

**ILOILO LA FILIPINA UYGONGCO CORPORATION, PETITIONER, VS,
HON. COURT OF APPEALS; CEBU CITY, HON. PATRICIA A. STO.
TOMAS, IN HER CAPACITY AS SECRETARY, DEPARTMENT OF LABOR
AND EMP...**

G.R. No. 170244. November 28, 2007

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170244/>

NACHURA, J.:

Before this Court is a Petition[1] for Certiorari under Rule 65 of the Rules of Civil Procedure, seeking to nullify the respondent Court of Appeals (CA) Decision[2] dated December 2, 2004 which affirmed in toto the Order[3] of the Department of Labor and Employment (DOLE) Acting Secretary Manuel G. Imson (acting Secretary Imson) dated June 4, 2003 and the Order[4] of respondent DOLE Secretary Patricia A. Sto. Tomas (DOLE Secretary) dated September 18, 2003.

Petitioner Iloilo La Filipina Uygongco Corporation (petitioner) is a domestic corporation engaged in trading and trucking businesses. Petitioner is the employer of the private respondents La Filipina Uygongco Corporation Workers (respondents). Petitioner claims that respondents are “pakyaw” workers, hence, not entitled to the full enjoyment of the benefits provided in the labor standards under the Labor Code.

Sometime in October 1997, the drivers and motor pool personnel of petitioner formed the Iloilo La Filipina Uygongco Corporation Labor Union (ILFUCLU) and said union was registered with the DOLE on November 14, 1997.[5] ILFUCLU President and herein respondent, Ronaldo Payda, verbally requested the DOLE Region VI Office[6] to conduct a routine labor inspection as the ILFUCLU believed that they were receiving wages below the minimum mandated by law, among others. Sometime in December 1997, respondents, who are officers and members of ILFUCLU, filed a Complaint for Underpayment of Wages, Non-payment of Holiday Pay, Overtime Pay, Rest day Pay, Nightshift Differential and Service Incentive Leave Pay before the DOLE Region VI Office. On March 26, 1998 a labor routine inspection was conducted. On October 6, 1998, the Labor Inspector held that petitioner did not violate any provision on labor standards which the DOLE Regional Director in his Order[7] dated December 1, 1998 affirmed on the following grounds, to wit:

- The truck drivers concerned are non-agricultural field personnel and they are paid by results. Hence, they are not covered by hours of work under paragraph (e) and (f), Rule I, Rule II, Rule IV, & Rule V of Book III of the Labor Code;
- The basis of their salary is “per trip” at a minimum of P50.00 per trip and on the average they made at 4 to 5 trips per day they earned from P200.00 to P250.00 per day which is over the minimum wage; and
- They are given P70.00 food allowance if they report for work which is not required by law.

On appeal, acting Secretary Imson in his Order dated June 4, 2003, reversed and set aside these findings, holding that respondents are regular employees of the petitioner based on the parameters set by law in the determination of

employer-employee relationship and are, therefore, entitled to said monetary benefits. He further held that petitioner is engaged in the trucking business; hence, respondents as truck drivers perform activities which are usually necessary and desirable to the said business. Lastly, the DOLE Region VI Office should not have merely relied on the pro-forma affidavits of the respondents and based the inspection results on company records. The dispositive portion of the Order reads:

WHEREFORE, the Order dated December 01, 1998 is hereby SET ASIDE and VACATED and a new one is entered finding the appellee, Iloilo La Filipina Uycongco (sic) Corporation liable for underpayment of wages, non-payment of holiday pay, rest day pay and overtime pay.

Let the case be REMANDED to the DOLE-Regional Office VI for the appropriate computation of the workers' individual entitlements as above-stated.

All other claims of appellants are DISMISSED for lack of merit.

SO ORDERED.[8]

Petitioner filed a Motion for Reconsideration. On September 18, 2003, the DOLE Secretary denied petitioner's Motion for Reconsideration for its failure to establish and substantiate its allegation of paying the minimum wage to respondents and for lack of merit.[9]

Aggrieved, petitioner filed a petition[10] for certiorari before the CA which eventually affirmed the DOLE Secretary's ruling. The CA held that respondents' employment status cannot be based solely on their pro-forma affidavits manifesting that they are "pakyaw" employees considering that they abandoned the same in a subsequent Joint Affidavit. Moreover, the CA held that respondents worked under the petitioner's control and supervision. Assuming respondents are piece-rate employees, such will not exculpate the petitioner from complying with labor standards based on the Rules Implementing the Labor Code and existing jurisprudence.

Petitioner filed its Motion for Reconsideration[11] which was, however, denied in a Resolution[12] dated September 26, 2005. Petitioner received the copy of the said Resolution on October 4, 2005. Initially, petitioner filed a Motion[13] for Extension of Time to File a Petition for Review on Certiorari under Rule 45 on October 18, 2005. However, on November 17, 2005, petitioner filed a Manifestation and Motion,[14] stating that "in the course of the preparation of the petition, petitioner through counsel has realized that the proper action to be filed is a PETITION FOR CERTIORARI under Rule 65 of the Rules of Court and not (a) PETITION FOR REVIEW ON CERTIORARI under Rule 45 of the Rules of Court" and that it will be filing a Petition for Certiorari under Rule 65 instead. Hence, this Petition for Certiorari under Rule 65, ascribing grave abuse of discretion on the CA in affirming the DOLE Secretary's ruling on the following grounds:

- THAT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE WORKERS ARE REGULAR EMPLOYEES OF ILOILO LA FILIPINA UYGONGCO CORPORATION DESPITE THEIR EXECUTION OF AN AFFIDAVIT ADMITTING THE FACT THAT THEY ARE "PAKYAW" WORKERS AND, THEREFORE, NOT ENTITLED TO THE LABOR STANDARDS PROVIDED (SIC) UNDER THE LABOR CODE;
- THAT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING THAT THE WORKERS ARE REGULAR EMPLOYEES AND, THEREFORE, ENTITLED TO THEIR INDIVIDUAL ENTITLEMENT NOTWITHSTANDING THE DECISION OF THE HONORABLE 18TH DIVISION, COURT OF APPEALS, CEBU CITY, DISMISSING THE WORKERS' COMPLAINT FOR ILLEGAL DISMISSAL AND IN EFFECT, AFFIRMING THE DECISION OF THE 4TH [DIVISION] NATIONAL LABOR RELATIONS COMMISSION, CEBU CITY, THEREBY DECLARING THEM AS "PAKYAW" WORKERS AND, THEREFORE, NOT ENTITLED TO

THEIR MONETARY CLAIMS;

- THAT THE HONORABLE COURT OF APPEALS HAS SERIOUSLY ERRED AND HAS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE LA FILIPINA UYGONGCO WORKERS HAVE VIOLATED THE RULE AGAINST FORUM SHOPPING.

Petitioner posits (1) that the affidavits executed by the respondents are not pro-forma and the same particularly stated that the respondents are “pakyaw” employees; (2) that they executed the same freely and voluntarily before the DOLE Region VI Office; (3) that the DOLE Secretary's and the CA's respective acts of disregarding the first set of affidavits and giving credence to the subsequent Joint Affidavit of the respondents stating that they are regular employees would sanction the perjurious acts of the workers and are tantamount to grave abuse of discretion; and (4) that the respondents are guilty of forum shopping because six of its officers/members (complainants) filed a case[15] for Union Busting, Underpayment of Wages, Non-payment of Holiday Pay, Service Incentive Leave Pay, 13th Month Pay, Night Shift Differentials, Allowances and Attorney's Fees (Union Busting case) against herein petitioner and as such, there is identity of parties and causes of action.[16] Moreover, in this Union Busting case both the Labor Arbiter[17] and the National Labor Relations Commission (NLRC)[18] uniformly held that said complainants were not illegally dismissed. Both also held that the complainants were “pakyaw employees” and, as such, they are not entitled to their respective monetary claims.[19] On certiorari, the CA dismissed the complainants' petition based on procedural infirmities. The said Union Busting case is still pending before the CA on Motion for Reconsideration.[20]

On the other hand, respondents submit that the lone issue in this case is whether or not the CA committed grave abuse of discretion in upholding the DOLE Secretary's Orders which the petitioner failed to show; that the instant Petition is anchored on questions of fact; that petitioner did not attach all the relevant and pertinent pleadings and documents in violation of Rule 65; that the first set of affidavits executed by respondents were merely pro-forma, un-sworn affidavits; that petitioner did not dispute the contention that they are engaged in the trucking and trading businesses and that respondents are its drivers and members of its motor pool personnel, hence, respondents are regular employees since their work is directly and necessarily connected with petitioner's business; that petitioner wielded control and supervision over the respondents as a result its officers/members were illegally dismissed, giving rise to the Union Busting case; that petitioner never advanced any argument refuting respondents' assertion that the latter received wages below the minimum; that petitioner as respondents' employer failed to overcome the burden of proving that it complied with the minimum wage law and the labor standards law; that petitioner's act of citing the rulings of the Labor Arbiter and the NLRC on the Union Busting case violates the rule on sub judice; that on the premise that said decisions on the Union Busting case relied on the findings of the DOLE Regional Director and such findings were duly overturned by the DOLE Secretary, said decisions have no more leg to stand on; and, that there is no forum shopping in this case as the Union Busting case is based on Illegal Dismissal while the instant case emanated from the routine labor inspection of DOLE Region VI Office.[21]

We deny the instant Petition.

The Petition is evidently used as a substitute for the lost remedy of appeal.

Mark that what is being assailed in this recourse is the CA Decision dated December 2, 2004. Rule 45 of the Rules of Civil Procedure specifically provides that an appeal by certiorari from the judgments or final orders or resolutions of the Court of Appeals is by verified petition for review on certiorari. Thus:

SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

SECTION 2. Time for filing; extension — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

The aggrieved party is proscribed from assailing a decision or final order of the CA via Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, petitioner had an adequate remedy, namely, a petition for review on certiorari under Rule 45 of the Rules of Court.^[22] A petition for review on certiorari, not a special civil action for certiorari was, therefore, the correct remedy.

Records show that petitioner received the copy of the CA Resolution denying his Motion for Reconsideration on October 4, 2005. At the outset, petitioner filed a Motion for Extension of Time to File a Petition for Review on Certiorari under Rule 45 on October 18, 2005. Petitioner prayed that it be given a period of thirty (30) days counted from October 19, 2005. Subsequently, on November 17, 2005, the day the thirty (30)-day extended period was about to expire, petitioner filed a Manifestation and Motion manifesting that it will be filing a Petition for Certiorari under Rule 65 instead. In this Court's Resolution dated December 5, 2005, we granted the Motion for Extension of Time of thirty (30) days within which to file a Petition for Review under Rule 45, and simply took note of the petitioner's Manifestation and Motion. Petitioner filed the instant Petition on December 2, 2005. Petitioner averred that computed from October 4, 2005, the last day for the filing of a Petition for Certiorari under Rule 65 of the Rules of Court is December 4, 2005, hence, the timeliness of its petition. Respondents filed their Comment and petitioner filed its Reply respectively.

It is obvious from petitioner's own Manifestation and Motion that the decision to file the instant Petition under Rule 65 was made of while the remedy of appeal under Rule 45 still existed. It is also evident that petitioner tried to tinker with this Court's rules by the simple expedient of filing a Manifestation and Motion informing this Court, at the time the extended period to file an appeal was about to expire, that it is availing of a petition for Certiorari rather than a petition for review on Certiorari under Rule 45, the period of filing of which petitioner sought to extend. This Court is convinced that petitioner knew that it had the existing remedy of appeal as borne out by the fact that petitioner prayed for the extension of the period in the filing thereof, which the Court actually granted in this case. However, when petitioner filed the instant petition, it even had the temerity to allege that "there is no appeal (sic) or plain, speedy or adequate remedy in the ordinary course of law than the filing of this petition." Clearly then, the petitioner interposed the present special civil action for certiorari under Rule 65 as an alternative to a petition for review under Rule 45, not because the former is the speedy and adequate remedy but in order to make up for the loss of its remedy of an ordinary appeal.

Settled is the rule that where appeal is available to the aggrieved party, the special civil action for certiorari will not be entertained – remedies of appeal and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for a lost 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 was available, as in this case, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.^[23] Petitioner's resort to this Court by Petition for Certiorari was a fatal procedural error, and the instant petition must, therefore, fail.

Indeed there are instances when certiorari was granted despite the availability of appeal such as: (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. None of these recognized exceptions, however, is present in the case at bar. Petitioner failed to show circumstances that would justify a deviation from the general rule, and make available a petition for certiorari in lieu of taking an appeal.[24]

Moreover, while it is true that this Court, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, may treat a Petition for Certiorari as having been filed under Rule 45, the instant Petition cannot be treated as such, primarily because it was filed way beyond the 15-day reglementary period within which to file the Petition for Review[25] and even beyond the extended period of thirty (30) days granted to petitioner by this Court, without the attending instances aforementioned. Based on the foregoing disquisitions, the assailed decision of the CA had already become final and executory and beyond the purview of this Court to act upon.[26]

On petitioner's claim that respondents are guilty of forum shopping because after the filing of this case for labor inspection, six of its officers/members subsequently filed the Union Busting case against the same petitioner in view of their dismissal from work based on Dishonesty and Perjury on October 1, 1998, we hold that there is no forum shopping in this case.

Pertinent is our ruling in *Consolidated Broadcasting System, Inc. v. Oberio*,[27] where we held, to wit:

Under Article 217 of the Labor Code, termination cases fall under the jurisdiction of Labor Arbiters. Whereas, Article 128 of the same Code vests the Secretary of Labor or his duly authorized representatives with the power to inspect the employer's records to determine and compel compliance with labor standard laws. The exercise of the said power by the Secretary or his duly authorized representatives is exclusive to cases where employer-employee relationship still exists. Thus, in cases where the complaint for violation of labor standard laws preceded the termination of the employee and the filing of the illegal dismissal case, it would not be in consonance with justice to charge the complainants with engaging in forum shopping when the remedy available to them at the time their causes of action arose was to file separate cases before different fora.

In this case, said officers/members of the respondents merely pursued the subsequent case of Union Busting, among others, in view of their dismissal from work. Said cause of action is independent from the labor inspection case which respondents filed with the DOLE way ahead of the Union Busting case. No less than the law provides for these respective remedies.

Finally, if the consequences for pursuing the wrong remedial tack in this case seem harsh, it should be remembered that there is no innate right to appeal. Appeal is a statutory right which may be exercised within the prescribed limits. The 1997 Rules of Civil Procedure provides for a rational and orderly method by which appeal can be pursued, and even contingency remedial measures if appeal could no longer be timely pursued.[28] Petitioner must bear the consequence for its failure to undertake a timely appeal when such remedy existed. Once again, we stress that the rules of procedure were promulgated for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[29]

WHEREFORE, the instant Petition is **DISMISSED** and the Court of Appeals Decision dated December 2, 2004 is **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

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

[1] Rollo, pp. 15-47.

[2] Particularly docketed as CA-G.R. SP No. 80501; penned by Associate Justice Arsenio J. Magpale, with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr., concurring; id. at 52-60.

[3] Particularly docketed as RO6000-9811-RI-002; OS-LS-001-020-99; id. at 75-80.

[4] Rollo, pp. 81-82.

[5] Respondents' Comment dated February 4, 2006; id. at 137-147.

[6] Also referred to as DOLE Regional Office-Iloilo in some pleadings and documents.

[7] Particularly docketed as RO6000-9811-RI-002; rollo, pp. 71-74.

[8] Rollo, p. 80.

[9] Id. at 81-82.

[10] Id. at 83-95.

[11] Id. at 96-102.

[12] Id. at 50.

[13] Id. at 3-6.

[14] Id. at 9-12.

[15] Particularly docketed as SRAB Case No. VI-10-50580-98 filed by Ronaldo Payda, Rodrigo Orlina, Marcelino Sinsoro, Norman Diamante, Tito Harion and Rolando Cayapado; rollo, pp. 103-110.

[16] Rollo, pp. 15-47.

[17] Decision dated May 19, 1999; id. at 103-110.

[18] Decision dated January 29, 2004 and particularly docketed as NLRC Case No. V-000484-99; id. at 111-115.

[19] Petitioner's Reply dated May 5, 2006; rollo, pp. 150-152.

[20] Rollo, pp. 120-126.

[21] Supra note 5.

[22] Hanjin Engineering and Construction Co. Ltd./Nam Hyum Kim v. Court of Appeals, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 96.

[23] Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136-137.

[24] Chua v. Santos, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374-375.

[25] First Corporation v. Former Sixth Division of the Court of Appeals, G.R. No. 171989, July 4, 2007.

[26] *Zacate v. Commission on Elections*, G.R. No. 144678, March 1, 2001, 353 SCRA 441, 449.

[27] G.R. No. 168424, June 8, 2007 (emphasis supplied).

[28] *Victory Liner, Inc. v. Michael Malinias*, G.R. No. 151170, May 29, 2007.

[29] *Audi Ag v. Hon. Jules A. Mejia*, in his capacity as Executive Judge of the Regional Trial Court, Alaminos City; *Auto Prominence Corporation*; and *Proton Pilipinas Corporation*, G.R. No. 167533, July 27, 2007.

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.