

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS,
EDUARDO TAN, DAVID ANG, JESUS SY AND LILY FRANCISCO UY,
RESPONDENTS.**

G.R. No. 93076. July 23, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari, with a prayer for a writ of preliminary injunction, to set aside the decision of the respondent Court of Appeals in C.A.-G.R. SP No. 18662,[1] which dismissed the petition for certiorari filed by petitioner to annul the Orders of 4 July 1989 and 10 August 1989 of respondent Judge in Criminal Case No. SW No. 058 (89),[2] which, respectively, granted the motion to quash search warrant and for the release of the seized lumber filed by Lily Francisco Uy and denied petitioner's motion for its reconsideration.

The material operative facts and relevant proceedings in this case are set forth in the questioned decision:

“1. On January 18, 1989 elements of the Economic Intelligence Investigation Bureau (EIIB) informed the Special Action and Investigation Division/Personnel Investigation Committee (SAID/PIC) of the Department of Environment and Natural Resources (DENR) of the presence of a huge stockpile of narra and kamagong fitches and lumber inside a compound at Nos. 61 and 63 E. Rivera Street, Quezon City.

On the same day, pursuant to Special Order No. 54, Series of 1989, the SAID/PIC--DENR team together EIIB agents went to said compound, saw the stockpile and took pictures thereof. Respondent Jesus Sy who was found in the compound presented papers/documents purportedly covering the forest products. However, he refused to allow the team to enter the compound claiming the key was not with him.

2. On the following day, January 19, 1989 the SAID/PIC-DENR team filed an application for search warrant with the Regional Trial Court of Quezon City, which was granted by respondent Judge. On the same day, the government team together with the Quezon City RTC Sheriff enforced the search warrant and seized approximately 50,000 board feet of narra lumber, shorts and sticks, issuing receipts for the seized materials.

3. On May 16, 1989, respondent Lily Francisco Uy filed a motion to quash search warrant and for redelivery to her of the seized lumber on the grounds that the same belongs to her and not to respondents Tan[,] Ang and Sy; and that there was no probable cause for issuance thereof. Attached to the motion were documents proving her ownership of the seized lumber.

4. On July 4, 1989, respondent issued the assailed order granting the motion to quash for the reason that the documents presented are incontrovertible evidence showing that:

- a) Respondent Lily Francisco Uy is the owner of the seized lumber;
- b) She is in possession of the necessary documents (permit) as required by Section 68 of PD 705 as amended by Executive Order No. 277;
- c) The seized lumber owned by her were narra only, not kamagong and narra fitches and lumber; the documents

are not recycled (as alleged by petitioner) and there are no inconsistencies therein, and that the narra lumber came from legal sources;

d) Petitioner violated respondent Uy's constitutional right in taking possession of the original copies of the documents, which were not covered by the search warrant.

Respondent Judge further ordered petitioner to release/return to Lily Francisco Uy the subject pieces of lumber and the original copies of the documents seized.

A motion for reconsideration filed by petitioner was denied by respondent Judge in his second assailed order dated August 10, 1989."^[3]

Petitioner received a copy of the 10 August 1989 Order on 16 August 1989.^[4]

On 5 September 1989, upon request of counsel of private respondent Lily Uy, the Branch Clerk of Court of the trial court issued a certification to the effect that the Order of 10 August 1989, in relation to the Order of 4 July 1989, "is now final and executory as of September 1, 1989."^[5]

On 5 September 1989, after being shown copies of the Orders and the certification, the Secretary of the Department of Environment and Natural Resources (DENR) authorized the release of the lumber seized after proper inventory and documentation.^[6]

On 7 September 1989 the petitioner filed the petition for certiorari^[7] before the Court of Appeals (C.A.-G.R. SP No. 18662) asserting therein that:

"4.1. The Orders dated July 4, 1989 and August 10, 1989 were issued in flagrant disregard of the x x x provision of Section 68 of P.D. No. 705, as amended by Executive Order No. 277, and Section 3 of Rule 126 of the Rules of Court. They likewise run counter to the settled rule that a judgment must be supported by the evidence on record.

4.2. In deviating from the law, Constitution and jurisprudence, respondent Judge acted with patent grave abuse of discretion amounting to lack of jurisdiction.

4.3. There is no plain, speedy and adequate remedy in the ordinary course of law."^[8]

in support of which it claims that the search warrant was validly issued, the subsequent seizure had constitutional and legal basis and that the findings of respondent Judge in his orders are not supported by evidence on record or by the circumstances obtaining in the case.^[9]

As adverted to earlier, the Court of Appeals dismissed the petition. It held that the respondent Judge committed no grave abuse of discretion in issuing the assailed orders; and that the petition was filed six (6) days after the assailed orders became final, hence it was filed as a substitute for the lapsed remedy of appeal, which cannot be allowed. Elaborating on the first, the Court of Appeals found that before issuing the questioned orders, the respondent Judge "considered and evaluated the evidence on hand and the arguments of both parties," bewailed the deliberate failure of petitioner to resist the motion to quash the search warrant in this wise:

"Respondent Judge issued the first assailed order on July 4, 1989, granting the motion to quash filed by respondent Uy after due notice and hearing to both parties. The records show that the motion was first set for hearing on May 17, 1989, but was reset to May 30, 1989 in view of the non-appearance of both parties (DENR and Lily Francisco Uy). On May 30, 1989, only counsel for respondent Uy was present; hence, the hearing of the case was again reset to June 14, 1989, with warning to DENR to file its comment within three days before June 14, 1989, otherwise the motion will be considered submitted for resolution. On June 14, 1989, counsel for DENR appeared but failed to submit any comment. However, petitioner DENR was still given therein (13)

days within which to file its comment. No comment was filed and respondent court issued its first assailed order x x x."

and concluded that if there were errors committed by the respondent Judge, they were errors of judgment and not of jurisdiction, which should have been the proper subject of appeal and not of the extraordinary writ of certiorari. As regards the second point, the Court of Appeals held that petitioner, having received on 16 August 1989 a copy of the Order of 10 August 1989, had until 1 September 1989 within which to appeal therefrom. No appeal was perfected within the period; in fact the DENR officials allowed the release of the lumber in question after they were informed of the finality thereof. Petitioner filed the petition on 7 September 1989.

Hence, this appeal by certiorari wherein the petitioner, through the Office of the Solicitor General, urges Us to set aside the decision because:

"Respondent Court of Appeals acted with grave abuse of discretion amounting to lack of jurisdiction in dismissing the petition and in effect affirming the Order of the trial court which quashed the search warrant, since it is based on erroneous conclusions of facts and law. Secondly, certiorari was the proper remedy under the circumstances obtaining in the case at bar." [10]

In the Comment [11] which they filed on 11 August 1990 pursuant to Our resolution of 20 July 1990, [12] respondents claim that the questioned Orders of the trial court were already final and had in fact been executed with the consent and approval of the Secretary of the DENR at the time the petitioner filed the petition before the respondent Court of Appeals; any question as to the correctness of the findings of facts or any error of judgment committed by the trial court was correctible by appeal in due time and not by certiorari; and that certiorari does not lie as a substitute for the lapsed remedy of appeal. As regards the findings of facts of the trial court, respondents stressed that petitioner failed to substantiate the allegations in the affidavit supporting the application for search warrant despite all the chances given it, and it also failed to controvert the evidence offered by private respondent Lily Francisco Uy for the quashal of the search warrant.

In its Reply filed on 11 September 1990, [13] in compliance with the resolution of 15 August 1990, [14] petitioner admits that it failed to appear during the hearing of the motion to quash the search warrant and to submit a comment thereon, but alleges that this is no indication that no valid reason exists to assail the alleged ownership of Lily Francisco Uy of the lumber and of the authenticity of the documents she submitted. It further admits that the Secretary of the DENR consented to the release of the seized lumber, but claims that it did not estop petitioner from subsequently filing the petition for certiorari. In refutation of the issue on the lapsed remedy of appeal, petitioner contends that "the Revised Rules of Court do not provide a specific time frame within which to file a petition for certiorari (Rule 65, Sec. 1). The same can be filed within a reasonable time." [15]

We shall first direct and focus Our attention to the second issue since a resolution that appeal was the proper remedy, which petitioner allowed to lapse, may render moot and academic the first issue.

Petitioner candidly admits that appeal was available to them, but justifies its failure to interpose it because:

"x x x the same is not a speedy and adequate remedy as there then loomed, as it still looms, a great probability that private respondents will move for the execution of the judgment pending appeal by merely filing a bond. x x x what is involved in the present case is not merely the commercial value of the prices of lumber seized but more importantly is the fact that they constitute important pieces of evidence to enable the State to successfully prosecute the criminal action against private respondents.

Hence, an appeal may not promptly relieve petitioner from the injurious effect of judgment complained of. As held in *Jaca vs. Davao Lumber Co.*, 113 SCRA 107, the availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making case of the extraordinary remedy which is equally

beneficial, speedy and sufficient. It is the inadequacy not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari. To insist on the application of the rule in all cases may not always serve the ends of justice. The object of procedural law is to facilitate the adjudication of conflicting claims. Thus, although an appeal is available, certiorari still lies when such appeal does not prove to be a more speedy and adequate remedy (*Dimayacyac vs. Court of Appeals*, 93 SCRA 265)."[16]

The above rationalization, although appealing and impressive, fails to solicit Our support and acceptance because it is both fatally flawed and misleading, if not captious. It erroneously assumes that at the time the instant petition was filed petitioner still had the right to appeal. It received a copy of the Order of 10 August 1989 on 16 August 1989; hence, it had only until 31 August 1989 within which to appeal. Unfortunately, either by design or through inadvertence or negligence, none was interposed. Its petition then in C.A.-G.R. SP No. 18662, filed on 7 September 1989, was filed on the seventh day (not on the sixth day as stated by the Court of Appeals) following the expiration of the period to appeal.

It further erroneously assumes that appeal was not speedy and adequate because "there then loomed, as it still looms, a great probability that the private respondents will move for the execution of the judgment pending appeal by merely filing a bond." This is plain speculation based on an unfounded fear, a flimsy excuse for a procedural misstep. As of the date the petitioner filed the petition with the Court of Appeals, there was no motion for execution pending appeal; respondent Lily Francisco Uy waited for the finality of the Order. Even after its finality, no order of execution was issued by the trial court. None appeared to be necessary since the Secretary of the DENR consented to the release of the questioned lumber on the strength of the Order of 4 July and 10 August 1989 and a mere certification of the Branch Clerk of Court that the latter, in relation to the former, became final on 1 September 1989.[17]

Having failed to take advantage of the right to appeal, petitioner cannot now be heard to say that said remedy would not have been equally beneficial, speedy and sufficient. Besides, We do not think that appeal would have been less beneficial, speedy and sufficient. The feared execution pending appeal could be resisted just as much in the regular appeal as in a petition for certiorari. This needs no elaboration for Section 2 of Rule 39 of the Rules of Court provides an adverse party sufficient legal wherewithal to oppose a motion for execution pending appeal. But, if indeed there were very special and compelling reasons to preserve the seized lumber because they were important pieces of evidence, We fail to understand why petitioner took no action whatsoever between 16 August 1989, when it received a copy of the 10 August 1989 Order, and 7 September 1989 when it filed the petition with the Court of Appeals. The inaction during this period by the DENR, coupled with the voluntary release of the seized lumber to Lily Francisco Uy, is alarmingly puzzling.

Having lost the period to appeal through its own fault, petitioner cannot be permitted to avail of the remedy of certiorari under Rule 65 of the Rules of Court. The well-settled rule, buttressed and strengthened by a long line of cases, is that certiorari will not lie as a substitute for the lost remedy of appeal.[18]

The only exception thereto is when such right is lost through no fault of the petitioner,[19] which is not so in this case. Consequently, the petition before the Court of Appeals was doomed to fail and respondent Court of Appeals committed no error in holding that the petition was indeed filed as a substitute for a lapsed right to appeal. The claim then of petitioner in its Reply that Rule 65 of the Rules of Court provides no specific time-frame within which to file the petition is entirely irrelevant. It is also inaccurate for, as established by jurisprudence, petitions thereunder should be filed within a reasonable period.[20]

The foregoing may have rendered unnecessary a discussion of the first issue. But let Us dwell on it for a while in view of the importance of the matter raised. We agree with the Court of Appeals that the questioned orders of

respondent Judge were supported by substantial evidence. Petitioner did not even attempt to controvert the evidence offered by respondent Lily Francisco Uy. As the applicant for a search warrant, petitioner had the bounden duty to prove that the seized lumber did not legally belong to Lily Francisco Uy who, by the way, was not even made a respondent in the application. Since searches are in derogation of the inviolable right of the people to be secure in their persons, houses, papers and effects,[21] it necessarily follows that the applicant therefor should rely on the strength of his evidence to support the application or the subsequent legal custody of the seized articles. In the instant case, petitioner miserably failed to discharge this burden. On the contrary, it offered nothing as against the evidence submitted by Lily Francisco Uy. As she was not even made a respondent in the application for and in the search warrant which was eventually issued, upon prima facie proof that she was the owner of the seized lumber and that she lawfully acquired them, she was entitled to the quashal of the search warrant and the restoration to her of the seized articles.

ACCORDINGLY, for lack of merit, the instant petition is DENIED.

No costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Entitled People of the Philippines vs. Hon. Judge Benigno Dayaw et al.; per Associate Justice Nicolas Lapeña, Jr., concurred in by Associate Justices Jose P. Campos, Jr., and Emeterio Cui, promulgated on 30 March 1990, Annex "A" of Petition; Rollo, 31-36.

[2] Entitled People of the Philippines vs. Eduardo Tan, David Ang and Jesus Sy.

[3] Rollo, 31-33; see also pages 3-7 of the Petition; Rollo, 8-12.

[4] Second paragraph, p. 7 of Petition; Id., 12.

[5] Annex "G" to private respondent's Comment; Id., 235.

[6] Page 8 of Comment; Id., 151.

[7] Annex "H" of the instant Petition; Rollo, 62-82.

[8] Id., 68.

[9] Id., 69, 72.

[10] Rollo, 13.

[11] Id., 144-160.

[12] Id., 140.

[13] Id., 245-250.

[14] Id., 242-250.

[15] Rollo, 253.

[16] Rollo, 25-26.

[17] Rollo, 235.

[18] Abogaa vs. Go Sam, 87 Phil. 761; Equio vs. CFI of Negros Oriental, 92 Phil. 1083; Fernando vs. Vasquez, et al., 31 SCRA 288; People vs. Villanueva, 110 SCRA 465; Vda. de Caldito vs. Segundo, et al., 117 SCRA 573; Landicho vs. Tensuan, 151 SCRA 410; Acain vs. IAC, 155 SCRA 100; Destileria Limtuaco vs. IAC, et al., 157 SCRA 706; Belan, et al. vs. Court of Appeals, et al., 160 SCRA 291; Limpot vs. Court of Appeals, 170 SCRA 365; Edra vs. IAC, 179 SCRA 351.

[19] U.S. vs. Judge of CFI of Pampanga, 49 Phil. 495.

[20] Contreras vs. Villaraza, et al., 99 SCRA 329; Toledo vs. Pardo, 118 SCRA 566; San Juan vs. Cuento, et al., 160 SCRA 277; Vda. de Caldito vs. Segundo, et al., supra.

[21] Section 2, Article III, 1987 Constitution.

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