ATTY. ROGELIO E. SARSABA, PETITIONER, VS. FE VDA. DE TE, REPRESENTED BY HER ATTORNEY-IN-FACT, FAUSTINO CASTAÑEDA, RESPONDENTS.

G.R. No. 175910. July 30, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review on certiorari[1] with prayer for preliminary injunction assailing the Order[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 19, Digos City, Davao del Sur, in Civil Case No. 3488.

The facts, as culled from the records, follow.

On February 14, 1995, a Decision was rendered in NLRC Case No. RAB-11-07-00608-93 entitled, Patricio Sereno v. Teodoro Gasing/Truck Operator, finding Sereno to have been illegally dismissed and ordering Gasing to pay him his monetary claims in the amount of P43,606.47. After the Writ of Execution was returned unsatisfied, Labor Arbiter Newton R. Sancho issued an Alias Writ of Execution[3] on June 10, 1996, directing Fulgencio R. Lavarez, Sheriff II of the National Labor Relations Commission (NLRC), to satisfy the judgment award. On July 23, 1996, Lavarez, accompanied by Sereno and his counsel, petitioner Atty. Rogelio E. Sarsaba, levied a Fuso Truck bearing License Plate No. LBR-514, which at that time was in the possession of Gasing. On July 30, 1996, the truck was sold at public auction, with Sereno appearing as the highest bidder.[4]

Meanwhile, respondent Fe Vda. de Te, represented by her attorney-in-fact, Faustino Castañeda, filed with the RTC, Branch 18, Digos, Davao del Sur, a Complaint[5] for recovery of motor vehicle, damages with prayer for the delivery of the truck pendente lite against petitioner, Sereno, Lavarez and the NLRC of Davao City, docketed as Civil Case No. 3488.

Respondent alleged that: (1) she is the wife of the late Pedro Te, the registered owner of the truck, as evidenced by the Official Receipt[6] and Certificate of Registration;[7] (2) Gasing merely rented the truck from her; (3) Lavarez erroneously assumed that Gasing owned the truck because he was, at the time of the "taking,"[8] in possession of the same; and (4) since neither she nor her husband were parties to the labor case between Sereno and Gasing, she should not be made to answer for the judgment award, much less be deprived of the truck as a consequence of the levy in execution.

Petitioner filed a Motion to Dismiss[9] on the following grounds: (1) respondent has no legal personality to sue, having no real interests over the property subject of the instant complaint; (2) the allegations in the complaint do not sufficiently state that the respondent has cause of action; (3) the allegations in the complaint do not contain sufficient cause of action as against him; and (4) the complaint is not accompanied by an Affidavit of Merit and Bond that would entitle the respondent to the delivery of the tuck pendente lite.

The NLRC also filed a Motion to Dismiss[10] on the grounds of lack of jurisdiction and lack of cause of action.

Meanwhile, Lavarez filed an Answer with Compulsory Counterclaim and Third-Party Complaint.[11] By way of special and affirmative defenses, he asserted that the RTC does not have jurisdiction over the subject matter and that the complaint does not state a cause of action.

On January 21, 2000, the RTC issued an Order[12] denying petitioner's Motion to Dismiss for lack of merit.

In his Answer,[13] petitioner denied the material allegations in the complaint. Specifically, he cited as affirmative defenses that: respondent had no legal personality to sue, as she had no interest over the motor vehicle; that there was no showing that the heirs have filed an intestate estate proceedings of the estate of Pedro Te, or that respondent was duly authorized by her co-heirs to file the case; and that the truck was already sold to Gasing on March 11, 1986 by one Jesus Matias, who bought the same from the Spouses Te. Corollarily, Gasing was already the lawful owner of the truck when it was levied on execution and, later on, sold at public auction.

Incidentally, Lavarez filed a Motion for Inhibition,[14] which was opposed[15] by respondent.

On October 13, 2000, RTC Branch 18 issued an Order[16] of inhibition and directed the transfer of the records to Branch 19. RTC Branch 19, however, returned the records back to Branch 18 in view of the appointment of a new judge in place of Judge-designate Rodolfo A. Escovilla. Yet, Branch 19 issued another Order[17] dated November 22, 2000 retaining the case in said branch.

Eventually, the RTC issued an Order[18] dated May 19, 2003 denying the separate motions to dismiss filed by the NLRC and Lavarez, and setting the Pre-Trial Conference on July 25, 2003.

On October 17, 2005, petitioner filed an Omnibus Motion to Dismiss the Case on the following grounds:[19] (1) lack of jurisdiction over one of the principal defendants; and (2) to discharge respondent's attorney-in-fact for lack of legal personality to sue.

It appeared that the respondent, Fe Vda. de Te, died on April 12, 2005.[20]

Respondent, through her lawyer, Atty. William G. Carpentero, filed an Opposition,[21] contending that the failure to serve summons upon Sereno is not a ground for dismissing the complaint, because the other defendants have already submitted their respective responsive pleadings. He also contended that the defendants, including herein petitioner, had previously filed separate motions to dismiss the complaint, which the RTC denied for lack of merit. Moreover, respondent's death did not render functus officio her right to sue since her attorney-in-fact, Faustino Castañeda, had long testified on the complaint on March 13, 1998 for and on her behalf and, accordingly, submitted documentary exhibits in support of the complaint.

On March 22, 2006, the RTC issued the assailed Order[22] denying petitioner's aforesaid motion.

Petitioner then filed a Motion for Reconsideration with Motion for Inhibition,[23] in which he claimed that the judge who issued the Order was biased and partial. He went on to state that the judge's husband was the defendant in a petition for judicial recognition of which he was the counsel, docketed as Civil Case No. C-XXI-100, before the RTC, Branch 21, Bansalan, Davao del Sur. Thus, propriety dictates that the judge should inhibit herself from the case.

Acting on the motion for inhibition, Judge Carmelita Sarno-Davin granted the same[24] and ordered that the case be re-raffled to Branch 18. Eventually, the said RTC issued an Order[25] on October 16, 2006 denying petitioner's motion for reconsideration for lack of merit.

Hence, petitioner directly sought recourse from the Court via the present petition involving pure questions of law, which he claimed were resolved by the RTC contrary to law, rules and existing jurisprudence.[26]

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There is a "question of law" when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.[27]

Verily, the issues raised by herein petitioner are "questions of law," as their resolution rest solely on what the law provides given the set of circumstances availing. The first issue involves the jurisdiction of the court over the person of one of the defendants, who was not served with summons on account of his death. The second issue, on the other hand, pertains to the legal effect of death of the plaintiff during the pendency of the case.

At first brush, it may appear that since pure questions of law were raised, petitioner's resort to this Court was justified and the resolution of the aforementioned issues will necessarily follow. However, a perusal of the petition requires that certain procedural issues must initially be resolved before We delve into the merits of the case.

Notably, the petition was filed directly from the RTC which issued the Order in the exercise of its original jurisdiction. The question before Us then is: whether or not petitioner correctly availed of the mode of appeal under Rule 45 of the Rules of Court.

Significantly, the rule on appeals is outlined below, to wit:[28]

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on certiorari under Rule 45.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

Accordingly, an appeal may be taken from the RTC which exercised its original jurisdiction, before the Court of Appeals or directly before this Court, provided that the subject of the same is a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable.[29] The first mode of appeal, to be filed before the Court of Appeals, pertains to a writ of error under Section 2(a), Rule 41 of the Rules of Court, if questions of fact or questions of fact and law are raised or involved. On the other hand, the second mode is by way of an appeal by certiorari before the Supreme Court under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[30]

An order or judgment of the RTC is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[31] On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is interlocutory. Interlocutory refers to something between the commencement and the end of the suit which decides some point or matter, but is not a final decision on the whole controversy.[32]

The subject of the present petition is an Order of the RTC, which denied petitioner's Omnibus Motion to Dismiss, for lack of merit.

We have said time and again that an order denying a motion to dismiss is interlocutory.[33] Under Section 1(c), Rule 41 of the Rules of Court, an interlocutory order is not appealable. As a remedy for the denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then to proceed to trial; or, a party may immediately avail of the remedy available to the aggrieved party by filing an appropriate special civil action for certiorari under Rule 65 of the Revised Rules of Court. Let it be stressed though that a petition for certiorari is appropriate only when an order has been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Based on the foregoing, the Order of the RTC denying petitioner's Omnibus Motion to Dismiss is not appealable even on pure questions of law. It is worth mentioning that the proper procedure in this case, as enunciated by this Court, is to cite such interlocutory order as an error in the appeal of the case -- in the event that the RTC rules in favor of respondent -- and not to appeal such interlocutory order. On the other hand, if the petition is to be treated as a petition for review under Rule 45, it would likewise fail because the proper subject would only be judgments or final orders that completely dispose of the case.[34]

Not being a proper subject of an appeal, the Order of the RTC is considered interlocutory. Petitioner should have proceeded with the trial of the case and, should the RTC eventually render an unfavorable verdict, petitioner should assail the said Order as part of an appeal that may be taken from the final judgment to be rendered in this case. Such rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid

undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

In one case,[35] the Court adverted to the hazards of interlocutory appeals:

> It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that "the proper remedy in such cases is an ordinary appeal from an adverse judgment on the merits, incorporating in said appeal the grounds for assailing the interlocutory order. Allowing appeals from interlocutory orders would result in the `sorry spectacle' of a case being subject of a counterproductive ping-pong to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings. x x x.

Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, trial on the merits of the case would necessarily be delayed for a considerable length of time and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court.[36]

And, even if We treat the petition to have been filed under Rule 65, the same is still dismissible for violating the principle on hierarchy of courts. Generally, a direct resort to us in a petition for certiorari is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts.[37] This principle, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule is not necessary when cases brought before the appellate courts do not involve factual but legal questions.[38]

In the present case, petitioner submits pure questions of law involving the effect of non-service of summons following the death of the person to whom it should be served, and the effect of the death of the complainant during the pendency of the case. We deem it best to rule on these issues, not only for the benefit of the bench and bar, but in order to prevent further delay in the trial of the case. Resultantly, our relaxation of the policy of strict

observance of the judicial hierarchy of courts is warranted.

Anent the first issue, petitioner argues that, since Sereno died before summons was served on him, the RTC should have dismissed the complaint against all the defendants and that the same should be filed against his estate.

The Sheriff's Return of Service[39] dated May 19, 1997 states that Sereno could not be served with copy of the summons, together with a copy of the complaint, because he was already dead.

In view of Sereno's death, petitioner asks that the complaint should be dismissed, not only against Sereno, but as to all the defendants, considering that the RTC did not acquire jurisdiction over the person of Sereno.

Jurisdiction over a party is acquired by service of summons by the sheriff, his deputy or other proper court officer, either personally by handing a copy thereof to the defendant or by substituted service.[40] On the other

hand, summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.[41]

Records show that petitioner had filed a Motion to Dismiss on the grounds of lack of legal personality of respondent; the allegations in the complaint did not sufficiently state that respondent has a cause of action or a cause of action against the defendants; and, the complaint was not accompanied by an affidavit of merit and bond. The RTC denied the motion and held therein that, on the basis of the allegations of fact in the complaint, it can render a valid judgment. Petitioner, subsequently, filed his answer by denying all the material allegations of the complaint. And by way of special and affirmative defenses, he reiterated that respondent had no legal personality to sue as she had no real interest over the property and that while the truck was still registered in Pedro Te's name, the same was already sold to Gasing.

Significantly, a motion to dismiss may be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim.[42] Among the grounds mentioned is the court's lack of jurisdiction over the person of the defending party.

As a rule, all defenses and objections not pleaded, either in a motion to dismiss or in an answer, are deemed waived.[43] The exceptions to this rule are: (1) when the court has no jurisdiction over the subject matter, (2) when there is another action pending between the parties for the same cause, or (3) when the action is barred by prior judgment or by statute of limitations, in which cases, the court may dismiss the claim.

In the case before Us, petitioner raises the issue of lack of jurisdiction over the person of Sereno, not in his Motion to Dismiss or in his Answer but only in his Omnibus Motion to Dismiss. Having failed to invoke this ground at the proper time, that is, in a motion to dismiss, petitioner cannot raise it now for the first time on appeal.

In fine, We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it. Obviously, it is now impossible for Sereno to invoke the same in view of his death. Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants. Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers.

We agree with the RTC in its Order when it resolved the issue in this wise:

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> As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him.
>
> However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein does not render the action DISMISSIBLE, considering that the three (3) other defendants, namely, Atty. Rogelio E. Sarsaba, Fulgencio Lavares and the NLRC, were validly served with summons and the case with respect to the answering defendants may still proceed independently. Be it recalled that the three (3) answering defendants have previously filed a Motion to Dismiss the Complaint which was denied by the Court.
>
> Hence, only the case against Patricio Sereno will be DISMISSED and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused will proceed.

Anent the second issue, petitioner moves that respondent's attorney-in-fact, Faustino Castañeda, be discharged as he has no more legal personality to sue on behalf of Fe Vda. de Te, who passed away on April 12, 2005, during the pendency of the case before the RTC.

When a party to a pending action dies and the claim is not extinguished, the Rules of Court require a substitution of the deceased.[44] Section 1, Rule 87 of the Rules of Court enumerates the actions that survived and may be filed against the decedent's representatives as follows: (1) actions to recover real or personal property or an interest thereon, (2) actions to enforce liens thereon, and (3) actions to recover damages for an injury to a person or a property. In such cases, a counsel is obliged to inform the court of the death of his client and give the name and address of the latter's legal representative.[45]

The rule on substitution of parties is governed by Section 16,[46] Rule 3 of the 1997 Rules of Civil Procedure, as amended.

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance with the Rules results in the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.[47]

In the case before Us, it appears that respondent's counsel did not make any manifestation before the RTC as to her death. In fact, he had actively participated in the proceedings. Neither had he shown any proof that he had been retained by respondent's legal representative or any one who succeeded her.

However, such failure of counsel would not lead Us to invalidate the proceedings that have long taken place before the RTC. The Court has repeatedly declared that failure of the counsel to comply with his duty to inform the court of the death of his client, such that no substitution is effected, will not invalidate the proceedings and the judgment rendered thereon if the action survives the death of such party. The trial court's jurisdiction over the case subsists despite the death of the party.[48]

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigants are themselves protected as they continue to be properly represented in the suit through the duly appointed legal representative of their estate.[49]

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Anent the claim of petitioner that the special power of attorney[50] dated March 4, 1997 executed by respondent in favor of Faustino has become functus officio and that the agency constituted between them has been extinguished upon the death of respondent, corollarily, he had no more personality to appear and prosecute the case on her behalf.

Agency is extinguished by the death of the principal.[51] The only exception where the agency shall remain in full force and effect even after the death of the principal is when if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor.[52]

A perusal of the special power of attorney leads us to conclude that it was constituted for the benefit solely of the principal or for respondent Fe Vda. de Te. Nowhere can we infer from the stipulations therein that it was created for the common interest of respondent and her attorney-in-fact. Neither was there any mention that it was to benefit a third person who has accepted the stipulation in his favor.

On this ground, We agree with petitioner. However, We do not believe that such ground would cause the dismissal of the complaint. For as We have said, Civil Case No. 3488, which is an action for the recovery of a personal property, a motor vehicle, is an action that survives pursuant to Section 1, Rule 87 of the Rules of Court. As such, it is not extinguished by the death of a party.

In Gonzalez v. Philippine Amusement and Gaming Corporation,[53] We have laid down the criteria for determining whether an action survives the death of a plaintiff or petitioner, to wit:

> x x x The question as to whether an action survives or not depends on the nature of the action and the damage sued for. If the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person the property and rights of property affected being incidental. x x x

Thus, the RTC aptly resolved the second issue with the following ratiocination:

> While it may be true as alleged by defendants that with the death of Plaintiff, Fe Vda. de Te, the Special Power of Attorney she executed empowering the Attorney-in-fact, Faustino Castañeda to sue in her behalf has been rendered functus officio, however, this Court believes that the Attorney-in-fact had not lost his personality to prosecute this case.
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> It bears stressing that when this case was initiated/filed by the Attorney-in-fact, the plaintiff was still very much alive.
>
> Records reveal that the Attorney-in-fact has testified long before in behalf of the said plaintiff and more particularly during the state when the plaintiff was vehemently opposing the dismissal of the complainant. Subsequently thereto, he even offered documentary evidence in support of the complaint, and this court admitted the same. When this case was initiated, jurisdiction was vested upon this Court to try and hear the same to the end. Well-settled is the rule to the point of being elementary that once jurisdiction is acquired by this Court, it attaches until the case is decided.
>
> Thus, the proper remedy here is the Substitution of Heirs and not the dismissal of this case which would work injustice to the plaintiff.
>
> SEC. 16, RULE 3 provides for the substitution of the plaintiff who dies pending hearing of the case by his/her legal heirs. As to whether or not the heirs will still continue to engage the services of the Attorney-in-fact is another matter, which lies within the sole discretion of the heirs.

In fine, We hold that the petition should be denied as the RTC Order is interlocutory; hence, not a proper subject

of an appeal before the Court. In the same breath, We also hold that, if the petition is to be treated as a petition for certiorari as a relaxation of the judicial hierarchy of courts, the same is also dismissible for being substantially insufficient to warrant the Court the nullification of the Order of the RTC.

Let this be an occasion for Us to reiterate that the rules are there to aid litigants in prosecuting or defending their cases before the courts. However, these very rules should not be abused so as to advance one's personal purposes, to the detriment of orderly administration of justice. We can surmise from the present case herein petitioner's manipulation in order to circumvent the rule on modes of appeal and the hierarchy of courts so that the issues presented herein could be settled without going through the established procedures. In Vergara, Sr. v. Suelto,[54] We stressed that this should be the constant policy that must be observed strictly by the courts and lawyers, thus:

> x x x. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[55]

WHEREFORE, premises considered, the Petition is DENIED. The Order dated March 22, 2006 of the Regional Trial Court, Branch 19, Digos, Davao del Sur in Civil Case No. 3488, is hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

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[1] Pursuant to Rule 45 of the 1997 Rules of Civil Procedure; rollo, pp. 11-26.

[2] Penned by Judge Carmelita Sarno-Davin; id. at 33-34.

[3] Records, pp. 76-78.

[4] Certificate of Sale; id. at 45.

[5] Records, pp. 2-7.

[6] Annex "B" of the Complaint, id. at 11.

[7] Annex "C" of the Complaint, id. at 12.

[8] Extract from the Police Blotter of the Kiblawan Municipal Police Office, dated April 1, 1997, Annex "D" of the Complaint, id. at 13.

[9] Records, pp. 16-26.

[10] Id. at 62-65.

[11] Id. at 92-98.

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[12] Penned by Judge Rodolfo A. Escovilla; id. at 175-177.

[13] Records, pp. 196-199.

[14] Id. at 206-210.

[15] Id. at 212-213; 216-217.

[16] Id. at 218.

[17] Id. at 228.

[18] Id. at 246-248.

[19] Rollo, pp. 56-58.

[20] Named as Prescilla Suarez Te in her Death Certificate, records, p. 305.

[21] Rollo, pp. 308-310.

[22] Supra note 2.

[23] Rollo, pp. 36-42.

[24]Order dated August 1, 2006; id. at 46-48.

[25] Rollo, p. 50.

[26] Id. at 20.

[27] Cucueco v. Court of Appeals, 484 Phil. 254, 264 (2004).

[28] Sevilleno v. Carilo, G.R. No. 146454, September 14, 2007, 533 SCRA 385, 388, citing Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals, 297 SCRA 602 (1998). Significantly, under the Revised Rules on Criminal Procedure, all criminal cases, where the penalty imposed by the RTC is death, reclusion perpetua or life imprisonment, are now appealed before the Court of Appeals, instead of directly before this Court on automatic review, which new procedure was in accordance with the pronouncement in People v. Mateo (G.R. Nos. 147678-87, July 7, 2007, 433 SCRA 640).

[29]1997 Rule of Civil Procedure (as amended), Rule 41, Sec. 1.

[30] First Bancorp, Inc. v. Court of Appeals, G. R. No. 151132, June 22, 2006, 492 SCRA 221, 235, citing Rule 41, Section 2, 1997 Rules of Civil Procedure, as amended.

[31] Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 1, 2004, 436 SCRA 123, 132.

[32] Philippine Computer Solutions, Inc. v. Hernandez, G.R. No. 168776, July 17, 2007, 527 SCRA 809, 824.

[33] Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank, 471 Phil. 570, 574 (2004).

[34] De Castro v. Fernandez, G.R. No. 155041, February 14, 2007, 515 SCRA 682, 686.

[35] Philippine Computer Solutions, Inc. v. Hernandez, supra note 32, at 825, citing Go v. Court of Appeals, 297 SCRA 574, 581-582 (1998).

[36] Judy Anne L. Santos v. People of the Philippines and Bureau of Internal Revenue, G.R. No. 173176, August 26, 2008.

[37] Pacoy v. Cajigal, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 346.

[38] Rogelio Z. Bagabuyo v. Comelec, G.R. No. 176970, December 8, 2008.

[39] Records, p. 49.

[40] St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc., G.R. No. 140288, October 23, 2006, 505 SCRA 30, 36.

[41] Casimina v. Legaspi, G.R. No. 147530, June 29, 2005, 462 SCRA 171, 177-178.

[42] 1997 Rules of Civil Procedure (as amended), Rule 16, Sec. 1(a).

[43] 1997 Rules of Civil Procedure (as amended), Rule 9, Sec. 1.

[44] De la Cruz v. Joaquin, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 583. See also Board of Liquidators v. Heirs of M. Kalaw et al., 127 Phil. 399, 414 (1967).

[45]Napere v. Barbarona, G.R. No. 160426, January 31, 2008, 543 SCRA 376, 381.

[46] SEC. 16. Death of party; duty of counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) from notice. If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[47] Napere v. Barbona, supra note 45, at 382.

[48] Id.

[49] Sumaljag v. Literato, G.R. No. 149787, June 18, 2008, 555 SCRA 53, 62.

[50]Records, pp. 9-10.

[51] New Civil Code, Article 1919 (3).

[52] New Civil Code, Article 1930.

[53] G.R. No. 144891, May 27, 2004, 429 SCRA 533, 540.

[54]G.R. No. L-74766, December 21, 1987, 156 SCRA 753.

[55] Id. at 766. (Emphasis supplied.)

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