ZAMBOANGA FOREST MANAGERS CORP., PETITIONER, VS. NEW PACIFIC TIMBER AND SUPPLY CO., ET AL., RESPONDENT.

G.R. No. 173342. October 13, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The petition for review on certiorari at bench was filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure in view of the following resolutions issued by the Court of Appeals (CA) in CA-G.R. SP No. 80110: (a) Resolution dated 29 June 2004, dismissing the petition for review filed by petitioner Zamboanga Forest Managers Corporation (ZFMC) pursuant to Rule 43 of the same Rules;[1] and, (b) Resolution dated 21 June 2006, denying the motion for reconsideration of said dismissal.[2]

The Facts

Petitioner Zamboanga Forest Managers Corporation (ZFMC) is the holder of Timber License Agreement No. 205 covering an unspecified area at Sibuco and Siocon in Zamboanga Del Norte and Zamboanga City.[3] On the other hand, respondent New Pacific Timber and Supply Co. (NEPATCO) is the holder of Timber License Agreement No. 8 over an area consisting of 19,350.0 hectares of public forest situated in the same locality. In connection with a boundary dispute lodged before the Bureau of Forest Development (BFD), it appears that ZFMC and NEPATCO agreed on the demarcation of their respective concession areas pursuant to a compromise agreement dated 18 April 1973.[4] Acting on said agreement as well as the reports submitted by Foresters Carlos R. Retino and Juan B. Galo[5] of the Zamboanga City District Forestry Office, then BFD Regional Officer-in-Charge Regulo D. Bala issued an order dated 8 May 1974, the dispositive portion of which states:

> "Foregoing considered and in order to resolve immediately the alleged encroachment of NEPATCO inside the area of ZFMC, it is hereby ordered that the common boundary line which was actually laid down and blazed by about 2 to 3 meters wide on the ground as indicated on the attached sketch and which forms part of this Order, be adopted, it being in conformity with the Supplemental Agreement dated April 8, 1973 between parties concerned notwithstanding that said agreement does not contravene existing policies, rules and regulations of the Bureau of Forest Development.
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> "Henceforth, the technical description for TLA No. 8 of NEPATCO is described in part, to wit: `x x x to corner 14, intersection of the cutline and the boundary line of TLA No. 205 (Prop.) of ZFMC; thence N17' W, 2,600 meters to Corner 14-A, identical to Corner 11-B, of TLA No. 205 (Prop.) of ZFMC; thence N17' W, 6,650 meters to Corner 14-B, identical to Corner 11-A of TLA No. 205 (Prop.) of ZFMC; thence following a creek upstream in a general Northeasterly direction about 275 meters to Corner 15, identical to Corner 11 of TLA No. 205 (Prop.) of ZFMC x x x."
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> "Likewise, the technical description for TLA No. 205 (Prop.) for ZFMC is described in part, to wit: `x x x to Corner 11, a point at the bank of a creek, identical to Corner 15 of NEPATCO; thence following said creek, down stream in a general Southwesterly direction about 275 meters in a straight (direct) distance to Corner 11-A a point at its bank; thence 817 E, 7,650 meters to Corner 11-B, identical to 14-A, a point S82 E, 375

> meters from the junction of Lemon Creek and Saz River, thence S17'E, 2950 meters to Corner 12, a point at the Bank of Talisayan River; x x x."
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> "For the sake of justice and equity it is likewise ordered that the logs cut, gathered and removed by NEPATCO from the licensed area of ZFMC in the total volume of 23,892.40 cubic meters be replaced and/or paid with an equal volume and grade to ZFMC, or in any manner both licensees, may agree. The disposition thereof is conditioned upon the faithful compliance by both licensees with the terms and conditions of their compromise agreement of April 18, 1973."[6]

With the denial of its motion for reconsideration of the foregoing order in the 11 November 1974 order issued in the case,[7] NEPATCO elevated the matter to then Ministry of Natural Resources (MNR) via the appeal docketed thereat as MNR Case No. 4023. While affirming the resolution of the boundary dispute, however, then MNR Minister Teodoro Q. Peña rendered a decision dated 25 June 1984, absolving NEPATCO of liability for cutting lumber within ZFMC's concession area,[8] upon the following findings and conclusion:

> [NEPATCO] is being held liable for 23,892.40 cubic meters of timber. This is not based on actual measurement, but as stated in the memorandum of Juan B. Galo dated January 14, 1974, merely calculated on the average stand of 148.40 cubic meters per hectare (60 cms. in diameter) for 161 hectares which were found to have been logged inside the concession of [ZFMC]. It was also stated that there was no physical count or inventory of stumps because majority of the stumps were already in the stage of advanced decay.
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> There is no legally admissible evidence that it was [NEPATCO] who actually logged in the area. It should be noted that logging allegedly took place in 1961 and 1962 while investigation was conducted in 1973. The information that it was [NEPATCO] who conducted the logging allegedly came from one Ramon Serna, Sr., a tractor operator of [ZFMC] and former tractor operator of [NEPATCO] and corroborated by one Florentino Isidro, a concession guard of [ZFMC] and a former capataz of the falling and brushing crews of [NEPATCO]. It does not appear how they conveyed their information to District Forester Galo, but it is evident that [NEPATCO] was not given a chance to cross-examine the said informants nor to present evidence to controvert said information. Hence, the information has no probative value for being hearsay, which kind of evidence suffers from intrinsic weakness and in competency to satisfy the mind. (Jones on Evidence, 2[nd] ed. 1991). Furthermore, the credibility of the informant would be questionable considering that they were employed by [ZFMC] and may be considered biased.
>
> Even the earlier report of Forester Carlos R. Retino dated July 17, 1973 contained nothing more than the unsubstantiated statement that "it was found out this areas were logged by NEPATCO since in 1961 and 1962.' This purely gratuitous statement will not suffice to establish the liability of [NEPATCO].
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> x x x x
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> x x x (T)here is merit in the conte(n)tion of [NEPATCO] that logging operations conducted by either or both within the overlapped portion should be pres(um)ed done in good faith. Prior to the compromise agreement, each party had the right to insist that its area was the area as defined in the technical description of its concession, and therefore, each party had a right to log in that area. That is why the matter was settled by compromise. The fact that the logging camp and forest nursery of [NEPATCO] were found within the area which fell in the concession of [ZFMC] by virtue of the compromise agreement, is proof positive that appellant was acting in good faith in operating in said area. If it knew beforehand that the area belonged to [ZFMC], it could not have invested time, money and effort in the construction of its logging camp and its forest nursery thereat. If [NEPATCO] was engaged in clandestine operations, it would not have openly advertised its presence in that forbidden area."[9]

Dissatisfied, ZFMC perfected the appeal which was docketed before the Office of the President as O.P. Case No. 5613. Through then Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, the Office of the

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President rendered a one-page decision dated 30 June 2003, affirming in toto the MNR Minister's 25 June 1984 decision by adopting the aforequoted findings and conclusions.[10] In receipt of the order dated 30 September 2003 order[11] denying its motion for reconsideration of said decision in O.P. Case No. 5613,[12] ZFMC filed the 20 November 2003 petition for review docketed as CA-G.R. No. 80110[13] before the CA. Through its then Fifteenth Division, the CA issued a resolution dated 30 January 2004, requiring ZFMC to: (a) furnish a copy of its petition to the Office of the President and NEPATCO; (b) submit copies of the pleadings filed before the Office of the President and the MNR; and, (c) submit the correct and current address of NEPATCO and/or its counsel of record, Atty. Gaspar V. Tagalo.[14]

On 9 March 2004, ZFMC filed its compliance by submitting the correct current address of Atty. Tagalo and informing the CA that a copy of its petition had already been furnished NEPATCO and both the Office of the President and the Office of the Solicitor General (OSG). Anent the CA's directive to submit the pleadings filed in MNR Case No. 4023 and O.P. Case No. 5613, however, ZFMC averred, among other matters, that the undisputed facts of the case were already exhaustively discussed in the 25 June 1984 decision rendered in MNR Case No. 4023 which purportedly upheld BFD Director Bala's finding that NEPATCO encroached into its concession area; and, that the submission of the pleadings filed before the MNR and the Office of the President was no longer necessary since the only issue submitted for resolution was the propriety of the subsequent deletion of NEPATCO's liability for cutting lumber within its concession area.[15] Finding ZFMC's compliance unsatisfactory, the CA's then Twenty-First Division issued the resolution dated 29 June 2004, dismissing the petition pursuant to Section 7, Rule 43 of the 1997 Rules of Civil Procedure.[16]

On 4 August 2004, ZFMC filed a motion for reconsideration of the dismissal of its petition, reiterating the material allegations in its compliance and seeking permission to submit certified copies of the pleadings filed in MNR Case No. 4023 and O.P. Case No. 5613 "within a reasonable time, in the interest of justice."[17] In view of the denial of its motion for reconsideration in the resolution dated 21 June 2006 issued by the CA's Special Former Twenty-First Division,[18] ZFMC filed the petition at bench which originally named both NEPATCO and the Office of the President as respondents.[19] Acting on the manifestation and motion filed by the OSG,[20] however, the Court issued the 12 February 2007 resolution dropping the Office of the President as public respondent in the case.[21]

The Issue

ZFMC urges the grant of its petition on the ground that the 30 June 2003 decision rendered by the Office of the President in O.P. Case No. 5613 is a memorandum decision which should be nullified for lack of statement of the facts and the law on which the same based.[22]

The Court's Ruling

We find the petition bereft of merit.

For a party which characterized the present petition as one seeking the review of the 29 June 2004 and 21 June 2006 issued by the CA in CA-G.R. SP No. 80110,[23] ZFMC curiously fails to even mention the same resolutions in its discussion of the grounds in support of the petition. Instead, ZFMC limits is discourse on the defects of the 30 June 2003 decision rendered by the Office of the President in O.P. Case No. 5613, the reversal and setting aside of which is ultimately sought in its prayer. In so doing, however, ZFMC evidently loses sight of the fact that the petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure is the remedy available to 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."[24] Rather than the 30 June 2003 decision in O.P. Case No. 5613, the proper subjects of this petition are, therefore, the aforesaid 29 June

2004 and 21 June 2006 resolutions in CA-G.R. SP No. 80110 which, respectively, dismissed ZFMC's petition for review and denied its motion for reconsideration of said dismissal.

The foregoing preliminary matters thus clarified, we find that the CA cannot be faulted for dismissing the petition for review ZFMC filed pursuant to Rule 43 of the Rules by way of appeal from the 30 June 2003 decision in O.P. Case No. 5613. A perusal of said petition shows that, instead of formulating its own "concise statement of the facts and the issues involved" as required under Rule 43 of the Rules, ZFMC merely quoted the first ten (10) pages of the 25 June 1985 decision in MNR Case No. 4023. Altogether oblivious of the missing third page of its copy of said decision and the relevant facts it resultantly omitted, ZFMC also appended copies of only the following documents to its petition, viz.: (a) the decision in O.P. Case No. 5613; (b) its motion for reconsideration thereof; and, (c) the 30 September 2003 order denying said motion for lack of merit. Despite being alerted to the deficiencies of its petition in the CA's 30 January 2004 resolution directing the submission of the pleadings filed before the MNR and the Office of the President, ZFMC stubbornly maintained, that said documents were no longer necessary since the undisputed facts of the case were already narrated in the 25 June 1984 decision rendered in MNR Case No. 4023.

While it is admittedly the petitioner who decides at the outset which relevant documents will be appended to his petition, it has been held that the CA has the duty to ensure that "the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of prima facie merit in the petition."[25] With the third page missing from ZFMC's copy of the 25 June 1985 decision in MNR Case No. 4023 and the particulars it omitted as a consequence, we find that the CA's directive for the submission of the pleadings the parties filed in said case and in O.P. Case No. 5613 was clearly necessary for the proper appreciation of the facts and the issues relevant to the petition before it. Considering that a petitioner's failure to attach material and relevant documents to his petition is a sufficient ground to dismiss it,[26] the CA correctly dealt with ZFMC's failure to comply with its directive by dismissing the petition pursuant to Section 7, Rule 43 of Rules which provides as follows:

> Sec. 7. Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Still insisting on the superfluity of the submission of said pleadings in its 28 July 2004 motion for reconsideration of the dismissal of its petition, ZFMC had, of course, requested for reasonable time within which to comply with the CA's earlier directive. In the twenty-two months which elapsed from the filing of said motion[27] up to the denial thereof in CA's resolution dated 21 June 2006, however, the record shows that ZFMC miserably failed to submit the pleadings filed by the parties before the MNR and the Office of the President. To our mind, ZFMC's omission was fatal when viewed in the light of the above-discussed deficiencies of its petition and its added failure to submit copies of the very orders it sought to be affirmed by the CA, i.e., the BFD Director's orders dated 8 May 1974 and 11 November 1974. By and of itself, a party's failure to comply with the CA's directive without justifiable cause is also a ground for the dismissal of an appeal under Section 1 (h), Rule 50 of the Rules.[28]

Granted by the CA an extension of fifteen (15) days from 25 October, 2003 or until 9 November, 2003 within which to file its petition for review,[29] it does not likewise help ZFMC's cause any that it was only able to do so on 24 November 2003.[30] Although appeal is an essential part of our judicial process,[31] it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege.[32] Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the

judgment final and executory.[33] Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not[34] and no court - not even the Supreme Court - has the power to revise, review, change or alter the same.[35] The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[36]

Admittedly, the rule that a judgment that has become final and executory can no longer be disturbed, altered or modified admits of exceptions in special cases.[37] In filing the petition at hand, however, ZFMC has once again hindered the proper appreciation of the facts of the case by failing to submit copies of the BFD Director's orders dated 8 May 1974 and 11 November 1974, a complete copy of the 25 June 1985 decision in MNR Case No. 4023 and the pleadings the parties filed before the MNR and the Office of the President. Even if we were, therefore, to excuse ZFMC's procedural lapses before the CA, there would still be a paucity of bases for the reversal of the 30 June 2003 decision in O.P. Case No. 5613.

WHEREFORE, premises considered, the petition is DENIED for utter lack of merit.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

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[1] Rollo, pp. 61-63.

[2] Id. at 67-68.

[3] Id. at 39.

[4] Id. at 40-42.

[5] Id. at 42-45.

[6] Id. at 38-39.

[7] Id. at 46.

[8] Id. at 38-51.

[9] Id. at 47-50.

[10] Id. at 37.

[11] Id. at 67-68.

[12] Id. at 64-65.

[13] Id. at 21-36.

[14] CA rollo, p. 49.

[15] Id. at 54-55.

[16] Id. at 58-60.

[17] Id. at 62-63.

[18] Rollo, pp. 67-68.

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[19] Id. at 9-20.

[20] Id. at 71-75.

[21] Id. at 82-83.

[22] Id. at 14.

[23] Id. at 8.

[24] Section 1, Rule 45, 1997 Rules of Civil Procedure.

[25] Atillo v. Bombay, 404 Phil. 179, 191 (2001).

[26] Ferrer v. Villanueva, G.R. No. 155025, 24 August 2007, 531 SCRA 97, 103.

[27] By registered mail on 4 August 2006.

[28] Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars or directives of the court without justifiable cause.

[29] CA rollo, p. 8.

[30] Id. at 9-24.

[31] Republic v. Luriz, G.R. No. 158992, 26 January 2007, 513 SCRA 140, 148.

[32] Heirs of Teofilo Gaudiano v. Benemerito, G.R. No. 174247, 21 February 2007, 516 SCRA 416, 424.

[33] Peña v. Government Service Insurance System, G.R. No. 159520, 19 September 2006, 502 SCRA 383, 396.

[34] Club Filipino, Inc. v. Araullo, G.R. No. 167723, 29 November 2006, 508 SCRA 583, 592.

[35] Aguilar v. Manila Banking Corporation, G.R. No. 157911, 19 September 2006, 502 SCRA 354, 374-375.

[36] Filipro, Inc. v. Permanent Savings & Loan Bank, G.R. No. 142236, 27 September 2006, 503 SCRA 430, 438 .

[37] Industrial Timber Corporation v. Ababon, G.R. No. 164518, 25 January 2006, 480 SCRA 171, 180.

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