

UY KIAO ENG, PETITIONER, VS. NIXON LEE, RESPONDENT.

G.R. No. 176831. January 15, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the August 23, 2006 Amended Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 91725 and the February 23, 2007 Resolution,[2] denying the motion for reconsideration thereof.

The relevant facts and proceedings follow.

Alleging that his father passed away on June 22, 1992 in Manila and left a holographic will, which is now in the custody of petitioner Uy Kiao Eng, his mother, respondent Nixon Lee filed, on May 28, 2001, a petition for mandamus with damages, docketed as Civil Case No. 01100939, before the Regional Trial Court (RTC) of Manila, to compel petitioner to produce the will so that probate proceedings for the allowance thereof could be instituted. Allegedly, respondent had already requested his mother to settle and liquidate the patriarch's estate and to deliver to the legal heirs their respective inheritance, but petitioner refused to do so without any justifiable reason.[3]

In her answer with counterclaim, petitioner traversed the allegations in the complaint and posited that the same be dismissed for failure to state a cause of action, for lack of cause of action, and for non-compliance with a condition precedent for the filing thereof. Petitioner denied that she was in custody of the original holographic will and that she knew of its whereabouts. She, moreover, asserted that photocopies of the will were given to respondent and to his siblings. As a matter of fact, respondent was able to introduce, as an exhibit, a copy of the will in Civil Case No. 224-V-00 before the RTC of Valenzuela City. Petitioner further contended that respondent should have first exerted earnest efforts to amicably settle the controversy with her before he filed the suit.[4]

The RTC heard the case. After the presentation and formal offer of respondent's evidence, petitioner demurred, contending that her son failed to prove that she had in her custody the original holographic will. Importantly, she asserted that the pieces of documentary evidence presented, aside from being hearsay, were all immaterial and irrelevant to the issue involved in the petition--they did not prove or disprove that she unlawfully neglected the performance of an act which the law specifically enjoined as a duty resulting from an office, trust or station, for the court to issue the writ of mandamus.[5]

The RTC, at first, denied the demurrer to evidence.[6] In its February 4, 2005 Order,[7] however, it granted the same on petitioner's motion for reconsideration. Respondent's motion for reconsideration of this latter order was denied on September 20, 2005.[8] Hence, the petition was dismissed.

Aggrieved, respondent sought review from the appellate court. On April 26, 2006, the CA initially denied the appeal for lack of merit. It ruled that the writ of mandamus would issue only in instances when no other remedy would be available and sufficient to afford redress. Under Rule 76, in an action for the settlement of the estate of his deceased father, respondent could ask for the presentation or production and for the approval or probate of the

holographic will. The CA further ruled that respondent, in the proceedings before the trial court, failed to present sufficient evidence to prove that his mother had in her custody the original copy of the will.[9]

Respondent moved for reconsideration. The appellate court, in the assailed August 23, 2006 Amended Decision,[10] granted the motion, set aside its earlier ruling, issued the writ, and ordered the production of the will and the payment of attorney's fees. It ruled this time that respondent was able to show by testimonial evidence that his mother had in her possession the holographic will.

Dissatisfied with this turn of events, petitioner filed a motion for reconsideration. The appellate court denied this motion in the further assailed February 23, 2007 Resolution.[11]

Left with no other recourse, petitioner brought the matter before this Court, contending in the main that the petition for mandamus is not the proper remedy and that the testimonial evidence used by the appellate court as basis for its ruling is inadmissible.[12]

The Court cannot sustain the CA's issuance of the writ.

The first paragraph of Section 3 of Rule 65 of the Rules of Court pertinently provides that--

SEC. 3. Petition for mandamus.--When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.[13]

Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[14] This definition recognizes the public character of the remedy, and clearly excludes the idea that it may be resorted to for the purpose of enforcing the performance of duties in which the public has no interest.[15] The writ is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution.[16] As the quoted provision instructs, mandamus will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station.[17]

The writ of mandamus, however, will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.[18] Nor will mandamus issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious.[19] As a rule, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled.[20] On the part of the relator, it is essential to the issuance of a writ of mandamus that he should have a clear legal right to the thing demanded and it must be the imperative duty of respondent to perform the act required.[21]

Recognized further in this jurisdiction is the principle that mandamus cannot be used to enforce contractual obligations.[22] Generally, mandamus will not lie to enforce purely private contract rights, and will not lie against an individual unless some obligation in the nature of a public or quasi-public duty is imposed.[23] The writ is not appropriate to enforce a private right against an individual.[24] The writ of mandamus lies to enforce the execution of an act, when, otherwise, justice would be obstructed; and, regularly, issues only in cases relating to the public and to the government; hence, it is called a prerogative writ.[25] To preserve its prerogative character, mandamus is not used for the redress of private wrongs, but only in matters relating to the public.[26]

Moreover, an important principle followed in the issuance of the writ is that there should be no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of mandamus being invoked.[27] In other words, mandamus can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief.[28] Although classified as a legal remedy, mandamus is equitable in its nature and its issuance is generally controlled by equitable principles.[29] Indeed, the grant of the writ of mandamus lies in the sound discretion of the court.

In the instant case, the Court, without unnecessarily ascertaining whether the obligation involved here--the production of the original holographic will--is in the nature of a public or a private duty, rules that the remedy of mandamus cannot be availed of by respondent Lee because there lies another plain, speedy and adequate remedy in the ordinary course of law. Let it be noted that respondent has a photocopy of the will and that he seeks the production of the original for purposes of probate. The Rules of Court, however, does not prevent him from instituting probate proceedings for the allowance of the will whether the same is in his possession or not. Rule 76, Section 1 relevantly provides:

Section 1. Who may petition for the allowance of will.--Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time, after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

An adequate remedy is further provided by Rule 75, Sections 2 to 5, for the production of the original holographic will. Thus--

SEC. 2. Custodian of will to deliver.--The person who has custody of a will shall, within twenty (20) days after he knows of the death of the testator, deliver the will to the court having jurisdiction, or to the executor named in the will.

SEC. 3. Executor to present will and accept or refuse trust.--A person named as executor in a will shall within twenty (20) days after he knows of the death of the testator, or within twenty (20) days after he knows that he is named executor if he obtained such knowledge after the death of the testator, present such will to the court having jurisdiction, unless the will has reached the court in any other manner, and shall, within such period, signify to the court in writing his acceptance of the trust or his refusal to accept it.

SEC. 4. Custodian and executor subject to fine for neglect.--A person who neglects any of the duties required in the two last preceding sections without excuse satisfactory to the court shall be fined not exceeding two thousand pesos.

SEC. 5. Person retaining will may be committed.--A person having custody of a will after the death of the testator who neglects without reasonable cause to deliver the same, when ordered so to do, to the court having jurisdiction, may be committed to prison and there kept until he delivers the will.[30]

There being a plain, speedy and adequate remedy in the ordinary course of law for the production of the subject will, the remedy of mandamus cannot be availed of. Suffice it to state that respondent Lee lacks a cause of action

in his petition. Thus, the Court grants the demurrer.

WHEREFORE, premises considered, the petition for review on certiorari is GRANTED. The August 23, 2006 Amended Decision and the February 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 91725 are REVERSED and SET ASIDE. Civil Case No. 01100939 before the Regional Trial Court of Manila is DISMISSED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Eliezer R. de Los Santos, with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring; rollo, pp. 26-29.

[2] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Rodrigo V. Cosico and Jose C. Reyes, Jr., concurring; rollo, pp. 31-32.

[3] Records, pp. 1-4.

[4] Id. at 14-19.

[5] Id. at 227-229.

[6] Id. at 238 and 262-263.

[7] Id. at 320-321.

[8] Id. at 399-401.

[9] CA rollo, pp. 45-51.

[10] Supra note 1.

[11] Supra note 2.

[12] Rollo, pp. 139-146.

[13] Italics supplied.

[14] *Abaga v. Panes*, G.R. No. 147044, August 24, 2007, 531 SCRA 56, 61-62.

[15] *Segre v. Ring*, 163 A.2d 4, 5 (1960).

[16] *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008, 545 SCRA 618, 625; *Lumanlaw v. Peralta, Jr.*, G.R. No. 164953, February 13, 2006, 482 SCRA 396, 417.

[17] *Mayuga v. Court of Appeals*, G.R. No. 123899, August 30, 1996, 261 SCRA 309, 316-317; *Reyes v. Zamora*, No. L-46732, May 5, 1979, 90 SCRA 92, 112; *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company*, No. L-25316, February 28, 1979, 88 SCRA 616, 621; *Gabutas v. Castellanes*, No. L-17323, June 23, 1965, 14 SCRA 376, 379; *Alzate v. Aldana*, No. L-18085, May 31, 1963, 8 SCRA 219, 223; *Dulay v. Merrera*, No. L-17084, August 30, 1962, 5 SCRA 922, 926; *Quintero v. Martinez*, 84 Phil. 496, 497 (1949).

[18] *Tangonan v. Paño*, No. L-45157, June 27, 1985, 137 SCRA 245, 255; *Gonzalez v. Board of Pharmacy*, 20 Phil. 367, 375 (1911).

[19] *Palileo v. Ruiz Castro*, 85 Phil. 272, 275 (1949).

[20] *Samson v. Office of the Ombudsman*, G.R. No. 117741, September 29, 2004, 439 SCRA 315, 325.

[21] *University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771.

[22] *Manalo v. PAIC Savings Bank*, G.R. No. 146531, March 18, 2005, 453 SCRA 747, 754-755; *National Marketing Corporation v. Cloribel*, No. L-27260, April 29, 1968, 23 SCRA 398, 403; *National Marketing Corporation v. Cloribel*, No. L-26585, March 13, 1968, 22 SCRA 1033, 1037-1038. See, however, *Mantrade/FMMC Division Employees and Workers Union v. Bacungan*, No. L-48437, September 30, 1986, 144 SCRA 510, in which the Court considered mandamus as an appropriate equitable remedy to compel a corporation to grant holiday pay to its monthly salaried employees. See also *Hager v. Bryan*, 19 Phil. 138 (1911), cited in *Ponce v. Alsons Cement Corporation*, G.R. No. 139802, December 10, 2002, 393 SCRA 602, 614-615, and in *Rural Bank of Salinas, Inc. v. Court of Appeals*, G.R. No. 96674, June 26, 1992, 210 SCRA 510, 515-516, in which the Court ruled that mandamus may be issued to compel the secretary of a corporation to make a transfer of the stock on the books of the corporation if it affirmatively appears that he has failed or refused so to do, upon the demand either of the person in whose name the stock is registered, or of some person holding a power of attorney for that purpose from the registered owner of the stock.

[23] *Carroll v. American Agricultural Chemical Co.*, 167 S.E. 597 (1932).

[24] *Crawford v. Tucker*, 64 So.2d 411, 415 (1953).

[25] *The American Asylum at Hartford for the education and instruction of the Deaf and Dumb v. The President, Directors and Company of the Phoenix Bank*, 4 Conn. 172, 1822 WL 12 (Conn.), 10 Am.Dec. 112 (1822). See, however, *Bassett v. Atwater*, 32 L.R.A. 575, 65 Conn. 355, 32 A. 937 (1895), in which the Supreme Court of Errors of Connecticut recognized the principle that, in the issuance of the writ of mandamus, the value of the matter, or the degree of its importance to the public police, should not be scrupulously weighed. If there be a right, and no other specific remedy, mandamus should not be denied.

[26] *State ex rel. Moyer v. Baldwin*, 83 N.E. 907, 908 (1908).

[27] *Pimentel III v. Commission on Elections*, G.R. No. 178413, March 13, 2008, 548 SCRA 169, 209; *Balindong v. Dacalos*, G.R. No. 158874, November 10, 2004, 441 SCRA 607, 612; *Rodriguez v. Court of Appeals*, G.R. No. 134278, August 7, 2002, 386 SCRA 492, 499; see *Manalo v. Gloria*, G.R. No. 106692, September 1, 1994, 236 SCRA 130, 136-137, in which the Court ruled that petitioner's claim for backwages could be the appropriate subject of an ordinary civil action and there is absolutely no showing that the said remedy is not plain, speedy and adequate.

[28] *Segre v. Ring*, *supra* note 15.

[29] *Walter Laev, Inc. v. Karns*, 161 N.W.2d 227, 229 (1968).

[30] These rules were taken from Sections 626-629 of Act No. 190, "An Act providing a Code of Procedure in civil actions and special proceedings in the Philippine Islands," enacted on August 9, 1901.

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