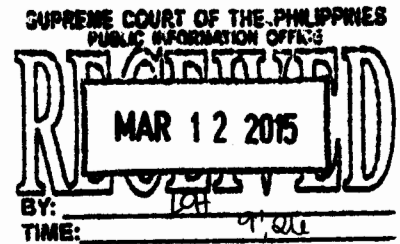




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **25 February 2015** which reads as follows:

¹G.R. No. 216075 – *Juanito Victor C. Remulla, Jr., petitioner vs. The Hon. Court of Appeals, Hon. Office of the Ombudsman, and Emmanuel L. Maliksi, respondents.*

On March 12, 2013, this Court rendered a Decision in a case entitled *Mayor Emmanuel L. Maliksi vs. Commission on Elections and Homer T. Saquilayan* and docketed as G.R. No. 203302,¹ the dispositive portion of which reads:

WHEREFORE, we DISMISS the petition. We AFFIRM the Resolution promulgated on 14 September 2012 by the Commission on Elections *En Banc* which affirmed the 15 August 2012 Resolution of the Commission on Elections First Division declaring HOMER T. SAQUILAYAN as the duly-elected Municipal Mayor of Imus, Cavite. We LIFT the temporary restraining order issued on 11 October 2012. This decision is IMMEDIATELY EXECUTORY considering that the remainder of Saquilayan's term of office is only less than five (5) months.

SO ORDERED.²

Consequent thereto, the Commission on Elections (COMELEC) *En Banc* ordered the issuance of the Writ of Execution ordering Mayor Emmanuel L. Maliksi (Maliksi) to cease and desist from performing his functions as mayor and to vacate the office in favor of Homer T. Saquilayan (Saquilayan).

On March 18, 2013, petitioner Juanito Victor Remulla, Jr., being the Governor of the Province of Cavite, accompanied the personnel of the COMELEC in implementing the writ. However they were not able to enter the premises of the City Hall as it was barricaded by the supporters of Maliksi. Petitioner then climbed the iron gate to have access to the City Hall and assist the COMELEC personnel in installing Saquilayan as the lawful Mayor of Imus City. Apparently from these acts of petitioner stemmed the filing of charges for Grave Abuse of Authority and Grave Misconduct against him before the Office of the Ombudsman.

Ruling of the Ombudsman

On October 17, 2013, the Ombudsman rendered a Decision,³ the decretal portion of which reads:

¹693 SCRA 214.

²*Id.* at 255.

³No copy was attached to the Petition.

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WHEREFORE, under the premises, we find Governor Juanito Victor C. Remulla, Province of Cavite, guilty of Conduct Prejudicial to the Best Interest of the Service and he is meted the administrative penalty of Suspension for Six Months and One Day. Said penalty, however, cannot be implemented against him by virtue of the Aguinaldo doctrine.⁴

Petitioner moved for reconsideration but the same was denied by the Ombudsman. Petitioner filed a Petition for *Certiorari* before the Court of Appeals.

Ruling of the Court of Appeals (CA)

On June 26, 2014, the CA issued the first assailed Resolution⁵ dismissing petitioner's Petition for *Certiorari* for not being the proper remedy and for having been filed out of time. The CA ratiocinated that –

At the outset, the Court notes that although captioned as a Petition for Review, the petitioner stated that the nature of the action is a Petition for *Certiorari* under Rule 65 of the Rules of Court and the ground relied upon for the allowance of the petition is that the public respondent had acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed decision and order.

However, upon perusal of the record, the petition seeks to annul issuances of the Office of the Ombudsman, in OMB-L-A-13-0215, to wit: (1) Decision dated October 17, 2013 finding petitioner guilty of Conduct Prejudicial to the Best Interest of the Service with a penalty of suspension of six (6) months and one (1) day; and (2) Order dated February 10, 2014 denying his motion for reconsideration.

The proper remedy under the premises is a Petition for Review under Rule 43 of the Rules of Court not a Petition for *Certiorari* under Rule 65 of the Rules of Court.

x x x x

The Petition was filed out of time.

x x x x

The records show that on April 8, 2014, petitioner received the copy of the Order dated February 10, 2014, denying petitioner's Motion for Reconsideration. According to the Rules, petitioner has fifteen (15) days, or until April 23, 2014 within which to file a Petition for Review. The Petition for Review was filed on May 23, 2014, or late by thirty (30) days.⁶

⁴See Petition, p. 5; *rollo*, p. 7.

⁵*Rollo*, pp. 26-30; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicedican and Michael L. Elbinias.

⁶*Id.* at 26-28.

The dispositive portion of the assailed Resolution reads:

IN VIEW WHEREOF, the Petition for Review is DISMISSED.⁷

Petitioner moved for reconsideration but the CA denied the same in its second assailed Resolution promulgated on November 20, 2014.⁸

Hence, petitioner filed the instant Petition for *Certiorari*⁹ under Rule 65 of the Rules of Court. For resolution before this Court is the issue of whether the CA erred in dismissing petitioner's Petition for *Certiorari* for not being the correct mode of appeal and its being filed out of time.

We dismiss the Petition.

We note that the Petition lacks verified statement of material dates of receipt of the assailed Resolution and filing of the motion for reconsideration as required in Rule 65, Section 4, in relation to Rule 46, Section 3, of the Rules of Court. Petitioner's failure to comply with this requirement is sufficient ground for the dismissal of the Petition.

Even if we brush aside such infirmity, the Petition must still be dismissed there being no grave abuse of discretion on the part of the CA.

Petitioner argues that there being grave abuse of discretion on the part of the Ombudsman in finding him guilty of Conduct Prejudicial to the Best Interest of the Service, the appropriate remedy for the denial of his Motion for Reconsideration thereto is to elevate the case to the CA by way of a special civil action for *Certiorari* under Rule 65 of the Rules of Court and not an appeal from said order under Rule 43. Hence, the CA should not have dismissed his Petition for *Certiorari*.

We are not persuaded.

The CA's dismissal of petitioner's Petition for *Certiorari* was proper. The mode of appeal assailing the decision of the Ombudsman adopted by petitioner was undoubtedly wrong. He should have filed a Petition for Review under Rule 43 of the Rules of Court as clearly set forth in Section 7, Rule 111 of the Rules of Procedure of the Office of the Ombudsman as amended by Administrative Order No. 17, which reads:

Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the**

⁷Id. at 29.

⁸Id. at 31-32.

⁹Id. at 3-25.

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decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written notice of the decision or order denying the motion for reconsideration. (Emphasis supplied)

It is a basic rule in jurisprudence that *certiorari* cannot be availed of when the party has adequate remedy such as an appeal. Where appeal is available, *certiorari* will not prosper even if the ground availed of is grave abuse of discretion.¹⁰ Fundamental too is the rule that provisions of law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements, essential to enable the appellate court to take cognizance of the appeal.

We also agree with the CA that, even if the Petition for *Certiorari* be treated as a Petition for Review, the same must still fail for being filed out of time. Section 4 of Rule 43 provides:

SEC. 4. *Period of appeal.* - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

As correctly noted by the CA, petitioner's Petition was filed 30 days late. He received a copy of the Ombudsman Order denying his motion for reconsideration on April 8, 2014. As such, he had until April 23, 2014 to file his Petition for Review. Records, however, show that petitioner filed his Petition only on May 23, 2014.

Incidentally, we quote with approval the following discussion of the CA:

Petitioner's re-election as governor of the Province of Cavite has rendered the administrative case and the appeal moot and academic. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merit. Courts will not determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.¹¹

¹⁰ *Tible and Tible Company, Inc. vs. Royal Savings and Loan Association*, 574 Phil. 20, 33 (2008).

¹¹ *Id.* at 29.

In view of the foregoing, the assailed June 26, 2014 Resolution of the CA was not tainted with abuse of discretion much more grave but anchored on legal and valid grounds. Consequently, we find no necessity to dwell on the other issues raised by petitioner considering that this Court did not acquire jurisdiction over the instant Petition through the fault of the petitioner. (*J. Velasco, Jr., designated Acting Member in view of the leave of absence of J. Brion, per Special Order No. 1910 dated January 12, 2015*).

ACCORDINGLY, the Petition for *Certiorari* is **DISMISSED**.

SO ORDERED. "

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court ^{my 3/4}

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