

**BIENVENIDO EJERCITO AND JOSE MARTINEZ, PETITIONERS, VS.
M.R. VARGAS CONSTRUCTION, BRION, MARCIAL R. VARGAS, SOLE
OWNER, RENATO AGARAO, PROJECT FOREMAN, RESPONDENTS.**

G.R. No. 172595. April 10, 2008

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-172595/>

TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Court of Appeals' Decision[1] and Resolution[2] in CA-G.R. SP No. 89001. The appellate court's decision dismissed the petition for certiorari, which sought to set aside the Order[3] dated 08 November 2004 issued by Hon. Marie Christine Jacob, Presiding Judge of the Regional Trial Court (RTC) of Quezon City, Branch 100. The appellate court's resolution denied petitioners' motion for reconsideration of the decision.

As culled from the records, the following factual antecedents appear:

On 5 March 2004, the City Government of Quezon City, represented by Mayor Feliciano Belmonte, Jr., entered into a construction contract[4] with M.R. Vargas Construction, represented by Marcial Vargas in his capacity as general manager of the said business enterprise, for the improvement and concreting of Panay Avenue.[5] Pursuant to the contract, the business enterprise commenced its clearing operations by removing the structures and uprooting the trees along the thoroughfare. Its foreman, Renato Agarao, supervised the clearing operations.[6]

Claiming that the clearing operations lacked the necessary permit and prior consultation, petitioners Bienvenido Ejercito and Jose Martinez, as well as a certain Oscar Baria, brought the matter to the attention of the barangay authorities, Mayor Belmonte, Senator Ma. Ana Consuelo A.S. Madrigal, the Department of Environment and Natural Resources and the Philippine Coconut Authority.[7]

The efforts of petitioners proved unsuccessful. Hence, on 10 September 2004, they filed a petition for injunction before the Quezon City RTC. The petition named "M.R. Vargas Construction Co., represented by herein Marcial R. Vargas and Renato Agarao," as respondent.[8]

The Petition,[9] docketed as Civil Case No. Q-04-53687, indicated that "Respondent M.R. Vargas Construction, is an entity, with office address at the 4th Floor, President Tower, Timog Avenue corner Scout Ybardaloza [sic] St., Quezon City, represented herein by its President Marcial Vargas and its construction foreman Renato Agarao, where they may be served with summons and other court processes." [10]

The petition was accompanied with an application for a temporary restraining order (TRO) and a writ of preliminary injunction.[11] Thus, the Office of the Clerk of Court forthwith issued summons and notice of raffle on 10 September 2004.[12] Upon service of the processes on the aforementioned address, they were returned unserved on the ground that respondent enterprise was unknown thereat.[13]

The petition was subsequently raffled to the sala of Judge Jacob, before which petitioners' application for a temporary restraining order was heard on 15 September 2004.[14] On the same day, when Agarao was also present in court, Judge Jacob issued a TRO directing respondent enterprise to desist from cutting, damaging or

transferring the trees found along Panay Avenue.[15]

On 23 September 2004, the Mangoba Tan Agus Law Offices filed a special appearance on behalf of respondent enterprise and moved for the dismissal of the petition as well as the quashal of the temporary restraining order on the ground of lack of jurisdiction over respondent enterprise. The motion also assailed the raffle of the case for having been conducted in violation of Section 4, Rule 58 of the Rules of Court; the issuance of the TRO without requiring the posting of a bond; the failure to implead the Government of Quezon City despite its being the real party-in-interest; and petitioners' application for the injunctive writ which was allegedly grossly defective in form and substance.[16]

The motion to dismiss the petition and to quash the TRO was heard on 24 September 2004.[17] Before the hearing, a court interpreter showed to respondent enterprise's counsel a copy of the summons and of the notice of raffle in which appear a signature at the bottom of each copy, apparently indicating the receipt of the summons.[18] On the mistaken belief that the summons was received by respondent enterprise, at the hearing of the motion, its counsel withdrew two of the grounds stated in the motion, to wit, lack of jurisdiction and irregularity in the raffle of the case.[19]

At the hearing of petitioners' application for a writ of preliminary injunction on 1 October 2004, the counsel for respondent enterprise manifested that he was adopting the arguments in the motion to quash the TRO.[20] On 6 October 2004, the RTC issued an Order granting petitioners' application for a writ of preliminary injunction.[21]

On 7 October 2004, counsel for respondent enterprise filed a manifestation with urgent omnibus motion to nullify the proceedings and to cite petitioners and the process server in contempt of court.[22] He argued that respondent enterprise failed to receive the summons, alleging that it was herein petitioner Jose Martinez who signed as recipient thereof as well as of the notice of raffle that was served on 10 September 2004.[23]

On 18 October 2004, the writ of preliminary injunction was issued. Subsequently, petitioners filed a motion for ocular inspection and another motion praying that respondent enterprise be ordered to restore the structures damaged by its clearing operations.[24]

On 8 November 2004, the RTC issued the assailed Order,[25] nullifying the proceedings thus far conducted in the case.[26] Petitioners sought reconsideration, but the motion was denied in an Order dated 20 December 2004.[27]

Thus, petitioners filed a petition for certiorari before the Court of Appeals assailing the 8 November 2004 Order issued by Judge Jacob.[28] This time, aside from Judge Jacob and the enterprise "M.R. Vargas Construction" itself, the petition also named Marcial R. Vargas and Renato Agarao, the enterprise's owner and foreman, respectively, as individual respondents. The separate addresses of said respondents were also indicated in the initial part of the petition.

It was argued in the petition that Judge Jacob committed grave abuse of discretion in nullifying the proceedings on the ground of lack of jurisdiction in view of Agarao's presence at the hearing on petitioners' application for TRO, in failing to act on petitioners' pending motions and in directing instead the issuance of new summons on respondent enterprise.[29]

On 10 October 2005, the Court of Appeals rendered the assailed Decision dismissing the petition for certiorari for lack of merit.[30] In its Order dated 28 April 2006, the Court of Appeals denied petitioners' motion for reconsideration.

Hence, the instant petition attributes the following errors to the Court of Appeals:

I.

THE COURT OF APPEALS ERRED IN RULING THAT THE REGIONAL TRIAL COURT DID NOT OBTAIN JURISDICTION OVER THE RESPONDENTS, DEPSITE THE RECEIPT OF COURT PROCESSES AND VOLUNTARY APPEARANCE BEFORE THE COURTS.

II.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE WITHDRAWAL BY PRIVATE RESPONDENTS OF THE GROUND OF ABSENCE OF JURISDICTION OVER ITS PERSON CONSTITUTED A WAIVER OF SUCH OBJECTION[31]

The instant petition³⁴which similarly impleads the enterprise, M.R. Vargas Construction, Marcial R. Vargas and Renato Agarao as respondents³⁴raises two issues, namely: (1) whether the trial court acquired jurisdiction over respondent enterprise and (2) whether the defense of lack of jurisdiction had been waived.

Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant is null and void. In an action strictly in personam, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person.[32]

Citing the jurisdictional implications of the failure of service of summons, the Court of Appeals concluded that no grave abuse of discretion was committed by Judge Jacob in nullifying the proceedings thus far conducted in the case based on the finding that the summons had not been served on respondent enterprise and that Agarao, despite being present at the 15 September 2004 hearing, was not authorized to represent respondent enterprise in said hearing.

Petitioners take exception. They argue that the trial court acquired jurisdiction over respondent enterprise, an entity without juridical personality, through the appearance of its foreman, Agarao, at the 15 September 2004 hearing on the TRO application. Petitioners theorize that the voluntary appearance of Agarao in said hearing was equivalent to service of summons binding upon respondent enterprise, following by analogy, Section 8, Rule 14[33] which allows the service of summons on any of the defendants associated to an entity without juridical personality. Furthermore, they contend that the receipt by a certain Rona Adol of the court processes was binding upon respondent enterprise because the latter did not deny the authority of Adol to receive communications on its behalf.

Petitioners' argument is untenable.

At the outset, it is worthy to note that both the Court of Appeals and the trial court found that summons was not served on respondent enterprise. The Officer's Return stated essentially that the server failed to serve the summons on respondent enterprise because it could not be found at the address alleged in the petition. This factual finding, especially when affirmed by the appellate court, is conclusive upon this Court and should not be disturbed because this Court is not a trier of facts.

A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.[34] Only natural or juridical persons or entities authorized by law may be parties to a civil action and every action must be prosecuted and defended in the name of the real parties-in-interest.[35]

The records show that respondent enterprise, M.R. Vargas Construction Co., is a sole proprietorship and, therefore, an entity without juridical personality. Clearly, the real party-in-interest is Marcial R. Vargas who is the

owner of the enterprise. Thus, the petition for injunction should have impleaded him as the party respondent either simply by mention of his name or by denominating him as doing business under the name and style of "M.R. Vargas Construction Co." It was erroneous to refer to him, as the petition did in both its caption and body, as representing the enterprise. Petitioners apparently realized this procedural lapse when in the petition for certiorari filed before the Court of Appeals and in the instant petition, M.R. Vargas Construction, Marcial R. Vargas and Renato Agaro were separately named as individual respondents.

Since respondent enterprise is only a sole proprietorship, an entity without juridical personality, the suit for injunction may be instituted only against its owner, Marcial Vargas. Accordingly summons should have been served on Vargas himself, following Rule 14, Sections 6[36] and 7[37] of the Rules of Court on personal service and substituted service. In the instant case, no service of summons, whether personal or substituted, was effected on Vargas. It is well-established that summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. If however efforts to find him personally would make prompt service impossible, service may be completed by substituted service, i.e., by leaving copies of the summons at his dwelling house or residence with some person of suitable age and discretion then residing therein or by leaving the copies at his office or regular place of business with some competent person in charge thereof.[38]

The modes of service of summons should be strictly followed in order that the court may acquire jurisdiction over the respondents, and failure to strictly comply with the requirements of the rules regarding the order of its publication is a fatal defect in the service of summons. It cannot be overemphasized that the statutory requirements on service of summons, whether personally, by substituted service or by publication, must be followed strictly, faithfully and fully, and any mode of service other than that prescribed by the statute is considered ineffective.[39]

Agarao was not a party respondent in the injunction case before the trial court. Certainly, he is not a real party-in-interest against whom the injunction suit may be brought, absent any showing that he is also an owner or he acts as an agent of respondent enterprise. Agarao is only a foreman, bereft of any authority to defend the suit on behalf of respondent enterprise. As earlier mentioned, the suit against an entity without juridical personality like respondent enterprise may be instituted only by or against its owner. Impleading Agarao as a party-respondent in the suit for injunction would have no legal consequence. In any event, the petition for injunction described Agarao only as a representative of M.R. Vargas Construction Co., which is a mere inconsequentiality considering that only Vargas, as its sole owner, is authorized by the Rules of Court to defend the suit on behalf of the enterprise.

Despite Agarao's not being a party-respondent, petitioners nevertheless confuse his presence or attendance at the hearing on the application for TRO with the notion of voluntary appearance, which interpretation has a legal nuance as far as jurisdiction is concerned. While it is true that an appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person, the appearance must constitute a positive act on the part of the litigant manifesting an intention to submit to the court's jurisdiction.[40] Thus, in the instances where the Court upheld the jurisdiction of the trial court over the person of the defendant, the parties showed the intention to participate or be bound by the proceedings through the filing of a motion, a plea or an answer.[41]

Neither is the service of the notice of hearing on the application for a TRO on a certain Rona Adol binding on respondent enterprise. The records show that Rona Adol received the notice of hearing on behalf of an entity named JCB. More importantly, for purposes of acquiring jurisdiction over the person of the defendant, the Rules

require the service of summons and not of any other court processes.

Petitioners also contend that respondent enterprise waived the defense of lack of jurisdiction when its counsel actively demanded positive action on the omnibus motion. The argument is implausible.

It should be noted that when the defendant's appearance is made precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court.[42] Such was the purpose of the omnibus motion, as counsel for respondent enterprise precisely manifested therein that he erroneously believed that Vargas himself had received the summons when in fact it was petitioner Martinez who signed as recipient of the summons. Noteworthy is the fact that when the counsel first appeared in court his appearance was "special" in character and was only for the purpose of questioning the court's jurisdiction over Vargas, considering that the latter never received the summons. However, the counsel was shown a copy of the summons where a signature appears at the bottom which led him to believe that the summons was actually received by Vargas when in fact it was petitioner Martinez himself who affixed his signature as recipient thereof. When the counsel discovered his mistake, he lost no time pleading that the proceedings be nullified and that petitioners and the process server be cited for contempt of court. Both the trial and appellate courts concluded that the improvident withdrawal of the defense of lack of jurisdiction was an innocuous error, proceeding on the undeniable fact that the summons was not properly served on Vargas. Thus, the Court of Appeals did not commit a reversible error when it affirmed the trial court's nullification of the proceedings for lack of jurisdiction.

WHEREFORE, the instant petition for certiorari is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 89001 are AFFIRMED in toto. Costs against petitioners.

The temporary restraining order issued in this case is DISSOLVED.

SO ORDERED.

Carpio-Morales, (Acting Chairperson), Velasco, Jr., and Brion, JJ., concur.
Quisumbing, (Chairperson), on official leave.

** Identified in the petition as Renato Aggarao.

[1] Rollo, pp. 8-19; dated 10 October 2005 and penned by J. Rebecca De Guia-Salvador and concurred in by JJ. Ruben T. Reyes, now Associate Justice of the Court, and Aurora Santiago-Lagman.

[2] Id. at 7; dated 28 April 2006.

[3] Id. at 65-69.

[4] CA rollo, pp. 116-120.

[5] Id. at 116.

[6] Rollo, p. 54.

[7] Id. at 55.

[8] CA rollo, p. 65.

[9] Id. at 65-72.

[10] Id. at 55.

[11]Id. at 69.

[12] Rollo, p. 119.

[13]Id. at 55.

[14] Id. at 55.

[15] Id.

[16] CA rollo, p. 122-135.

[17] Rollo, p. 66.

[18]Id. at 57.

[19] Rollo, p. 56.

[20] Id.

[21] CA rollo, p. 17.

[22] Id. at 73-78.

[23] Id. at 74.

[24] Id. at 29-30.

[25] Supra note 3.

[26] Rollo, p. 65.

[27] CA rollo, p. 16.

[28] Id. at 2-15.

[29] Id. at 6.

[30] Supra note 1.

[31] Rollo, p. 31.

[32] Manotoc v. Court of Appeals, G.R. No. 130974, August 16, 2006, 499 SCRA 21, 33.

[33] SEC. 8. Service upon entity without juridical personality. ³⁴When persons associated in an entity without juridical personality are sued under the name by which they are generally or commonly known, service may be effected upon all the defendants by serving upon any one of them, or upon the person in charge of the office or place of business maintained in such name. But such service shall not bind individually any person whose connection with the entity has, upon due notice, been severed before the action was brought.

[34] Mangila v. Court of Appeals, 435 Phil. 870, 886 (2002).

[35] Litonjua Group of Companies v. Vigan, 412 Phil. 627, 636 (2001).

[36] SEC. 6. Service in person on defendant.-³⁴Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[37] SEC. 7. Substituted service.-³⁴If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the

defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving copies at defendant's office or regular place of business with some competent person in charge thereof.

[38] Sandoval II v. HRET, 433 Phil. 290, 300-301 (2002).

[39] Pinlac v. Court of Appeals, 402 Phil. 684, 706 (2001).

[40] Herrera-Felix v. Court of Appeals, G.R. No. 143736, 11 August 2004, 436 SCRA 87, 94.

[41] See Domingo v. Reed, G.R. No. 157701, 9 December 2005, 477 SCRA 227; Herrera-Felix v. Court of Appeals, id.; Villareal v. CA, 356 Phil. 826 (1998).

[42] French Oil Mill Machinery Co., Inc. v. Court of Appeals, 356 Phil. 780, 786-787 (1998).

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.