

GERTRUDES NABUA, ALEX N. LU, CAYETANO N. LU, JR. AND JULIETA N. LU, PETITIONERS, VS. DOUGLAS LU YM, RESPONDENT.

G.R. No. 176141. December 16, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

LITIGANTS should not trifle with decisions of the highest court of the land, the final arbiter of legal controversies.

This is a petition for review on certiorari of the resolution[1] of the Court of Appeals (CA) denying petitioners' motion to dismiss appeal and motion to order the trial court to issue a writ of execution.

The Antecedents

Sometime in the 1940s, Cayetano Ludo took petitioner Gertrudes Nabua as his common law wife and had ten children with her, namely: George, Alex, Cayetano, Jr., Julieta, Crispin alias "Douglas," Evangeline, Marilyn, Bernardita, Edwin, and Cresencio, all surnamed Lu. Alex, Cayetano, Jr., and Julieta join Gertrudes as petitioners against respondent Douglas in this case.

Cayetano, together with his brothers Paterno and Cipriano, founded the now famous Ludo and Lu Ym Corporation which owns the biggest single crushing plant in the world. Aside from commercial endeavors in the Philippines and abroad, Cayetano acquired numerous real and personal properties, e.g., beach resorts, condominium units, agricultural and commercial lots, private jet, sports cars, and shares of stocks.

In the 1970s, respondent Douglas, also known as Crispin N. Lu, took active part in the management of all the properties owned by Cayetano. In the late '70s and early '80s when Cayetano was already old and sickly, his shares of stocks were transferred to respondent. When Cayetano's death was impending, respondent explained to his brothers and sisters the need to execute a simulated last will and testament to evade payment of excessive inheritance taxes.

Indeed, a simulated last will and testament was supposedly executed by Cayetano under respondent's supervision and guidance. At that time, Cayetano was already dependent on respondent's decision-making. After Cayetano's death, respondent informed petitioners of the need to have the simulated last will and testament of their father probated. Petitioners (plaintiffs) all signed without any opposition because they were made to believe that it was for the purpose of keeping the properties of their father intact for the benefit of the family.

Respondent managed the 50% share of petitioner Gertrudes Nabua in the estate of Cayetano. Likewise, respondent managed and held in trust the other 50% of the properties of Cayetano due his children. This included the properties of the unwilling co-plaintiffs, namely: Evangeline, Marilyn, Bernardita, Edwin, and Cresencia. In the course of administering and managing the properties entrusted to him, respondent abandoned his own mother, petitioner Gertrudes Nabua, and stopped giving support to her.

Petitioners demanded an accounting from respondent when they learned that their cousins, children of Paterno Lu Ym, were given a similar accounting of the sale of shares of stocks in Philippine Bank of Communications and Crown Oil Corporation. Their demand was, however, ignored by respondent.

RTC Proceedings

Respondent's motion to dismiss was denied by the Regional Trial Court (RTC). On appeal, this Court remanded the motion to the RTC for further proceedings. Meanwhile, respondent was declared in default by the RTC for failure to file his answer.

Because of respondent's refusal to render an accounting, petitioners, as plaintiffs, were constrained to file a complaint for accounting with prayer for temporary restraining order and injunction with the RTC, Branch 24, in Cebu City.

On August 16, 2002, respondent, as defendant, filed an omnibus motion to dismiss the complaint on the following grounds: (a) plaintiffs' claims are barred by a prior judgment or by the statute of limitations; (b) plaintiffs have no legal capacity to sue and/or do not have a cause of action; (c) fraud and equity; and (d) docket fees were not paid, therefore, a condition precedent for filing the claim has not been complied with.[2]

Respondent's omnibus motion was denied by the RTC. His motion for reconsideration was rejected. Repairing to the CA, the appellate court on August 20, 2003 denied respondent's petition to reverse the order of the RTC denying his motion to dismiss.[3]

Undaunted, respondent went up to this Court in G.R. No. 161309 entitled *Lu Ym v. Nabua*,[4] seeking a review of the CA decision and resolution.[5] On February 23, 2005, this Court partly granted respondent's petition and ordered a remand to the RTC for further proceedings to resolve anew with deliberate dispatch the motion to dismiss, disposing thus:

WHEREFORE, the petition is GRANTED in part. The Decision of the Court of Appeals dated August 20, 2003 sustaining the trial court's denial of petitioner's motion to dismiss, as well as its resolution dated December 16, 2003 denying reconsideration, is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court of Cebu City for further proceedings to resolve anew with deliberate dispatch the motion to dismiss in accordance with Section 3, Rule 16 of the 1997 Rules of Civil Procedure as elucidated in this Decision.[6] (Emphasis supplied)

Meanwhile, respondent was declared in default by the RTC on May 28, 2003 for failure to file his answer. As a result, plaintiffs were allowed to present evidence ex parte.[7]

At the time petitioner Gertrudes testified during trial, she was already 86 years old. She related how she felt abandoned and betrayed by her son Douglas. She felt neglected when he cut off her monthly allowance of P10,000. Douglas lived in a property worth several millions of pesos while she lived in a modest house. She filed the complaint to compel him to render an accounting of all properties which she and her husband acquired jointly during their union.[8]

RTC Disposition

On March 16, 2005, the RTC rendered a Decision[9] ordering respondent to account for the properties subject of the complaint. The fallo of the decision stated:

WHEREFORE, in view of the foregoing, this Court finds for plaintiffs and hereby enters judgment ordering defendant Douglas Lu Ym to account the following real properties owned by the late Cayetano Ludo and held by him in trust and for the benefit of herein plaintiffs, on the following properties, as follows: Tax Declaration

No. 01616 under defendant's name covering Lot No. 1 (Exh. "H"); Tax Declaration No. 02207 under defendant's name covering Lot No. 3 (Exh. "I"); Tax Dec. No. 02143 under the name of Lu Ym Annabel (wife of defendant Douglas Lu Ym) (Exh. "J"); Tax Dec. No. 00024 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "K"); Tax Dec. No. 02827 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "L"); Tax Dec. No. 02826 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "M"); Tax Dec. No. 03157 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "N"); Transfer Certificate of Title No. 102557 under the name of defendant Douglas Lu Ym (Exh. "0-1"); Tax Dec. No. 02143 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "P"); Tax Dec. No. 0028 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "S"); Tax Dec. No. 01615 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "U"); Tax Dec. No. 01617 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "W"); Tax Dec. No. 02208 under the name of defendant Douglas covering Lot No. 3 (Exh. "Y"); the 1/3 share of the late Cayetano Ludo with the Ludo & Lu Ym Development Corporation, among which are the following: Transfer Certificate of Title Nos. 17029 (Exh. "AA"), 17032 (Exh. "BB"), 22325 (Exh. "CC"), 22323 (Exh. "DD"), 44057 (Exh. "EE"), 20514 (Exh. "FF"), 20515 (Exh. "GG"), and 20516 (Exh. "HH"), all registered under the Ludo and Lu Ym Development Corporation of which defendant Douglas is one of the major stockholders as shown in the Certification issued by the Corporate Secretary (Exh. "II") of the said corporation; the proceeds of the sale of the following properties of the late Cayetano Ludo sold by defendant as follows: (a) of the private jet plane amounting to P100 million pesos; shares of stocks with Crown Oil Corporation Communications amounting to P30 million dollars; shares of stocks with Philippine Bank of Communications amounting to P53 million pesos; luxurious cars amounting P50 million pesos; rent of ancestral house (the White House) located at F. Ramos St. beside Robinson's Department Store, Cebu City; and proceeds of the sale of the Ranudo property; and all other properties which defendant held and continue to hold in trust for all the heirs of the late Cayetano Ludo.

The Bureau of Internal Revenue is specifically directed to compute and impose the estate taxes due on the above mentioned properties of the late Don Cayetano Ludo.

SO ORDERED.[10] (Emphasis supplied)

On April 12, 2005, respondent moved for reconsideration.[11] He contended that the February 23, 2005 ruling of the Supreme Court in G.R. No. 161309[12] invalidated or rendered moot the RTC decision.

In its Order of May 20, 2005,[13] the RTC denied respondent's motion for reconsideration. The RTC laid down its bases for denying the motion as follows:

The prayer to set aside herein judgment cannot be sustained for lack of legal basis. The record will show that proceedings in this case was conducted regularly:

- Per Motion, defendant Douglas was given until June 15, 2002 to submit responsive pleading (May 30, 2002 order) on August 2, 2002, defendant Douglas was given 15 days to file answer to the amended complaint;
- Another extension of 15 days or until November 8, 2002 was given as prayed for (October 28, 2002 order);
- Another extension was requested on November 7, 2002 which was granted in the order dated November 12, 2002;
- Due to the filing of the Petition for Certiorari, this Court on its own, suspended further proceedings for sixty (60) days (November 29, 2002 order);
- On February 7, 2003, plaintiffs prayed that principal defendant be declared in default;
- On February 10, 2003, said defendant was again reminded to submit answer;
- Defendant Douglas was declared in default (May 25, 2003 order);

- Plaintiff Gertrudes Nabua testified on June 27, 2003;
- Temporary Restraining Order issued by the Court of Appeals was received on September 4, 2003;
- On August 20, 2003, the Court of Appeals dismissed the Certiorari petition and affirmed the two assailed orders (received on September 11, 2003);
- Defendant Douglas appealed the Court of Appeals decision to the Supreme Court by way of Petition for Review on Certiorari.

Meanwhile, as there was no restraining order from the Supreme Court, plaintiffs continued to present evidence. Exhibit was formally offered on March 31, 2004 which was admitted in evidence in an Order dated April 30, 2004. Until this Court entered judgment in the main case.

In the light also of a recent Supreme Court Circular, wherein defendant in a civil case is directed to observe restraint in filing a Motion to Dismiss and instead allege the grounds thereof as defenses in the answer, this Court was confident that its ruling in the Motion to dismiss which was upheld by the Court of Appeals is in accord with the said rule. It has already reached a point of no return. Had the Honorable Supreme Court dismissed the main case, which is one of the reliefs in a Petition for Certiorari, it would have been different.[14]

CA Proceedings

On May 25, 2005, respondent filed a notice of appeal[15] from the RTC order denying his motion for reconsideration. On May 26, 2005, the RTC gave due course to the notice of appeal.[16]

Petitioners filed a motion for reconsideration of the order giving due course to the notice of appeal with motion for entry of judgment and writ of execution,[17] emphasizing that the notice of appeal of respondent is not an appeal from the decision in Civil Case No. CEB 27717 dated March 16, 2005 but from the Order dated May 20, 2005.

The RTC resolved the motion for reconsideration of petitioners in the following manner:

Due to the fact that this Court recognizes the right of appeal, it failed to realize that what was the subject of the notice of appeal is the Order of this Court dated May 20, 2005 order denying the Motion for Reconsideration and not the decision rendered on March 16, 2005.

At any rate, transmit the records of this case to the Court of Appeals as directed in the May 26, 2005 Order and leave it to the higher court to determine whether or not the appeal was filed out of time.[18]

Supreme Court Proceedings

While his appeal was pending before the CA, respondent filed a petition for contempt of court before this Court against the counsel of petitioners and the RTC presiding judge, entitled *Lu Ym v. Mahinay*, docketed as G.R. No. 164476.[19] Respondent contended that Atty. Mahinay and Judge Sarmiento defied this Court's decision in G.R. No. 161309[20] by refusing to vacate the RTC decision rendered.

On June 16, 2006, this Court dismissed respondent's petition, ruling that the assailed acts of counsel and RTC judge do not constitute disobedience to or defiance of the decision in G.R. No. 161309.[21] The pertinent portion of the decision states:

In the present case, the assailed acts of respondents do not constitute disobedience to, or defiance of the decision in G.R. No. 161309. The Court never stated therein that the March 16, 2005 decision of respondent Judge, or any judgment on the merits rendered pending decision of the Court, should be set aside. Note that no TRO or injunction was issued to restrain the proceedings below. Unrestrained, the trial, presentation of

evidence and rendition of judgment would logically take their course, and respondent Judge could not be faulted for proceeding with the rendition of judgment.

Moreover, the main thrust of the Court's decision in G.R. No. 161309 was to order the trial court to rule on the issues raised by petitioner in the motion to dismiss. This had already been substantially satisfied by the respondent Judge in his March 16, 2005 decision. In holding that the probated will of Cayetano did not, in fact, settle his estate as the same was simulated and intended merely to evade payment of taxes, respondent Judge in effect debunked the claim of valid assignment of rights over the properties in favor of petitioner and the Lu Ym Corporation as well as petitioner's assertion that the probate of Cayetano's will constituted *res judicata* and a bar to the relitigation of the same properties. So also, the pronouncement of respondent Judge that Gertrudes is the common law wife of Cayetano is recognition of Gertrudes' capacity to sue. In the same vein, the full faith and credence accorded by respondent Judge on the allegations and testimonies of Gertrudes and her witnesses addressed the issue of fraud invoked by petitioner.[22] (Emphasis supplied)

CA Disposition

Back in the CA, petitioners filed a motion to order the trial court to issue a writ of execution.[23] They reiterated their position that the Supreme Court ruling in G.R. No. 161309[24] did not nullify the RTC decision.

On January 4, 2007, the CA denied the two motions of petitioners, namely: (a) Motion to Dismiss Appeal; and (b) Motion to Order the Trial Court to Issue a Writ of Execution. The CA resolution stated:

In *Apuyan vs. Haldeman*, 438 SCRA 402, September 20, 2004, the Court held:
Petitioners' reference in his notice of appeal to the Order of the Trial Court dated 07 January 1997 denying petitioner's Motion for Reconsideration should also be deemed to refer to the decision of the trial court dated 09 October 1996 which was subject of the Motion for Reconsideration. (pls. see pages 99-103)

Note: Plaintiff-Appellees moved to dismiss defendant-appellants Appeal on the ground that what the appellant appealed from was the Order denying the Motion for Reconsideration of the Decision and not the Decision of the RTC. x x x[25]

Petitioners thus resorted to the present recourse under Rule 45.

Issue

Petitioners hoist the lone issue that THE COURT OF APPEALS GRAVELY ERRED IN ALLOWING RESPONDENT TO APPEAL BEFORE IT ON AN ISSUE WHICH HAS ALREADY BEEN RESOLVED WITH FINALITY BY THE SUPREME COURT IN G.R. NO. 169476 (LU YM V. MAHINAY).[26]

Our Ruling

Prefatorily, the present petition under Rule 45 is an appeal from a CA resolution denying the motion to dismiss. Such denial is an interlocutory order which is not a proper subject for a Rule 45 petition.

As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits; otherwise, the administration of justice will be delayed and it will result to undue burden upon the courts.

This Court, however, has held that an original action for certiorari under Rule 65 is an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[27]

In the interest of substantial justice, We treat this petition as an original action for certiorari under Rule 65. Verily, We are asked to resolve whether the CA gravely erred or abused its discretion in allowing respondent's appeal

from an order of dismissal of his motion for reconsideration.

An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.[28]

The rationale behind this principle is that the denial of such a motion for reconsideration is not an interlocutory order, because it puts an end to a particular matter, and nothing is left for the trial court but to execute the order.[29] Hence, it does not violate the rule that an appeal may be taken only from a judgment or final order.[30] The December 20, 2007 amendment to the Rules of Civil Procedure has, in fact, deleted Section 1(a) of Rule 41 which contains the express provision that no appeal may be taken from an order denying a motion for new trial or reconsideration.[31]

Petitioners moved to dismiss respondent's appeal before the CA, based on the theory that the notice of appeal stated that it was an appeal from the order denying the motion for reconsideration. As *Apuyan v. Haldeman*[32] directs, an appeal from an order of a denial of a motion for reconsideration should also be deemed to refer to the decision of the trial court.

Notwithstanding the terminology of the notice of appeal, the material consideration is if the appeal was filed within the required period of 15 days from receipt of the main decision. As this Court ruled in *Apuyan*:

In this case, petitioner filed his appeal within the reglementary period. However, he did not appeal from the trial court's decision dated October 9, 1996 which disposed the case, but from the trial court's Order dated January 7, 1997, denying his motion for reconsideration of the decision of the trial court.

Can we consider said appeal from the Order denying a motion for reconsideration of the judgment of the trial court as an appeal from a final order?

We rule in the affirmative.

x x x x

Similarly, in the instant case, the trial court's Order dated January 7, 1997 denying petitioner's motion for reconsideration of the trial court's decision dated October 9, 1996 is not an interlocutory order, but a final order, as the trial court finally resolved therein the issues raised in the motion for reconsideration, which were already passed upon in the trial court's decision.

Petitioner's reference in his notice of appeal to the Order of the trial court dated January 7, 1997 denying petitioner's motion for reconsideration should also be deemed to refer to the decision of the trial court dated October 9, 1996, which was the subject of the motion for reconsideration.

In effect, petitioner appealed from the final order of the trial court dated January 7, 1997 and the decision of the trial court dated October 9, 1996, which appeal was filed on time.[33] (Emphasis supplied)

The 15-day period to file an appeal is reckoned from the date of receipt of the decision, and this period is interrupted by the timely filing of a motion for new trial or reconsideration.[34] Records of the instant controversy show that respondent received a copy of the March 16, 2005 Decision of the RTC on April 4, 2005. On the eighth day, April 12, 2005, respondent filed his motion for reconsideration. This translates to a balance of seven days from the original 15-day period to appeal the decision. On May 24, 2005, respondent received the Order dated May 20, 2005 denying his motion for reconsideration. On the fifth day, May 25, 2005, respondent filed his notice of appeal.[35] In sum, respondent used up a total of 13 days to file his appeal, well within the 15 days required to do so.

We now tackle the issue of whether the issue subject of the appeal of respondent before the CA has already been

resolved by the Supreme Court in *Lu Ym v. Mahinay*.^[36]

We are constrained to rule in the negative. To rule otherwise would require Us to delve into the merits of the case. In a certiorari proceeding involving an incident in a case, the court does not have authority to rule on the merits of the main case itself which is not on appeal before it.^[37]

Records show that upon receiving summons to answer the complaint against him by petitioners in the RTC, respondent filed a motion to dismiss. When his motion was denied, he did not file his answer despite direction to do so, resulting in the declaration of default against him. Respondent appealed the denial of his motion to dismiss with the CA. The CA, however, affirmed the RTC ruling. On appeal to this Court, the case was remanded to the trial court for further proceedings.

The trial court rendered its decision before it was notified of this Court's decision in G.R. No. 161309.^[38] Respondent appealed the decision, which appeal is now pending before the CA. At the same time, he filed G.R. No. 169476^[39] before this Court, seeking a declaration of indirect contempt against the RTC judge and petitioners' counsel, for allegedly disobeying the remand order in G.R. No. 161309.^[40]

Petitioner's reliance on the Court's pronouncement in the contempt proceeding^[41] is misplaced. G.R. No. 169476^[42] resolved that petitioner's counsel and the RTC presiding judge were not guilty of indirect contempt for disobeying the decision in G.R. No. 161309.^[43] The case did not rule on the validity of the RTC decision but instead noted that an appeal was pending before the CA where the issue should be properly addressed. Speaking through Justice Consuelo Ynares-Santiago, this Court expressly stated:

The sole issue here is whether respondents are guilty of indirect contempt.

We rule in the negative.

x x x x

In the present case, the assailed acts of respondents do not constitute disobedience to, or defiance of the decision in G.R. No. 161309. The Court never stated therein that the March 16, 2005 decision of respondent Judge, or any judgment on the merits rendered pending decision of the Court, should be set aside. Note that no TRO or injunction was issued to restrain the proceedings below. Unrestrained, the trial, presentation of evidence and rendition of judgment would logically take their course, and respondent Judge could not be faulted for proceeding with the rendition of judgment.

Moreover, the main thrust of the Court's decision in G.R. No. 161309 was to order the trial court to rule on the issues raised by petitioner in the motion to dismiss. This had already been substantially satisfied by the respondent Judge in his March 16, 2005 decision. In holding that the probated will of Cayetano did not, in fact, settle his estate as the same was simulated and intended merely to evade payment of taxes, respondent Judge in effect debunked the claim of valid assignment of rights over the properties in favor of petitioner and the Lu Ym Corporation as well as petitioner's assertion that the probate of Cayetano's will constituted *res judicata* and a bar to the relitigation of the same properties. So also, the pronouncement of respondent Judge that Gertrudes is the common law wife of Cayetano is recognition of Gertrudes' capacity to sue. In the same vein, the full faith and credence accorded by respondent Judge on the allegations and testimonies of Gertrudes and her witnesses addressed the issue of fraud invoked by petitioner.

It is therefore clear that to nullify the March 16, 2005 decision of respondent Judge and to conduct anew the proceedings before the trial court for the sole purpose of ruling on the motion to dismiss, would be a waste of time which would further delay the resolution of this case. Furthermore, the assailed March 16, 2005 decision of the trial court is now on appeal before the Court of Appeals. It is therefore before the latter court where the issue of the nullification of the trial court's decision should be addressed.

In sum, we find that respondents did not commit any act amounting to indirect contempt. To reiterate, respondent Judge's March 16, 2005 Decision and May 20, 2005 Order do not constitute defiance of the Court's verdict in G.R. No. 161309. It follows therefore that the pleadings filed by respondent Atty. Mahinay in reliance of the aforesaid decision and order of the trial court are not as well contumacious. Indeed, an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[44]

When respondent was declared in default, the proper remedy would have been to file a motion to set aside the order of default upon a proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense.[45] This respondent failed to do.

In the recent case of *Martinez v. Republic*,^[46] this Court stressed that a party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. He may not seek the reversal of the decision on the basis of evidence submitted in the appellate court. Otherwise, his right to adduce evidence would have been returned to him.[47] We expect therefore, that the CA disposition of his pending appeal will almost certainly be based on evidence presented by petitioners ex parte.

We note the length of time this action has been pending with the courts, and the number of times the parties have appealed to the CA and to this Court, resulting in delay in the execution of the trial court decision. We likewise note that petitioner Gertrudes Nabua is already in advanced years and suffers from failing health.[48] She may not enjoy her entitlement to her share in the contested properties should this case be further delayed.

WHEREFORE, the petition is DENIED but the Court of Appeals is ORDERED to resolve respondent's appeal with deliberate dispatch.

SO ORDERED.

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

[1]Rollo, pp. 33-34. Dated January 4, 2007. Court of Appeals, Cebu City, Special 18th Division; Associate Justice Arsenio Magpale (chairman), with Associate Justices Isaias Dicdican and Marlene Gonzales-Sison (members).

[2] Id. at 50-56.

[3] Id. at 57-64. CA-G.R. SP No. 74095. Dated August 20, 2003. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Jose C. Mendoza, concurring.

[4]G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[5] *Lu Ym v. Nabua*, id.

[6]Id. at 311.

[7]Rollo, p. 86.

[8] Id. at 87.

- [9]Id. at 84-99.
- [10] Id. at 98-99.
- [11]Id. at 100-101.
- [12]Lu Ym v. Nabua, supra note 4.
- [13]Rollo, pp. 102-103.
- [14]Id. at 102-103.
- [15]Id. at 104.
- [16]Id. at 106. Order dated May 26, 2005.
- [17] Id. at 107-109. Dated June 6, 2005.
- [18]Id. at 111.
- [19]G.R. No. 169476, June 16, 2006, 491 SCRA 253.
- [20]Lu Ym v. Nabua, supra note 4.
- [21]Lu Ym v. Mahinay, supra.
- [22] Id. at 262-263.
- [23] Rollo, pp. 132-145.
- [24]Lu Ym v. Nabua, supra note 4.
- [25]Rollo, p. 33.
- [26] Id. at 14.
- [27]In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 137.
- [28] Quelnan v. VHF Philippines, Inc., G.R. No. 145911, July 7, 2004, 433 SCRA 631.
- [29] Id.
- [30] Rules of Civil Procedure (1997), Rule 41, Sec. 1.
- [31] The present amended Section 1, Rule 41 of the Rules of Procedure states:
- Section 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
- No appeal may be taken from:
- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
 - (b) An interlocutory order;
 - (c) An order disallowing or dismissing an appeal;
 - (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

[32] G.R. No. 129980, September 20, 2004, 438 SCRA 402.

[33] Apuyan v. Haldeman, *id.* at 417-419.

[34] Rules of Civil Procedure, Rule 41, Sec. 3.

[35] Rollo, p. 104.

[36] *Supra* note 19.

[37] Municipality of Biñan, Laguna v. Court of Appeals, G.R. No. 94733, February 17, 1993, 219 SCRA 69.

[38] Lu Ym v. Nabua, *supra* note 4.

[39] Lu Ym v. Mahinay, *supra* note 19.

[40] Lu Ym v. Nabua, *supra* note 4.

[41] Lu Ym v. Mahinay, *supra* note 19.

[42] *Id.*

[43] Lu Ym v. Nabua, *supra* note 4.

[44] Lu Ym v. Mahinay, *id.* at 262-264.

[45] Rules of Civil Procedure, Rule 9, Sec. 3(b).

[46] G.R. No. 160895, October 30, 2006, 506 SCRA 134.

[47] Martinez v. Republic, *id.*

[48] Rollo, p. 167. Medical Report.

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