



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 2, 2020 which reads as follows:

“G.R. NO. 247815 (ERLINDA F. ATIENZAR, ET AL. v. THE HEIRS OF EDUARDO BANGOY, ET AL.).- The Court resolves to **DENY** the petition for *certiorari* for a) being a wrong mode of appeal; and b) having been filed out of time.

First. The proper remedy to question the Court of Appeals’ judgment, final order or resolution is *via* Rule 45 or a petition for review on *certiorari*, *viz.*:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Supreme Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.¹

On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure

¹ *Albor v. Court of Appeals*, 823 Phil. 901, 909 (2018).

or mistakes in the findings or conclusions of the lower court. As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.²

Here, appeal *via* Rule 45 was not only available but also a speedy and adequate remedy. Clearly, petitioners availed of a wrong remedy *via* a petition for *certiorari* before the Court.

Second. Section 2, Rule 45 of the Rules of Court prescribes a fifteen (15)-day period to file a petition for review on *certiorari*, *viz.*:

Section 2. Time for filing; extension. The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Here, petitioners received the Court of Appeals' Resolution dated March 15, 2019 denying their motion for reconsideration on April 15, 2019. Hence, they had until April 30, 2019 within which to file a petition for review on *certiorari* to the Court. As it was, however, they filed a petition for *certiorari* on June 15, 2019 or forty-six (46) days late.

We emphasize that *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.³ By filing a special civil action for *certiorari* under Rule 65, petitioners availed themselves of the wrong remedy.

Third. Even assuming that a petition for *certiorari* is the proper remedy, the same must still fail.

² *Id.* at 920.

³ *Supra* note 1, at 910-911.

As shown, the Court of Appeals dismissed the petition for *certiorari* in view of not just one, but three procedural defects, *i.e.* non-payment of docket fees, incomplete statement of material dates, and failure to state the names and addresses of respondents. On this score, Section 3, Rule 46 of the Rules of Court provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. x x x

XXXX

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

It is settled that payment of appeal docket fees is both mandatory and jurisdictional. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. The failure to pay or even the partial payment of the appeal fees does not toll the running of the prescriptive period, hence, will not prevent the judgment from becoming final and executory.⁴

As for the material dates rule, *Oasis Park Hotel v. Navaluna*⁵ citing *Vinuya v. Romulo*, ordained:

⁴ *National Transmission Commission v. Heirs of Teodulo Ebesa*, 781 Phil. 594, 603-604 (2016).

⁵ 800 Phil. 244, 264-265 (2016).

x x x. To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed. **The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari*.** The *Court* emphasized three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.** x x x.
(Emphasis supplied)

Finally, Section 3, Rule 46 of the Rules of Court expressly requires that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory. Thus, petitioners' failure to comply with this requirement is a sufficient ground for the dismissal of their petition.

Verily, based on the rules and jurisprudence, the Court of Appeals did not commit grave abuse of discretion when it dismissed the petition.

In any event, the right to appeal is not a natural right or a part of due process but a mere statutory privilege. Thus, the perfection of an appeal **in the manner and within the period prescribed** is not only mandatory but also jurisdictional. The failure of the appellant to conform with the rules on appeal renders the judgment final and executory.⁵ So must it be.

True, a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are

⁵ See *Petalver v. People*, G.R. No. 242107, January 16, 2019.

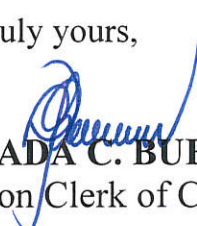
required to be followed except only for the most persuasive of reasons.⁶

WHEREFORE, the petition is **DENIED** and the Court of Appeals' twin Resolutions dated June 29, 2018 and March 15, 2019 in CA-G.R. SP No. 08776-MIN, **AFFIRMED**.

The private respondents Heirs of Eduardo Bangoy's: (1) urgent motion for an extension of ten (10) days from November 4, 2019 within which to file a comment on the petition for certiorari is **GRANTED**, and (2) the aforesaid comment is **NOTED**. The filing of comment of respondents Lorna Jane Bangoy Embudo, the Heirs of Marian Bangoy-Cabanan, and the Heirs of Gaspar Bangoy, is **DISPENSED WITH**.

SO ORDERED." *PERALTA, C.J.*, on official business.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{At 8/27}

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The Presiding Judge
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(Civil Case No. CC21-2013)

⁶ *Bethel Realty and Development Corporation v. Housing and Land Use Regulatory Board*, 690 Phil. 304, 319-320 (2012).

