



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

HEIRS OF JANUARIA CABRERA,  
represented by MIGUELA  
CABARRUBIAS-ABELLA and/or  
ASUNCION CABARRUBIAS-  
AQUILA,\*

*Petitioners,*

- versus -

HEIRS OF FLORENTINO  
JURADO, namely: LUCITA U.  
VILLAMOR\*\* married to ROLAN  
VILLAMOR, BERNARDITA DELA  
ROSA married to JOSEPH WINNIE  
DELA ROSA,\*\*\* ROBERT  
JURADO\*\*\*\* married to JOSELYN  
ELLORAN and GILBERT JURADO  
married to FRANCISCA TAPIA;  
HEIRS OF FREDESWINDA  
JURADO, namely: ROLAN  
VILLAMOR, WILFREDO  
VILLAMOR, JIFFY VILLAMOR,  
ALEX VILLAMOR, GLEN  
VILLAMOR, HANS VILLAMOR,  
SPONKY VILLAMOR, KEN  
VILLAMOR, LENNY VILLAMOR,  
NESTOR VILLAMOR, and  
LOURDES TIU; HEIRS OF  
ANASTACIA ABELLA and JOVITO  
ANOLING, SR., SPOUSES EDGAR  
M. MARTINEZ and KIM Y.  
MARTINEZ; DEPARTMENT OF  
PUBLIC WORKS AND HIGHWAYS

G.R. No. 235308

Present:

LEONEN, J.,  
Chairperson,  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
LOPEZ, J., JJ.

\* Also referred to as "Asuncion Cabarrubias-Aquilla" in some parts of the *rollo*.

\*\* Also referred to as "Lucia Villamor" in some parts of the *rollo*.

\*\*\* Also referred to as "Joseph Wennie dela Rosa" in the Petition.

\*\*\*\* Also referred to as "Roberto Jurado" in some parts of the *rollo*.

**(DPWH), and the REGISTER OF  
DEEDS FOR THE CITY OF CEBU,**  
*Respondents.*

Promulgated:

May 12, 2021

*MispDCBatt*

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## DECISION

**DELOS SANTOS, J.:**

### The Case

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Resolutions of the Court of Appeals (CA), Cebu City dated May 30, 2016<sup>2</sup> and September 20, 2017<sup>3</sup> in CA-G.R. SP No. 09623-UDK.<sup>4</sup> The assailed Resolutions dismissed petitioners' Petition for *Certiorari* under Rule 65 of the Rules of Court, which assailed the April 16, 2015 Omnibus Order<sup>5</sup> of the Regional Trial Court (RTC) of Cebu City, Branch 58.

### The Facts and Antecedent Proceedings

On January 31, 2008, petitioner heirs of Januaria Cabrera, represented by Miguela Cabarrubias-Abella and/or Asuncion Cabarrubias-Aquila (petitioners), filed a Complaint for Annulment/Cancellation of Titles and Tax Declarations, Damages, Attorney's Fees, and Costs against respondent heirs of Florentino Jurado, namely: Lucita U. Villamor (Lucita) married to Rolan Villamor (Rolan), Bernardita dela Rosa (Bernardita) married to Joseph Winnie dela Rosa (spouses Dela Rosa), Robert Jurado (Robert) married to Joselyn Elloran, and Gilbert Jurado (Gilbert) married to Francisca Tapia; heirs of Fredeswinda Jurado, namely: Rolan Villamor, Wilfredo Villamor, Jiffy Villamor, Alex Villamor, Glen Villamor, Hans Villamor, Sponky Villamor, Ken Villamor, Lenny Villamor, Nestor Villamor, and Lourdes Tiu (Tiu); heirs of Anastacia Abella and Jovito Anoling, Sr., and spouses Edgar M. Martinez and Kim Y. Martinez (spouses Martinez; collectively, private respondents). The case was raffled to the RTC of Cebu City, Branch 58 and docketed as Civil Case No. CEB-34035. Accordingly, summons were served and respondents filed their respective Answers and Affirmative

<sup>1</sup> *Rollo*, pp. 12-28.

<sup>2</sup> *Id.* at 31-38; penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.

<sup>3</sup> *Id.* at 41-48; penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Marilyn B. Lagura-Yap and Gabriel T. Robeniol, concurring.

<sup>4</sup> Also referred to as CA-G.R. CEB SP No. 09623 UDK in the Notices of Resolution and in the Petition.

<sup>5</sup> *Rollo*, pp. 155-161; penned by Presiding Judge Ma. Lynna P. Adviento.

Defenses.<sup>6</sup>

Tiu, one of the private respondents, filed her Answer with Compulsory Counterclaim dated February 18, 2008 challenging the petitioners' foregoing complaint on the following grounds: (1) it failed to state a valid cause of action; (2) petitioners had no valid cause of action against her; (3) petitioners were guilty of laches; and (4) petitioners had no personality to file the case.<sup>7</sup>

The trial court directed the petitioners and Tiu to file their respective memoranda, but only the latter filed her memorandum.<sup>8</sup>

On October 4, 2013, the trial court issued an Order<sup>9</sup> dismissing the complaint against Tiu, for petitioners' failure to state a cause of action. It was noted that petitioners were suing as heirs of Januaría, the alleged owner of the lot subject of the complaint. However, the trial court found that petitioners have not shown that they have been declared as legal and forced heirs of Januaría. Citing *Heirs of Yaptinchay v. Del Rosario*,<sup>10</sup> the trial court ruled that if the suit is not brought in the name of or against a real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action.<sup>11</sup>

The foregoing Order of the trial court became final as the petitioners did not file a motion for reconsideration therefrom.<sup>12</sup>

Subsequently, several respondents, through their respective counsel, filed their pleadings before the trial court, to wit: (1) Motion for Preliminary Hearing of Affirmative Defenses by Rolan and the heirs of Lucita; (2) Motion to Dismiss by the spouses Martinez; (3) Manifestation and Motion by the Office of the Solicitor General (OSG) for public respondent Department of Public Works and Highways (DPWH); (4) Manifestation with Motion filed by Bernardita, Robert, and Gilbert; and (5) Motion to Dismiss/Manifestation filed by the intervenors heirs of Atty. Antonio "Boy" S. Regis and respondents Abellas.<sup>13</sup>

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<sup>6</sup> Id. at 15.

<sup>7</sup> Id. at 142.

<sup>8</sup> Id.

<sup>9</sup> Id. at 142-145.

<sup>10</sup> 363 Phil. 393 (1999).

<sup>11</sup> Id. at 399, citing *Travel Wide Associated Sales (Phils.), Inc. v. Court of Appeals*, 276 Phil. 219, 224 (1991).

<sup>12</sup> *Rollo*, p. 72.

<sup>13</sup> Id. at 155.

On July 14, 2014, petitioners filed a Consolidated Comment/Opposition to Motions/Manifestation.<sup>14</sup> As regards spouses Martinez, petitioners claimed that: (1) the former have distinct interest which are not similar to that of the other respondents; (2) lack of personality to sue was not one of the affirmative defenses raised; and (3) their affirmative defenses have already been denied by the previous judges who handled the case.<sup>15</sup>

As regards the special and affirmative defenses of respondents Rolan and the heirs of Lucita, petitioners claimed that these defenses should have been heard after the Answer was filed and before trial.<sup>16</sup>

Petitioners also opposed the motion by Bernardita, Robert, and Gilbert, alleging that since the latter did not raise the question on paternity and filiation, their defenses were already deemed waived.<sup>17</sup>

Lastly, petitioners claimed that the DPWH cannot invoke the October 4, 2013 Order of the trial court since it did not share the same interest as Tiu.<sup>18</sup>

### **Ruling of the RTC**

On April 16, 2015, the trial court issued an Omnibus Order<sup>19</sup> dismissing the case as against all the respondents. Reiterating its reliance on *Heirs of Yaptinchay*, the trial court maintained that heirship was crucial, as the absence thereof would not make the petitioners as real parties-in-interest clothed to bring the case before it.<sup>20</sup>

On the issue of whether or not the dismissal of the case against Tiu benefitted the other respondents, the trial court ruled in the affirmative. It explained that since the October 4, 2013 Order was premised on the ground that the complaint stated no cause of action, then the dismissal should extend to all the respondents, otherwise, an awkward situation would arise, where petitioners are considered real parties-in-interest with respect to some, and at the same time not real parties-in-interest with respect to the others.<sup>21</sup>

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<sup>14</sup> Id. at 17.

<sup>15</sup> Id. at 158.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Supra note 5.

<sup>20</sup> *Rollo*, p. 159.

<sup>21</sup> Id. at 161.

Petitioners filed a motion for reconsideration, which was denied on June 26, 2016 since it was filed out of time and did not comply with Section 5, Rule 15 of the Rules of Court.<sup>22</sup>

On September 28, 2015, petitioners filed a Motion for Extension of 15 days to file a petition for *certiorari*.<sup>23</sup>

On October 13, 2015, petitioners filed with the CA a Petition for *Certiorari* under Rule 65 of the Rules of Court.<sup>24</sup>

### **Ruling of the CA**

On May 30, 2016, the CA issued a Resolution<sup>25</sup> dismissing the petition for being an improper remedy. The CA held that a petition for *certiorari* was not the proper remedy to assail the trial court's order of dismissal based on petitioners' failure to state a cause of action. According to the CA, such order of dismissal, whether correct or not, is a final order in which the remedy was to file a timely appeal.<sup>26</sup>

Moreover, the CA ruled that even if admitted, the dismissal of the petition was inevitable in view of its procedural defects, to wit:

1. Petitioners failed to pay the required docket and other lawful fees upon the filing of their motion for extension of time to file a petition for *certiorari*, on September 28, 2015;
2. Petitioners failed to explain why the preferred personal mode of filing was not availed of, in violation of Rule 13, Section 11 of the 1997 Revised Rules of Procedure;
3. There are inconsistencies in the Explanation and Proof of Service portion of the petition, and in the Affidavit of Service as well. Petitioners disclose in their Explanation that said pleading was not served personally to private respondents due to the absence of messengerial staff. On the other hand, they state in their Affidavit of Service that the affiant personally served a copy of the petition to private respondents;
4. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping did not contain the province or city where the notary public was commissioned, as well as, the address of the notary public, in violation of Rule VIII, Section 2 (c) of the 2004 Rules [on] Notarial Practice; and

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<sup>22</sup> Id. at 19.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Supra note 2.

<sup>26</sup> *Rollo*, pp. 33-34.

5. Petitioners pray for an extension of fifteen (15) days from September 28, 2015, within which to file a petition for *certiorari*, which extension is not allowed, in accordance with the ruling of the Supreme Court in *Laguna Metts Corporation v. Court of Appeals, et al.*<sup>27</sup> (Underscoring in the original; citation omitted)

The CA further emphasized that: (1) filing for a special civil action for *certiorari* is an extraordinary action that lies only where there is neither an appeal nor a plain, speedy, and adequate remedy in the ordinary course of law; (2) petition for *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the former is not a substitute for a lapse or lost appeal; and (3) where an appeal is available, *certiorari* will not prosper, even if the ground therefor is “grave abuse of discretion.”<sup>28</sup>

Petitioners filed a motion for reconsideration. On September 20, 2017, the CA issued a Resolution<sup>29</sup> denying the said motion of the petitioners.

Hence, this petition was filed.

### Issues

- (1) Whether the CA gravely erred in dismissing petitioners’ Petition for *Certiorari* under Rule 65 of the Rules of Court for being an improper remedy; and
- (2) Whether the CA gravely erred in dismissing petitioners’ petition based on mere technicalities.

Petitioners mainly argue that technicalities should not be given preference but must yield to substantial justice; and that deficiency in the observance of the rules should not be given undue importance.<sup>30</sup>

Prefatorily, petitioners cite Section 6, Rule 1 of the Rules of Civil Procedure which provides that the Rules of Court shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding. Referring to the case of *Case v. Jugo*,<sup>31</sup> petitioners alleged that there are four instances where non-observance of the rules may be excused, to wit: (1) those cases in which public policy is not involved; (2) those which arose from an honest mistake

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<sup>27</sup> Id. at 35-36.

<sup>28</sup> Id. at 36.

<sup>29</sup> Supra note 3.

<sup>30</sup> *Rollo*, p. 23.

<sup>31</sup> 77 Phil. 523 (1946).

in good faith or unforeseen circumstances or accident; (3) those which do not prejudice the adverse party; and (4) those which do not deprive the courts of their authority.<sup>32</sup>

While they conceded that *certiorari* is not a substitute for a lost appeal, petitioners claim that there have been many exceptions that could have applied to their case.<sup>33</sup>

First, relying in *Ruiz, Jr. v. Court of Appeals*,<sup>34</sup> petitioners maintain that even if appeal should have been a proper remedy against an oppressive and arbitrary decision of a lower court, the aggrieved party may avail of the special civil action for *certiorari* when appeal would not be a speedy or adequate remedy. They added that the Court can legally entertain the special civil action for *certiorari* considering the broader and primordial interests of justice which compel an occasional departure from the general rule that the extraordinary writ of *certiorari* cannot substitute for a lost appeal. Relatedly, petitioners invoke the foregoing exception alleging that the orders of the trial court amounted to an oppressive exercise of judicial authority.

Second, petitioners cite the case of *Del Pozo v. Judge Penaco*,<sup>35</sup> wherein the Court held that in order to prevent a miscarriage of justice and correct a very serious error, “very special circumstances” of the case can make a necessary suspension of the principle that a special civil action for *certiorari* is proper only if “there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.” Petitioners submit that the unique circumstances of what happened in their case should be taken into consideration in the interest of substantial justice.

There are four respondents who filed their respective Comments. They are: (1) Lucita; (2) the spouses Martinez; (3) the spouses Dela Rosa, Robert, and Gilbert; and (4) the DPWH through the OSG. Also, a Comment and Opposition was filed by Corazon Caballero-Regis, Adorable Elizabeth Regis-Villagonzalo, Courtney Psalm Regis Villagonzalo, and Marie Elizabeth Victoria Regis Villagonzalo, as intervenors.

In her Comment,<sup>36</sup> Lucita mainly pointed out that there was no grave abuse on the part of the CA in dismissing the case since the petitioners filed the petition for *certiorari* beyond the reglementary period.

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<sup>32</sup> *Rollo*, p. 21.

<sup>33</sup> *Id.*

<sup>34</sup> 292-A Phil. 622 (1993).

<sup>35</sup> 249 Phil. 534 (1988).

<sup>36</sup> *Rollo*, pp. 54-61.

Likewise, in their Comment,<sup>37</sup> spouses Martinez countered that petitioners cannot invoke liberal construction of the Rules of Court since the latter did not only violate the rules in the Rules of Court, but were also negligent. Particularly, they pointed out the following: (1) failure to file a timely motion for reconsideration from the October 4, 2013 Order of the trial court; (2) the subsequent failure to set their motion for hearing pursuant to Section 5, Rule 15 of the Rules of Court; (3) the filing of a petition for *certiorari* when there is the remedy of appeal; and (4) failure to file the required docket fees before the CA. According to spouses Martinez, relaxation in the faithful observance of the rules should only be for persuasive reasons and only in meritorious cases, which they claim as wanting in this case.

Additionally, in the Comment<sup>38</sup> of spouses Dela Rosa, Robert, and Gilbert, they averred that there is no satisfactory or compelling reason that warrants the relaxation of the rules in favor of the petitioners. They added that petitioners' plea for the application of the principles of substantial justice in their favor deserves scant consideration.

Moreover, in its Comment,<sup>39</sup> the DPWH, through the OSG, noted that petitioners' arguments are nothing but a citation of various jurisprudence on liberal interpretation of procedural rules and instances when their non-observance was excused. According to the OSG, the instant case does not establish a pure legal question and involves factual issues that are beyond the pale of an appeal by *certiorari* under Rule 45 of the Rules of Court. The OSG pointed out that the instant petition only addresses ancillary issues, *i.e.*, the failure to comply with the technical requirements and formalities, but not the weightier reason for the denial of their remedies, which was belated filing. Lastly, the OSG claims that the RTC's dismissal of the complaint, which is the root of the present controversy, can no longer be disturbed since petitioners failed to raise this as an issue to this instant case.

Also, in their Comment and Opposition,<sup>40</sup> the intervenors alleged that: (1) on May 17, 2018, they received a Resolution dated March 14, 2018 from this Court; (2) they have not received a copy of the petition filed by the petitioners before this Court; and (3) they adopt the Comment and Opposition that they filed before the CA on April 24, 2016. Accordingly, they pray for the dismissal of the instant petition on the grounds of its formal and substantive defects.

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<sup>37</sup> Id. at 71-75.

<sup>38</sup> Id. at 115-122.

<sup>39</sup> Id. at 132-139.

<sup>40</sup> Id. at 63-65.



In their Consolidated Reply,<sup>41</sup> petitioners reiterate that due to “unique circumstances” that happened to their case and in the interest of substantial justice, they claim that the instant petition should be given due course. They submit that the RTC’s dismissal of their complaint was not in accordance with law and established jurisprudence. This time, citing the case of *Evangelista v. Santiago*,<sup>42</sup> petitioners argued that the RTC should have limited itself to examining the sufficiency of the allegations in the complaint since the truth of the said allegations are deemed hypothetically admitted by the respondents. Particularly, they pointed out paragraphs 9 and 19 of the Complaint, which stated that the “plaintiffs are the surviving legal heirs and successors-in-interest of the deceased Januaria Cabrera who died intestate in Cebu City sometime on May 24, 1931,” and showed the family tree of Januaria, respectively.<sup>43</sup> Accordingly, they claim that the RTC committed grave abuse of discretion, amounting to lack of or in excess of its jurisdiction.<sup>44</sup>

### The Court’s Ruling

The petition lacks merit.

#### *Petition for certiorari not a substitute for a lost appeal.*

Prefatorily, the Court notes that the RTC’s prior dismissal of the case in favor of Tiu, which was rendered on October 4, 2013, had become final and executory when petitioners did not file a motion for reconsideration therefrom.

As regards the assailed April 16, 2015 Omnibus Order dismissing the complaint against all the other respondents, it bears stressing that petitioners likewise failed to file a timely appeal when their motion for reconsideration therefrom was denied on June 26, 2015 due to belated filing and failure to set the motion for hearing in violation of Section 5, Rule 15 of the Rules of Court. Notably, instead of filing an appeal from the foregoing, the petitioners’ next action was already on September 28, 2015, which was filing a motion for an extension of 15 days to file a petition for *certiorari*.

Accordingly, the Court agrees with the CA that the petitioners availed of the wrong remedy when they filed a petition for *certiorari* before it to assail the RTC’s Omnibus Order dismissing the case against all the other respondents.

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<sup>41</sup> Id. at 175-186.

<sup>42</sup> 497 Phil. 269 (2005).

<sup>43</sup> *Rollo*, p. 179.

<sup>44</sup> Id. at 181.

An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. A final order is appealable, in accordance with the final judgment rule enunciated in Section 1, Rule 41 of the Rules of Court declaring that “[a]n 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.”<sup>45</sup>

It is settled that a special civil action for *certiorari* under Rule 65 of the Rules of Court is proper only when there is neither an appeal, nor plain, speedy, and adequate remedy in the ordinary course of law. The remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive such that where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion. To reiterate, *certiorari* is not a substitute for a lost appeal. It is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one’s own negligence or error in one’s choice of remedy occasioned such loss or lapse.<sup>46</sup>

In this case, the assailed dismissal was rendered on April 16, 2015. The RTC noted that the petitioners had until May 9, 2015 to file a motion for reconsideration. However, it was filed only on May 28, 2015, which was the reason for the RTC to deny the same. From the foregoing, it is obvious that the reason for petitioners’ wrong choice of remedy was that the period to appeal already lapsed without an appeal having been filed. Having lost their right and chance to file an appeal, petitioner instituted a petition for *certiorari*, which they thought was still available for them even under a time extension to file the same.

In *Villalon v. Lirio*,<sup>47</sup> the Court held that “even if, in the greater interest of substantial justice, *certiorari* may be availed of, it must be shown that the [lower court] acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The court must have exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.”<sup>48</sup>

In this case, petitioners foremost failed to convincingly explain why they failed to appeal the dismissal order of the trial court. After the dismissal by the RTC and within the time allowed, it was clear that they were neither prevented nor legally barred in filing an appeal. Consequently, when they belatedly filed their petition for *certiorari* before the CA, petitioners generally ascribed grave abuse of discretion against the trial court

<sup>45</sup> *Abadilla, Jr. v. Spouses Obrero*, 775 Phil. 419, 424-425 (2015).

<sup>46</sup> *Miranda v. Civil Service Commission*, G.R. No. 213502, February 18, 2019.

<sup>47</sup> 765 Phil. 474 (2015).

<sup>48</sup> *Id.* at 481, citing *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 630-631 (2006).

and tried to make it appear that appeal could not have been speedy and adequate remedy for them.

***None of the exceptions are applicable.***

Admittedly, there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal.<sup>49</sup> These are: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.<sup>50</sup>

In this case, the Court finds that none of the exceptions is present in this case. Aside from generally asserting that “unique circumstances” happened to their case, petitioners were not able to substantiate their allegation of the RTC’s violations of the rules.

***Ruiz, Jr. and Del Pozo, not applicable.***

In support of their submission that they can exceptionally avail of a petition for *certiorari*, petitioners cite the cases of *Ruiz, Jr.* and *Del Pozo*.

Petitioners’ reliance to these cases are mistaken.

In *Ruiz, Jr.*, the Court found that an appeal would have been neither speedy nor adequate for the plaintiffs and the cross-claimants had not been given a chance to prove their causes of action, hence, there was no evidence in the records upon which to anchor a judgment by the appellate court in their favor.

Meanwhile, in *Del Pozo*, there was a finding that in the proceedings during the trial, petitioners therein were denied of due process. Consequently, the Court found very special circumstances that warranted necessary suspension of rules to prevent miscarriage of justice and correct a very serious error the actuality of which was conceded by virtually all the parties.

Evidently, the factual milieu of the foregoing cases and the standpoint in which the filing of a petition for *certiorari*, despite availability of an appeal was allowed, differ with that of this case.

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<sup>49</sup> *Metropolitan Manila Development Authority v. Jancom Environmental Corp.*, 425 Phil. 961, 974 (2002).

<sup>50</sup> *Chua v. Santos*, 483 Phil. 392, 402 (2004).

***Relaxation of the procedural rules  
unwarranted.***

As to the procedural aspect, the CA dismissed the petition based also in the following defects: (1) failure to pay required docket fees and other lawful fees; (2) violation of Section 11, Rule 13 of the Revised Rules of Civil Procedure; (3) inconsistencies on Explanation and Proof of Service; (4) violation of Section 2(c), Rule VIII of the 2004 Rules on Notarial Practice; and (5) prayer for extension of 15 days to file a petition for *certiorari* not in accordance with prevailing jurisprudence.<sup>51</sup>

Relatedly, petitioners argue that mere technicalities should not be given preference but must yield to substantial justice and that the deficiency in the observance of the rules and should not be given undue importance.<sup>52</sup>

It is settled that the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. It must be stressed that *certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by the law and non-observance thereof may not be brushed aside as mere technicality.<sup>53</sup>

While there have been exceptional instances where the Court has set aside procedural defects to rectify patent injustice related to the liberal interpretation of the rules, the Court finds such reason lacking in this case.

All told, the Court dismisses the instant petition after finding that the challenged Resolutions failed to illustrate a reversible error and grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA. With the core issues in this case resolved, the Court sees no more reason to discuss petitioners' marginal arguments belatedly raised in their Reply.

**WHEREFORE**, the Petition is **DENIED**. The assailed May 30, 2016 and September 20, 2017 Resolutions of the Court of Appeals, Cebu City in CA-G.R. SP No. 09623–UDK are **AFFIRMED**.

**SO ORDERED.**

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<sup>51</sup> *Rollo*, pp. 35-36.

<sup>52</sup> *Id.* at 23.

<sup>53</sup> *Garcia, Jr. v. Court of Appeals*, 570 Phil. 188, 193 (2008).

**SO ORDERED.**

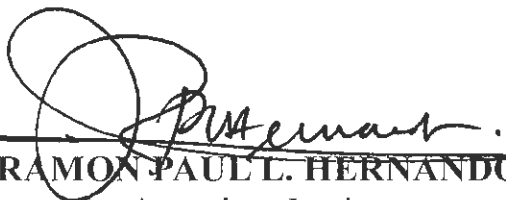


**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson



**RAMON PAUL L. HERNANDO**  
Associate Justice



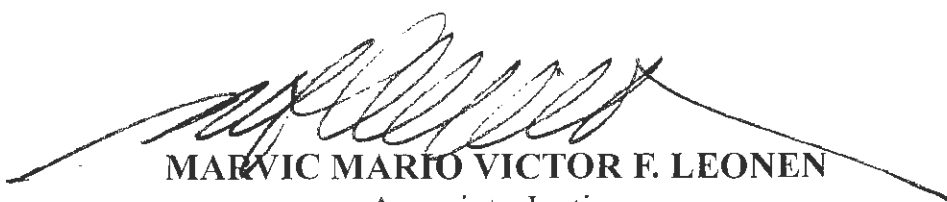
**HENRI JEAN PAUL B. INTING**  
Associate Justice



**JHOSEP Y. LOPEZ**  
Associate Justice

**ATTESTATION**

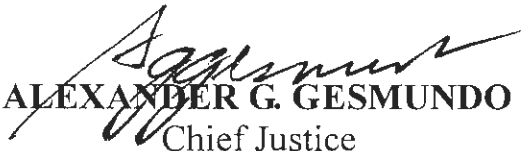
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
Chief Justice