within five (5) days from receipt hereof;
- b.2.) requiring the same administratrix to deposit in the same account the proceeds of all sugarcane harvest or any crop harvest, if any, done in the past or is presently harvesting or about to undertake, which belong to the estate of the decedent;
- b.3.) relative to the foregoing, the same de facto administratrix is also required to submit a financial report to

the Commission as regards the background of the cash at hand or deposited in bank(s), if any, the expenses incurred in course of her administration and other relevant facts including that of the proceeds of the sugarcane/crop harvest, which submission will be done upon deposit of the foregoing with the court as above-required.[3]

More than a year later or on 23 May 2003, the RTC, acting on the private respondents' Urgent Ex-parte Motion to resolve pending incident, gave Vilma another 10 days to comply with the directive of Atty. Nuevo. Again, no compliance has been made.

Consequently, on 12 June 2003, RTC Judge Eric F. Menchavez issued an Order[4] appointing Romualdo as special administrator of Gerardo's Estate, the fallo of which states:

Foregoing considered, the motion for the appointment of a special administrator is hereby GRANTED. Mr. Romualdo D. Lim is hereby appointed as Special Administrator and shall immediately take possession and charge of the goods, chattels, rights, credits and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, upon his filing of a bond in the amount of P50,000.00 and upon approval of the same by this Court.[5]

Petitioners filed on 19 June 2003 a Motion for Reconsideration of the foregoing Order, claiming that petitioner Vilma should be the one appointed as special administratrix as she was allegedly next of kin of the deceased.

On 17 July 2003, respondent Judge Francisco Gedorio (Gedorio), in his capacity as RTC Executive Judge, issued an Order[6] denying petitioners' Motion for Reconsideration.

Petitioners instituted with the Court of Appeals a Petition for Certiorari and Prohibition assailing the 17 July 2003 Order, again insisting on petitioner Vilma's right to be appointed as special administratrix. Petitioners likewise prayed for the issuance of preliminary injunction and/or temporary restraining order (TRO) to enjoin Romualdo from entering the estate and acting as special administrator thereof.

On 29 July 2004, the Court of Appeals issued a Decision denying petitioners' Petition. On 6 December 2004, the Court of Appeals similarly denied the ensuing Motion for Reconsideration filed by petitioners, to wit:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us DENYING and DISMISSING the petition filed in this case and AFFIRMING the assailed order in Special Proceeding No. 4014-0.[7]

On 22 January 2005, petitioners filed the instant Petition for Review on Certiorari assigning the following errors:

### I.

THE COURT OF APPEALS AND THE COURT A QUO BOTH GRIEVOUSLY ERRED IN DENYING PETITIONERS' PLEA TO BE GIVEN PRIMACY IN THE ADMINISTRATION OF THEIR FATHER'S ESTATE.

### II.

THE COURT OF APPEALS LIKEWISE ERRED IN DENYING PETITIONERS' PLEA FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR A TEMPORARY RESTRAINING ORDER AGAINST PRIVATE RESPONDENTS AND THEIR ATTORNEY-IN-FACT.[8]

On 14 February 2005, this Court issued a Resolution[9] denying the Petition on the ground of late filing, failure to submit an affidavit of service of a copy of the Petition on the Court of Appeals and proof of such service, failure to properly verify the Petition, and failure to pay the deposit for the Salary Adjustment for the Judiciary (SAJ) fund and sheriff's fee. Upon Motion for Reconsideration filed by petitioners, however, this Court issued on 18

July 2005 a Resolution[10] reinstating the Petition.

Petitioners contend[11] that they should be given priority in the administration of the estate since they are allegedly the legitimate heirs of the late Gerardo, as opposed to private respondents, who are purportedly Gerardo's illegitimate children. Petitioners rely on the doctrine that generally, it is the nearest of kin, whose interest is more preponderant, who is preferred in the choice of administrator of the decedent's estate.

Petitioners also claim that they are more competent than private respondents or their attorney-in-fact to administer Gerardo's estate. Petitioners Vilma and Gerardo "Jake" Tan (Jake) claim to have lived for a long time and continue to reside on Gerardo's estate, while respondents are not even in the Philippines, having long established residence abroad.

Petitioners additionally claim that petitioner Vilma has been acting as the administratrix of the estate since Gerardo's death on 14 October 2000 and is thus "well steeped in the actual management and operation of the estate (which essentially consists of agricultural landholdings)."[12]

As regards the denial of petitioners' plea for the issuance of a Writ of Preliminary Injunction and/or TRO, petitioners argue that such denial would leave Romualdo, private respondents' attorney-in-fact, free to enter Gerardo's estate and proceed to act as administrator thereof to the prejudice of petitioners.

The appeal is devoid of merit.

The order of preference petitioners speak of is found in Section 6, Rule 78 of the Rules of Court, which provides:

SEC. 6. When and to whom letters of administration granted.—If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

However, this Court has consistently ruled that the order of preference in the appointment of a regular administrator as provided in the afore-quoted provision does not apply to the selection of a special administrator.[13] The preference under Section 6, Rule 78 of the Rules of Court for the next of kin refers to the appointment of a regular administrator, and not of a special administrator, as the appointment of the latter lies entirely in the discretion of the court, and is not appealable.[14]

Not being appealable, the only remedy against the appointment of a special administrator is Certiorari under Rule 65 of the Rules of Court, which was what petitioners filed with the Court of Appeals. Certiorari, however, requires nothing less than grave abuse of discretion, a term which implies such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[15]

We agree with the Court of Appeals that there was no grave abuse of discretion on the part of respondent Judge Gedorio in affirming Judge Menchavez's appointment of Romualdo as special administrator. Judge Menchavez clearly considered petitioner Vilma for the position of special administratrix of Gerardo's estate, but decided against her appointment for the following reasons:

Atty. Clinton C. Nuevo, in his capacity as court appointed commissioner, directed oppositor Vilma Tan in the latter's capacity as de fact[o] administratrix, to deposit in the fiduciary account of the court all money and cash at hand or deposited in the banks which rightfully belong to the estate within five days from receipt of the directive. Oppositor Vilma Tan was likewise directed to deposit in the same account the proceeds of all sugarcane harvest or any crop from the estate of the decedent. She was likewise directed to submit a financial report as regards the background of the cash on hand, if any, the expenses incurred in the course of her administration. The directive was issued by Atty. Nuevo on March 18, 2002 or more than a year ago. On May 23, 2003, this Court, acting on the urgent ex parte motion to resolve pending incident, gave Vilma Tan another ten days to comply with the directive of Atty. Nuevo. Again, no compliance has been made.

This Court is called upon to preserve the estate of the late Gerardo Tan for the benefit of all heirs be that heir is (sic) the nearest kin or the farthest kin. The actuation of oppositor Vilma Tan does not satisfy the requirement of a special administrator who can effectively and impartially administer the estate of Gerardo Tan for the best interest of all the heirs.[16] (Emphases supplied.)

Assuming for the sake of argument that petitioner Vilma is indeed better suited for the job as special administratrix, as opposed to Romualdo, who was actually appointed by the court as special administrator of Gerardo's estate, the latter's appointment, at best, would constitute a mere error of judgment and would certainly not be grave abuse of discretion. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one in which the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or excess of jurisdiction.[17] The Court of Appeals could not have reversed a mere error of judgment in a Certiorari petition.

Furthermore, petitioners were not able to sufficiently substantiate their claim that their co-petitioner Vilma would have been the more competent and capable choice to serve as the special administratrix of Gerardo's estate. Contrary to petitioners' bare assertions, both the RTC and the Court of Appeals found that the documented failure of petitioner Vilma to comply with the reportorial requirements after the lapse of a considerable length of time certainly militates against her appointment.

We find immaterial the fact that private respondents reside abroad, for the same cannot be said as regards their attorney-in-fact, Romualdo, who is, after all, the person appointed by the RTC as special administrator. It is undisputed that Romualdo resides in the country and can, thus, personally administer Gerardo's estate.

If petitioners really desire to avail themselves of the order of preference provided in Section 6, Rule 78 of the Rules of Court, so that petitioner Vilma as the supposed next of kin of the late Gerardo may take over administration of Gerardo's estate, they should already pursue the appointment of a regular administrator and put to an end the delay which necessitated the appointment of a special administrator. The appointment of a special administrator is justified only when there is delay in granting letters, testamentary (in case the decedent leaves behind a will) or administrative (in the event that the decedent leaves behind no will, as in the Petition at bar) occasioned by any cause.[18] The principal object of the appointment of a temporary administrator is to preserve the estate until it can pass into the hands of a person fully authorized to administer it for the benefit of creditors and heirs.[19]

In the case at bar, private respondents were constrained to move for the appointment of a special administrator

due to the delay caused by the failure of petitioner Vilma to comply with the directives of the court-appointed commissioner. It would certainly be unjust if petitioner Vilma were still appointed special administratrix, when the necessity of appointing one has been brought about by her defiance of the lawful orders of the RTC or its appointed officials. Petitioners submit the defense that petitioner Vilma was unable to comply with the directives of the RTC to deposit with the court the income of Gerardo's estate and to provide an accounting thereof because of the fact that Gerardo's estate had no income. This defense is clearly specious and insufficient justification for petitioner Vilma's non-compliance. If the estate truly did not have any income, petitioners should have simply filed a manifestation to that effect, instead of continuing to disregard the court's orders.

Finally, as we are now resolving the case in favor of private respondents, there is no longer any need to discuss petitioners' arguments regarding the denial by the appellate court of their prayer for the issuance of a writ of preliminary injunction and/or TRO.

WHEREFORE, the instant Petition for Review on Certiorari is DENIED. The Decision dated 29 July 2004 of the Court of Appeals in CA-G.R. SP No. 79335 affirming the Order dated 17 July 2003 of the Regional Trial Court (RTC) of Ormoc City, in SP. PROC. No. 4014-0 denying reconsideration of its Order dated 12 June 2003, whereby it appointed Romualdo D. Lim as special administrator of the estate of Gerardo Tan, is AFFIRMED. Costs against petitioners.

### **SO ORDERED.**

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

---

[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Elvi John S. Asuncion and Ramon M. Bato, Jr., concurring; rollo, pp. 22-26.

[2] Issued by public respondent Executive Judge Francisco C. Gedorio, Jr. Records, p. 130.

[3] Id. at 82.

[4] Id. at 112-113.

[5] Id. at 113.

[6] Id. at 130.

[7] Rollo, p. 26.

[8] Id. at 15.

[9] Id. at 110-111.

[10] Id. at 135.

[11] Petitioners state in their Memorandum:

Petitioner Vilma Tan is Gerardo's biological daughter; Jake and Geraldine Tan, together with their late brother Christopher, are petitioner Vilma Tan's biological children who were adopted by Gerardo Tan via adoption proceedings docketed as Sp. Proc. No. 1386 at the Regional Trial Court Branch VII, Tacloban City, Leyte.

The late Christopher Tan died on October 28, 1994, when he was only seventeen (17) years old. He was single when he died, he had no children and did not leave a last will and testament. For this reason, his interests in the estate of the late Gerardo Tan are represented by his biological mother, herein Petitioner Vilma Tan. (Rollo, p.

176.)

[12] *Id.* at 8.

[13] *Ozaeta v. Pecson*, 93 Phil. 416, 419-420 (1953); *Roxas v. Pecson*, 82 Phil. 407, 410 (1948); *Heirs of Belinda Dalhlia Castillo v. Lacuata-Gabriel*, G.R. No. 162934, 11 November 2005, 474 SCRA 747, 757.

[14] *Pijuan v. De Gurrea*, 124 Phil. 1527, 1531-1532 (1966).

[15] *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416; *Banal III v. Panganiban*, G.R. No. 167474, 15 November 2005, 475 SCRA 164, 174.

[16] *Records*, p. 113.

[17] *Fortich v. Corona*, 352 Phil. 461, 477 (1998).

[18] Section 1, Rule 80 of the Rules of Court provides:

Section 1. Appointment of special administrator.—When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed.

[19] *De Guzman v. Guadiz, Jr.*, G.R. No. L-48585, 31 March 1980, 96 SCRA 938, 945.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.