

**LEONCIO D. MANGAHAS, ZALDY G. MATIAS, ORLANDO O. OANES,
DANTE Y. ARCILLA AND JOCELYN R. DELA CRUZ, PETITIONERS, VS.
THE COURT OF APPEALS, THE REGIONAL TRIAL COURT OF GAPAN
CITY, ...**

G.R. No. 173375. September 25, 2008

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-173375/>

CHICO-NAZARIO, J.:

Assailed in the instant Petition for Review on Certiorari[1] under Rule 45 of the Revised Rules of Court is (1) the Resolution[2] dated 23 February 2006 of the Court of Appeals in CA-G.R. SP No. 93272, entitled "Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz v. The Regional Trial Court of Gapan City (Nueva Ecija), Branch 35, the People of the Philippines and Dr. Celia Morales"; and (2) the Resolution[3] dated 13 June 2006 of the same court denying petitioners' Motion for Reconsideration of its earlier resolution. In both assailed resolutions, the Court of Appeals dismissed the Petition for Certiorari, with prayer for issuance of a temporary restraining order and injunction, filed by petitioners, for having been filed beyond the reglementary period within which to file said recourse.

The antecedent facts of the present petition are:

On 20 April 2001, private respondent Dr. Celia P. Morales (Morales) filed an Affidavit-Complaint[4] against petitioners Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz (Mangahas, et al.) for violation of Sec. 3 (f) of Republic Act No. 3019 before the Office of the Ombudsman. The complaint was docketed as OMB-1-01-0382-D.

In her complaint, private respondent Morales basically alleged that:

- On June 27, 1998, the Sangguniang Bayan (SB for brevity) of the Municipality of Gapan, Nueva Ecija, thru the initiative of Councilor Zaldy G. Matias (nephew of Mr. and Mrs. Edgardo Manalastas), seconded by Councilor Carlos R. Malaca, persuaded to pass and enact Kapasyahan Blg. 39, taon 1998, granting the request of Mr. and Mrs. Edgardo Manalastas for the conversion of their agricultural land covered by Transfer Certificate of Title No. NT-125720 into a memorial garden despite insufficiency of the requirements thereof as provided by law x x x;

x x x x

- x x x after receiving a copy of the said Kapasyahan, it appeared that the conversion of the agricultural land of Mr. and Mrs. Edgardo Manalastas (Manalastas for brevity) into a memorial garden was hurriedly done and apparently not in accord with the necessary legal requirements based on their failure to: (a) notify the adjacent residential lot owners of the said plan and/or development; (b) secure proper recommendation(s) and permit from different government departments, bureaus and agencies concerned; and (c) follow and comply with the proper procedures as prescribed by law;

- In questioning the same, my son sent a letter dated 13 April 1999 addressed to the SB and prayed, among others the immediate REVOCATION and CANCELLATION of the said Kapasyahan x x x;
- x x x Secretary of the Sanggunian, x x x admitted therein that Kapasyahan Blg. 39, taon 1998 was only a DRAFT RESOLUTION x x x;
- On 20 April 1999, another Kapasyahan Blg. 34, taon 1999 was issued by the SB refraining or stopping the Manalastas to further develop their project without first securing the proper permits and certification from the different government departments and bureaus concerned, unfortunately, however, the same was never implemented x x x;
- On 14 May 1999, my son decided to send another letter addressed to the SB and prayed x x x the issuance of a permanent revocation of Kapasyahan Blg. 39, taon 1998 in lieu of a temporary revocation previously issued x x x;
- x x x my daughter, Felicitas Morales sent another letter dated 28 September 2000 addressed to the SB, informing them of the presence of persons who had continued and still continue to develop the project of Manalastas despite the prohibition previously issued to that effect. However, to our prejudice, no action whatsoever was taken by the said public officials concerned, thereby extending undue favor to the Manalastas;
- x x x the undersigned was forced to send another letter dated 24 January 2001 addressed to the SB x x x;
- On 12 March 2001, another letter was sent by the undersigned addressed to the SB, requesting that I be given a chance to be heard in a form of public hearing in order to air my grievances against the illegal conversion of the land x x x and for the unfair, unjust and oppressive treatment which we suffered and continue to suffer up to the present x x x;
- Four (4) days prior to the scheduled public hearing on 6 April 2001, the Office of the Sanggunian headed by Hon. Vice-Mayor Marcelino D.I. Alvarez sent a notice to all the members of the SB, namely, Leoncio D. Mangahas, Zaldy G. Matias, Danilo A. de Guzman, Carlos R. Malaca, Orlando Q. Oanes, Dante Y. Arcilla, Jocelyn dela Cruz, Crisanto V. Velayo II, Alfredo M. Alejandria, Jr. and Alejandro C. Velayo, for purpose(s) of informing them of the said public hearing;
- When the notice was served to the following councilors, namely: Leoncio D. Mangahas, Zaldy G. Matias, Carlos R. Malaca, Orlando Q. Oanes, Dante Y. Arcilla and Jocelyn R. dela Cruz, I was informed by the Hon. Vice-Mayor Marcelino D.L. Alvarez and the Secretary of the Sanggunian, Mr. Eduardo H. Almera, that the said councilors have maliciously refused to sign the said notice, thereby giving undue advantage in favor of the Manalastas who up to this present time has been continuously developing their project despite the prohibition thereof x x x;
- However, despite the fact that they were properly notified, the above-named councilors in the preceding paragraph have deliberately and maliciously neglected and/or refused to attend the scheduled public hearing last 6 April 2001, thereby unjustly and oppressively discriminating the undersigned without sufficient justification whatsoever;
- Due to the unlawful acts committed by the six (6) councilors, the undersigned most respectfully submits that they be prosecuted for violation of Sec. 3(f) of the Anti-Graft and Corrupt Practice Act (R.A. 3019 as amended by R.A. 3047, P.D. 77 and B.P. 195) which provides that:
Xxx Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on matter pending before him for purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party. xxx
- As of this date, no public hearing yet has ever been conducted, hence, to the prejudice of the undersigned;

- With full sincerity and honesty, I believe that there will be no more public hearing that will be conducted due (to) the admission made by Hon. Vice-Mayor Marcelino D.L. Alvarez and Mr. Eduardo H. Almera as contained in their Joint Affidavit.

In their joint counter-affidavits, petitioners denied the accusations of private respondent Morales. They argued that the assailed Kapasyahan Blg. 39, taon 1998, was unanimously approved by the Municipal Councilors and was thereafter approved by the Provincial Councilors of Nueva Ecija.

In a Resolution[5] dated 27 June 2001, the Office of the Deputy Ombudsman for Luzon resolved to dismiss the complaint for lack of probable cause.

Upon motion of private respondent Morales, however, said Office, in another Resolution,[6] reconsidered its earlier finding of lack of probable cause. It held that there was further need for preliminary investigation to determine the criminal liabilities of petitioners in deliberately absenting themselves from the public hearing of the Sangguniang Bayan held on 6 April 2001.

On 8 November 2001, an Order[7] was issued by the Office of the Deputy Ombudsman for Luzon re-opening the case for further preliminary investigation.

In a Resolution[8] dated 5 June 2002, the Office of the Deputy Ombudsman for Luzon recommended that (1) petitioners be charged with and prosecuted for violation of Sec. 3 (f) of Republic Act No. 3019; and (2) the corresponding Information be filed in court.

On 18 July 2002, an Information[9] dated 5 June 2002, was filed before the Regional Trial Court (RTC), Branch 34, Gapan, Nueva Ecija, charging petitioners with the violation of Sec. 3(f) of Republic Act No. 3019. The accusatory portion thereof states:

That on or about 11 April 2001 or sometime prior or subsequent thereto in Gapan, Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then the incumbent Councilors of the Municipality of Gapan, Nueva Ecija, committing the crime herein charged in relation to and in the performance of their official function, did then and there willfully, unlawfully and criminally neglect and refuse after due demand or request, without sufficient justification, to act within a reasonable time on a matter pending before them by absenting themselves in the public hearing of Kapasyahan Blg. 39, knowing fully well that their presence are indispensable, necessary to justify the development of the proposed memorial garden thereat, for the development of (sic) discriminating against one Celia Morales, the other interested party.

The case was docketed as Criminal Case No. 10926.

On 28 October 2002, petitioners filed with the RTC a Motion for Reinvestigation with Prayer to Suspend Proceedings[10] since the Information had already been filed with the said trial court.

In an Order[11] dated 26 March 2003, the RTC denied petitioners' motion for lack of merit.

Warrants[12] for the arrest of petitioners were subsequently issued by the RTC, but the former, without more ado, posted personal cash bail bonds to secure their provisional liberty.[13]

In a last ditch effort to defer the proceedings before the RTC, petitioners filed a Motion for Reconsideration of the Order dated March 26, 2003 with Prayer for Inhibition.[14]

On 1 July 2003, Hon. Rodolfo Beltran, Presiding Judge of RTC- Branch 34, recused himself from the case without resolving the latest motion filed by petitioners.[15]

In an Order[16] dated 5 August 2003, Hon. Victoriano B. Cabanos, Presiding Judge of RTC-Branch 87, resolved the above motion by denying the same.

In the interim, before petitioners could be arraigned, the prosecution filed with the RTC a Motion to Suspend Accused from Public Office;[17] which petitioners countered by filing with the same court a Motion to Quash with Urgent Prayer to Defer Arraignment and Issuance of Order of Suspension.[18]

In an Order[19] dated 16 June 2005, the RTC granted the prosecution's prayer to suspend petitioners from public office for sixty (60) days in view of Sec. 63 (b) of the Local Government Code[20]; thus, effectively denying petitioners' Motion to Quash with Urgent Prayer to Defer Arraignment and Issuance of Order of Suspension. Petitioners filed a motion for reconsideration of the order of suspension but it was also denied by the RTC in another Order[21] dated 25 November 2005, but this time issued by RTC Branch 35,[22] Gapan, Nueva Ecija.

Imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in (1) suspending them for sixty (60) days from public office; and (2) denying the motion to quash, as well as their prayer to defer their arraignment, petitioners filed a Petition for Certiorari under Rule 65 of the Revised Rules of Court before the Court of Appeals.

On 23 February 2006, the Court of Appeals issued a Resolution dismissing the Petition. It ruled that:

The petition alleges that petitioners received on December 9, 2005 a copy of the Order dated November 25, 2005, which denied their motion for reconsideration of the Order dated June 16, 2005. Consequently, the sixty (60) day period within which to file a petition for certiorari expired on February 7, 2006. However, the instant petition was filed only on February 8, 2006, as shown by the post office stamp on the envelope, and was, therefore, late by one (1) day. The assailed Orders had thus (sic) already attained finality.[23]

Petitioners moved for the reconsideration of the appellate court's dismissal of their petition. They claimed that, in actuality, their petition was mailed on 7 February 2006 and not on 8 February 2006. Attached to petitioner's motion for reconsideration was a certification by one Marita Pangandian, Assistant Postmaster of Cabanatuan City Post Office, Nueva Ecija, as well as a simple photocopy of the page of the registry receipt book of said post office showing that that subject mail matters addressed to the Court of Appeals were received for mailing on 7 February 2006.

The Court of Appeals, however, in a Resolution dated 13 June 2006 found no cogent reason to disturb its original conclusion that the petition was filed beyond the reglementary period within which to avail of the extraordinary writ of certiorari. The appellate court held that:

Settled is the rule that a xerox copy of any document is without evidentiary weight or value (citation omitted). Moreover, the clerk of the post office who allegedly failed to stamp the date February 7, 2006 and, instead, stamped the date February 8, 2006 on the envelope containing the mail matter addressed to this Court did not execute an affidavit to that effect, so that the allegations in the affidavit of Mrs. Pangandian are hearsay.[24]

Further, the Court of Appeals took exception to the fact that the Office of the Solicitor General (OSG), being the official counsel of the People of the Philippines in appeals before the appellate court and the Supreme Court, was not served a copy of said petition. In its place, the Provincial Prosecutor was the one furnished a copy thereof.

Hence, petitioners come to this Court, challenging the dismissal by the Court of Appeals of their Petition anchored on the following arguments:

- WITH REGARD TO THE ACTUATIONS OF THE COURT OF APPEALS:
- WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE

PETITION FOR CERTIORARI FOR ALLEGEDLY HAVING BEEN FILED ONE DAY LATE, CONSIDERING THAT:

- FIRST, THE REGISTRY RECEIPT BOOK OF THE CABANATUAN CITY POST OFFICE SHOWED AND THE ASSISTANT POSTMASTER STATED THAT THE MAIL MATTER ADDRESSED TO THE COURT OF APPEALS WAS MAILED BY THE PETITIONERS ON 7 FEBRUARY 2006 AND NOT ON 8 FEBRUARY 2006.

- SECOND, THE PETITIONERS ARE NOW SUBMITTING A CERTIFIED COPY OF THE REGISTRY RECEIPT BOOK AND AN AFFIDAVIT OF THE CLERK CONCERNED WHO STAMPED THE NOTATION THAT IT WAS MAILED ON 8 FEBRUARY 2006 AND INSTEAD OF 7 FEBRUARY 2006.

- WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION ON THE GROUND THAT NO COPY OF THE PETITION FOR CERTIORARI WAS FURNISHED TO THE OFFICE OF THE SOLICITOR GENERAL. PETITIONERS ARE NOW SUBMITTING A COPY OF THIS PETITION AND THE OTHER PLEADINGS ARE NOW BEING FURNISHED TO THE OFFICE OF THE SOLICITOR GENERAL.

- WITH REGARD TO THE ACTUATIONS OF THE TRIAL COURT:

- WITH DUE RESPECT, THE HONORABLE TRIAL COURT GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT DENIED THE MOTION TO QUASH AND WHEN IT ORDERED THE SUSPENSION OF THE PETITIONERS CONSIDERING THAT:

- FIRST, THE SUBJECT INFORMATION DATED 5 JUNE 2002 WAS AN INVALID INFORMATION, CONSIDERING THAT IT WAS NOT SIGNED BY THE GOVERNMENT PROSECUTOR CONCERNED ON THE DATE IT WAS FILED ON 18 JULY 2002;

- SECOND, EVEN IF IT WAS BELATEDLY SIGNED, THE SAME INFORMATION REMAINED AS INVALID AND WAS NOT CURED BY THE FACT OF SIGNING AND COULD NOT BE GIVEN A RETROACTIVE EFFECT AS IF IT WERE VALID AT THE TIME IT WAS ORIGINALLY FILED;

- THIRD, EVEN IF IT WAS RENDERED VALID BY THE FACT OF ITS BELATED SIGNING BY THE GOVERNMENT PROSECUTOR CONCERNED, THE SAID INFORMATION HAS INSUFFICIENT ALLEGATIONS IN IT AND SUCH, THE SAME SHOULD BE QUASHED;

- FOURTH, THE TRIAL COURT HAS NO JURISDICTION TO TRY AND HEAR THIS CASE, MUCH MORE IMPOSE SUSPENSION AGAINST THE PETITIONERS.

- FIFTH, WITH DUE RESPECT, IT WOULD HAVE BEEN MORE PRUDENT IF THE TRIAL COURT HAD CONDUCTED A PRE-SUSPENSION HEARING IN ACCORDANCE WITH THE RULING OF THE SUPREME COURT IN THE CASE OF SANTIAGO V. SANDIGANBAYAN, 356 SCRA 636.

- SIXTH, WITH DUE RESPECT, THE HONORABLE COURT FAILED TO CONSIDER THAT THE ACCUSED ARE ALREADY SERVING DIFFERENT TERMS OF OFFICES AND THAT THE ALLEGED ACTS COMPLAINED OF WERE COMMITTED DURING THEIR PAST TERMS.[25]

Cutting through the issues, it would appear that ultimately, the central question and bone of contention in the petition before us boils down to the appreciation and determination of factual matters, first and foremost of which is the issue of whether the Petition for Certiorari filed with the Court of Appeals was indeed mailed on 7 February 2006. And only when the foregoing issue is resolved in the affirmative, is it still relevant for us to proceed to the legal question of whether the trial court erred in denying petitioners' motion to quash and granting the People's motion to suspend them from public office.

Factual issues are not the proper subject of this Court's discretionary power of judicial review under Rule 45 of the Revised Rules of Court. We have defined a question of law as distinguished from a question of fact, to wit:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[26]

Under Rule 45, only questions of law may be raised in a petition for review on certiorari before this Court as we are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the Court of Appeals are final and conclusive, and cannot be reviewed on appeal.[27] It is not the function of this Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[28] The preceding rule however, admits of certain exceptions and has, in the past, been relaxed when the lower courts' findings were not supported by the evidence on record or were based on a misapprehension of facts,[29] or when certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion.[30]

Be that as it may, we are hard pressed to apply any of the exceptions to the case at bar.

Timeliness of an appeal is a factual issue. It requires a review or evaluation of evidence on when the present petition was actually mailed and received by the appellate court. In the case at bar, to prove that they mailed their Petition for Certiorari addressed to the Clerk of Court of the Court of Appeals on 7 February 2006 instead of 8 February 2006 as shown by the stamped date on the envelope, petitioners initially submitted (1) a photocopy of the pertinent page of the Registry Book of the Cabanatuan Post Office sans any official guarantee that it was a faithful reproduction of the original; (2) an Affidavit of Service executed by one Lolita S. Rase stating under oath that she was the one who "served copies" of the Petition for Certiorari, by registered mail, to the parties of the subject case, including that intended for the Court of Appeals, with an attached photocopy of the registry receipt corresponding to the mail sent to the appellate court; and (3) an Affidavit of Merit/Certification made under oath by one Marita Pangandian, claiming to be the Assistant PostMaster of Cabanatuan City Post Office, which stated that said office received for mailing on 7 February 2006 four (4) parcels/mail matters addressed to (a) Atty. Romeo Vilorio; (b) the Clerk of Court of RTC-Br. 87, Gapan, Nueva Ecija; (c) the Office of the Provincial Prosecutor; and (d) Court of Appeals Clerk of Court. To be precise, the supposed Assistant PostMaster attested in her affidavit that:

- Based on our records, we received in our office on 7 February 2006 for mailing as registered mail four (4) parcels/envelopes addressed to the following persons, namely:
 - a) Atty. Romeo Vilorio - 2092
 - b) The Clerk of Court, Gapan - 2093
 - c) The Office of the Provincial Prosecutor - 2094
 - d) The Clerk of Court, Manila - A-2094 (for the Court of Appeals)

- As a practice, mail matters are dispatched in the morning. If the mail matters are received in the afternoon, then they are dispatched on the next day. As such, of the said registered mail matters were received in the afternoon of 7 February 2006, then they were dispatched on the next day or on 8 February 2006;

- Unknown to me, the registered mail matter for "The Clerk of Court" of Court of Appeals, Manila may not have been stamped when it was received on 7 February 2006 and/or may have been stamped with an erroneous date on 8 February 2006 when it was about to be dispatched.

- When I examined the Registry Book, it appeared to be that there was some confusion on the part of our new clerk Lorena Datus, as the registered mail matter for the Office of the Provincial Prosecutor was also entered as 2094 while the one intended for "The Clerk of Court, Manila" in the Registry Receipt Book was marked as "A-2094". With two (2) registered mail matters with Nos. 2094, it may possibly occur that the other parcel intended for the "Clerk of Court, Manila" was not stamped with the date "February 7, 2006" when it was received by our Post Office. The fact that it was not stamped may have gone unnoticed until that time that the said matters were about to be dispatched on "February 8, 2006" and possibly, one of our staff might have stamped the copy for the Court of Appeals with the date 8 February 2006.

- This oversight on the erroneous stamping of the date was clearly unintentional and not deliberate on our part.

- I am executing the foregoing for the purpose of attesting to the truth of the foregoing and upon the request of Atty. Christian B. Flores for the purpose of proving that the registered mail matter A-2094 was received by our Post Office on 7 February 2006.[31]

Both of the affidavits submitted by petitioners were notarized by Atty. Bener Ortiz Bauto of Bauto, Bauto and Flores Law Offices - evidently, the same law firm as that of the counsel of petitioners.

Based on the foregoing documents, nevertheless, the Court of Appeals stood pat in its dismissal of the petition. When petitioners came to this Court via the present petition for review on certiorari, they attached thereto the same photocopy of the pertinent page of the Registry Book of the Cabanatuan City Post Office, but this time with a typewritten notation "certified true copy" signed by one Lorena Gatus, purportedly a clerk of such post office. Likewise, petitioners annexed to their present petition, the additional affidavit of the same clerk Lorena Gatus attesting to the fact that she erroneously stamped on the envelopes of petitioners' mails the date 8 February 2006 instead of 7 February 2006.

Upon closer examination of the aforementioned documents, including those submitted before the appellate court, this Court finds no evidentiary basis to reverse the dismissal by the Court of Appeals of petitioner's petition for certiorari for being belatedly filed.

True, petitioners sent the Court of Appeals a registered mail containing seven (7) copies of their Petition for Certiorari. But the envelope in which the copies of the petition were contained bore the notation 8 February 2006 as the date of mailing. Such date fell beyond the reglementary period within which to file such a petition.

To dispute the date of mailing as stamped on the envelope of their mail, petitioners presented the attestation, under oath, of the supposed Assistant Postmaster of the Cabanatuan City Post Office that the subject registered mail was "received in our office on 7 February 2006 for mailing x x x"; as well as that of the purported clerk of the same post office admitting to having mistakenly stamped the envelope of the subject registered mail with the date 8 February 2006.

There is a presumption that official duties have been regularly performed.[32] On this basis, we have ruled in previous cases that the Postmaster's certification is sufficient evidence of the fact of mailing. This presumption, however, is disputable. In this case, the Affidavit/Certification of the alleged Assistant Postmaster cannot give rise to such a presumption, for not only does it attest to an irregularity in the performance of official duties (i.e., mistake in stamping the date on the registered mail), it is essentially hearsay evidence.

Though notarized, we cannot give the affidavits of the Assistant Postmaster and the clerk any probative value, since they were both notarized by a lawyer belonging to the same law firm as petitioners' counsel and, as such, are self-serving assertions not corroborated by any other evidence. Considering the interest of his law firm in the case, we cannot rely solely on the jurat of the notary public that the affiants/certifiers are indeed who they say they are. The affiants/certifiers herein claimed to be officers or employees of the Cabanatuan City Post Office, but this Court has no way of ensuring the veracity of such claim.

It would have been different had petitioners presented an Official Receipt as evidence of payment of appropriate fees corresponding to the issuance of such certifications by the Assistant Postmaster and the clerk, who certified that the photocopy of the pertinent page of the Registry Book was a faithful reproduction of the original and that she was the one who erroneously made the notation "8 February 2006" on the envelope addressed to the Clerk of Court of the Court of Appeals. Under PhilPost Administrative Order No. 05-17 dated 20 December 2005, in relation to Department of Transportation and Communications Memorandum Circular No. 2000-17 dated 18 February 2000, concerning fees for administrative services rendered, a fee of Php25.00 is imposed for certification of every document or information based on record. Without such receipt, plus the fact that the jurats of the affidavits/certifications were made by a lawyer from the same law firm as petitioners' counsel, we cannot help but doubt that the said documents were issued by the officers of the Cabanatuan City Post Office.

In addition, petitioners could have easily presented the original Registry Receipt No. A-2094. It would have constituted the best evidence of the fact of mailing on 7 February 2006, even if a different date had been stamped on the envelope of the subject registered mail. Regrettably, petitioners have not seen fit to present such original. Their continued failure to present the original receipt can only lead one to remember the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary.[33] Mere photocopy of Registry Receipt No. A-2094 militates against their position as there is no indicium of its authenticity. A mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.

Given the foregoing, we find no reason to reverse the assailed resolutions of the Court of Appeals and disturb its conclusions therein. Petitioners miserably failed to adduce credible and sufficient substantiation that any inadvertence was committed by the Post Office of Cabanatuan City, Nueva Ecija. Instead of supporting their cause, the affidavits submitted by petitioners, taken together with the mere photocopy of Registry Receipt No. A-2094 without the presentation of the original thereof, actually lead this Court to doubt whether petitioners' counsel has been sincere in his dealings with the courts. Needless to stress, a lawyer is bound by ethical principles in the conduct of cases before the courts at all times.[34]

It has been said time and again that the perfection of an appeal within the period fixed by the rules is mandatory and jurisdictional.[35] But it is always in the power of this Court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it.[36] This Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits[37] and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.[38]

Assuming that we suspend the rules, in the interest of justice, and direct the Court of Appeals to admit petitioners' Petition for Certiorari even if it was one day late, we would still affirm the dismissal of said Petition by the appellate court considering petitioners' failure to serve the OSG with a copy of the same.

In addressing the issue, petitioners exploit the oft used defense - in the interest of justice; and the fact that they

have now furnished the OSG copies of the present petition, as well as other pleadings.

Failure to furnish the OSG a copy of the petition filed before the Court of Appeals was a fatal defect.

We agree with the disposition of the Court of Appeals in that we have stated in *Salazar v. Romaquin*[39] that Section 5, Rule 110 of the Revised Rules of Court provides:

SEC. 5. Who must prosecute criminal actions. - All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The authority of the Provincial Prosecutor to appear for and represent the respondent People of the Philippines is confined only to the proceedings before the trial court.

We further elucidated in the same case that:

The pleadings of the accused and copies of the orders or resolutions of the trial court are served on the People of the Philippines through the Provincial Prosecutor. However, in appeals before the Court of Appeals and the Supreme Court either (a) by writ of error; (b) via petition for review; (c) on automatic appeal; or (d) in special civil actions where the People of the Philippines is a party, the general rule is that the Office of the Solicitor General is the sole representative of the People of the Philippines. This is provided for in Section 35(l) Chapter 12, Title III of Book IV of the 1987 Administrative Code, viz:

(l) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

A copy of the petition in such action must be served on the People of the Philippines as mandated by Section 3, Rule 46 of the Rules of Court, through the Office of the Solicitor General (citation omitted). The service of a copy of the petition on the People of the Philippines, through the Provincial Prosecutor would be inefficacious. The petitioner's failure to have a copy of his petition served on the respondent, through the Office of the Solicitor General, shall be sufficient ground for the dismissal of the petition as provided in the last paragraph of Section 3, Rule 46 of the Rules of Court. Unless and until copies of the petition are duly served on the respondent, the appellate court has no other recourse but to dismiss the petition.

The purpose of the service of a copy of the petition on the respondent in an original action in the appellate court prior to the acquisition of jurisdiction over the person of the respondent is to apprise the latter of the filing of the petition and the averments contained therein and, thus, enable the respondent to file any appropriate pleading thereon even before the appellate court can act on the said petition, or to file his comment thereon if so ordered by the appellate court. But if a copy of the petition is served on the Provincial Prosecutor who is not authorized to represent the People of the Philippines in the appellate court, any pleading filed by the said Prosecutor for and in behalf of the People of the Philippines is unauthorized, and may be expunged from the records.[40]

In the more recent case of *Go v. Court of Appeals*,[41] this Court, through Mr. Justice Quisumbing, once again made clear that "Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly states that in a petition filed originally in the Court of Appeals, the petitioner is required to serve a copy of the petition on the adverse party before its filing (citation omitted). If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13. Since the OSG represents the Republic of the Philippines once the

case is brought before this Court of the Court of Appeals, then service of the petition should be made on that office (citation omitted)."

As a last ditch effort, petitioners hark on a liberal construction of the rules of procedure in order to bring about substantial justice and appeal to this Court's exercise of equity jurisdiction.

We are not convinced.

It must always be remembered that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Aside from the above disquisition, there is no showing herein of any exceptional circumstance that may rationalize a digression from the rule on timely filing of appeals.

Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other; or, as has often been "suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and procedural rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court." [42]

As we have put it long before:

For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists- and is now still reverently observed- is `aequetas nunquam contravenit legis.' [43]

Having found the explanation of petitioners less than worthy of credence and lacking in evidentiary support, this Court is obliged to adhere austere to the procedural rules on the timeliness of submission before the court.

All told, We find that the Court of Appeals did not err in dismissing the petition for (1) being filed beyond the reglementary period within which to file the same; and (2) failure to observe the requirement of service upon the OSG as counsel for the People of the Philippines.

In view of the foregoing, this Court sees no need to discuss the second assigned error.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The assailed 23 February 2006 Resolution and 13 June 2006 Resolution, both of the Court of Appeals in CA-G.R. SP No. 93272, are hereby AFFIRMED. Costs against petitioners Leoncio D. Mangahas, Zaldy G. Matias, Orlando O. Oanes, Dante Y. Arcilla and Jocelyn R. de la Cruz.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Reyes, and Leonardo-De Castro, JJ.[*], concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, former Solicitor

General.

[1] Rollo, pp. 11-38.

[2] Penned by Court of Appeals Associate Justice Marina L. Buzon with Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok; Annex "TT" of the Petition; id. at 392-394.

[3] Annex "VV" of the Petition; id. at 404-407.

[4] Annex "A" of the Petition; id. at 40- 44.

[5] Annex "E" of the Petition; id. at 109-111.

[6] Dated 27 August 2001; Annex "H" of the Petition; id. at 135-136.

[7] Annex "I" of the Petition; id. at 137.

[8] Annex "M" of the Petition; id. at 158-162.

[9] Annex "N" of the Petition; id. at 163-164.

[10] Annex "T" of the Petition; id. at 193-199.

[11] Annex "Z" of the Petition; id. at 218-219.

[12] Id. at 220.

[13] Id. at 221-236 vis-à-vis Annex "AA" of the Petition; id. at 237.

[14] Annex "CC" of the Petition; id. at 238-246.

[15] Annex "DD" of the Petition; id. at 252-253.

[16] Annex "EE" of the Petition; id. at 255.

[17] Annex "GG" of the Petition; id. at 260-264.

[18] Annex "KK" of the Petition; id. at 287-294.

[19] Annex "OO" of the Petition; id. at 313-319.

[20] Sec. 63(b). - Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

[21] Annex "RR" of the Petition; id. at 381-388.

[22] The case was re-raffled a second time in view of the 13 October 2005 Order of Judge Cabanos inhibiting himself from further hearing the case in view of the motion for inhibition filed by petitioners.

[23] Rollo, p. 393.

[24] Id. at 405-406.

[25] *Id.* at 23-25.

[26] *Velayo-Fong, v. Spouses Velayo*, G.R. No. 155488, 6 December 2006, 510 SCRA 320, 329-330.

[27] *Donato C. Cruz Trading Corp. v. Court of Appeals*, 400 Phil. 776, 782 (2000); *Baylon v. Court of Appeals*, 371 Phil. 435, 441 (1999).

[28] *Kwok v. Philippine Carpet Manufacturing Corp.*, G.R. No. 149252, 28 April 2005, 457 SCRA 465, 475.

[29] *Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, 8 April 2005, 455 SCRA 175, 188.

[30] *New Sampaguita Builders Construction, Inc (NSBCI) v. Philippine National Bank*, 479 Phil. 483, 496 (2004).

[31] *Rollo*, p. 293.

[32] Sec. 3(m), Rule 131 of the Revised Rules of Court.

[33] *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, 10 April 2006, 487 SCRA 78, 106-107.

[34] *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 742 (2002).

[35] *Philippine National Bank v. Court of Appeals*, 316 Phil. 371, 384 (1995).

[36] *Republic v. Court of Appeals*, 172 Phil. 741 (1978) involved a delay of six days; *Siguenza v. Court of Appeals*, G.R. No. L-44050, 16 July 1985, 137 SCRA 570, thirteen days; *Pacific Asia Overseas Shipping Corporation v. National Labor Relations Commission*, G.R. No. L-76595, 6 May 1988, 161 SCRA 122, one day; *Cortes v. Court of Appeals*, G.R. No. L-79010, 23 May 1988, 161 SCRA 444, seven days; *Olacao v. National Labor Relations Commission*, G.R. No. 81390, 29 August 1989, 177 SCRA 38, two days; *Legasto v. Court of Appeals*, G.R. Nos. 76854-60, 25 April 1989, 172 SCRA 722, two days; and *City Fair Corporation v. National Labor Relations Commission*, 313 Phil. 464 (1995), which also concerned a tardy appeal.

[37] *Aguam v. Court of Appeals*, 388 Phil. 587, 594 (2000).

[38] *Republic of the Philippines v. Imperial, Jr.*, 362 Phil. 466, 477 (1999).

[39] G.R. No. 151068, 21 May 2004, 429 SCRA 41, 47-48.

[40] *Id.* at 48-49.

[41] G.R. No. 163745, 24 August 2007, 531 SCRA 158, 165-166.

[42] *Tupas v. Court of Appeals*, G.R. No. 89571, 6 February 1991, 193 SCRA 597, 600, citing *Limpot v. Court of Appeals*, G.R. No. 44642, 20 February 1989, 170 SCRA 367, 369-370.

[43] *Aguila v. Court of First Instance of Batangas, Branch I*, G.R. No. L-48335, 15 April 1988, 160 SCRA 352, 359-360.

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.