



Republic of the Philippines
Supreme Court
Manila

EN BANC

EBRENCIO F. INDOYON, JR.,
Municipal Treasurer, Lingig,
Surigao del Sur,
Petitioner,

G.R. No. 193706

Present:

- versus -

**COURT OF APPEALS, Twenty-
Second Division, Cagayan de Oro
City,**
Respondent.

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,*
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ*.

Promulgated:

March 12, 2013

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DECISION

SERENO, *CJ*:

This is a Petition for Certiorari filed under Rule 65 of the Revised Rules of Court asking this Court to determine once again whether the Court of Appeals, Cagayan de Oro City (CA) committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on Certiorari. The

* On official leave.

Petition assails the 05 June 2009 and 16 July 2010 Resolutions in CA-G.R. SP No. 02855-MIN of the CA.¹

FACTS

Petitioner Ebrencio F. Indoyon, Jr., was the municipal treasurer of the Municipality of Lingig, Surigao del Sur, with Salary Grade 24.² On 8 August 2005, upon examination of his cash and accounts covering the period 22 June 2005 to 8 August 2005, the Commission on Audit (COA) – through State Auditor III Lino A. Bautista (Auditor Bautista) – discovered that petitioner had incurred a cash shortage in the amount of ₱1,222,648.42.³

In an undated letter to petitioner, Auditor Bautista demanded the immediate production of the missing funds and the submission of a written explanation of the shortage.⁴

On 19 September 2005, petitioner replied with a letter addressed to the provincial auditor of Surigao del Sur, admitting therein that the former had personally used the amount of ₱652,000 to put up a project to supplement his income, and that he had allowed other municipal officials and employees to use as cash advances his collections as municipal treasurer.⁵

On 15 March 2006, a Formal Charge for Violation of COA Rules and Regulations was filed against petitioner before the Bureau of Local Government Finance, Department of Finance (BLGF-DOF), CARAGA Administrative Region, Butuan City. The case was docketed as ADM Case No. BLGF-08-0108.⁶

Meanwhile, a letter-complaint dated 6 December 2006 was sent by the Regional Legal and Adjudication-Commission on Audit to the Deputy Ombudsman, Office of the Ombudsman-Mindanao (Ombudsman). It recommended the filing of a criminal case for malversation and an administrative case for dishonesty and grave misconduct against petitioner.⁷

In its Decision dated 2 October 2008, the BLGF-DOF found petitioner guilty of “simple neglect of duty.” The dispositive portion of the Decision reads:

¹ The Resolution dated 05 June 2009 was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Edgardo A. Camelo and Ruben C. Ayson, while the Resolution dated 16 July 2010 was penned by Associate Justice Edgardo A. Camelo and concurred in by Associate Justices Leoncia R. Dimagiba and Nina G. Antonio-Valenzuela.

² *Rollo*, p. 75; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008, p. 1.

³ *Id.* at 75-76; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008, p.1-2.

⁴ *Id.* at 76; p. 2.

⁵ *Id.*

⁶ *Id.* at 40; Annex A of Petition; Formal Charge dated 15 March 2006.

⁷ *Rollo*, p. 63; Annex G of Petition; letter-complaint to the Deputy Ombudsman dated 6 December 2006.

PREMISES CONSIDERED, [r]espondent Indoyon is hereby found guilty of **Simple Neglect of Duty**. Considering the evidence that Respondent has taken undue advantage of his position, the penalty imposed is the maximum period which is **six (6) months suspension** from the service without pay. Let copies hereof be furnished the parties concerned and this Bureau advised accordingly.

Let the copies hereof be furnished the parties concerned and this Bureau advised accordingly.

SO ORDERED.⁸ (Emphasis supplied)

On 27 November 2008, petitioner filed a Request for Reconsideration of the BLGF-DOF Decision seeking a modification of the administrative penalty by the reduction thereof from suspension to the imposition of a fine.⁹ The request was partially granted in a Resolution dated 2 February 2009. Thus, instead of a six-month suspension, a fine in an amount equivalent to the six-month salary of petitioner was imposed on him.¹⁰

Meanwhile, on 30 April 2008, the Ombudsman rendered a Decision in Case No. OMB-M-A-07-024-A finding petitioner guilty of serious dishonesty and grave misconduct and imposing upon him the penalty of dismissal from the service.¹¹ On 13 March 2009, he filed a Motion for Reconsideration of the Decision, alleging that the jurisdiction over the same administrative Complaint filed before the Ombudsman had first been acquired by the BLGF-DOF.¹² Petitioner alleged that the two administrative cases were one and the same because of their identity of issues, facts and parties. The Ombudsman, however, maintained that the two cases were not identical and accordingly denied petitioner's Motion for Reconsideration.¹³

To enjoin the implementation of the Ombudsman's Decision, petitioner filed a Petition for Review on Certiorari under Rule 43 with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA. The case was docketed as CA-G.R. SP No. 02855-MIN.¹⁴ In a Resolution dated 5 June 2009, the Petition was dismissed on the ground that it suffered not just one technical infirmity, but several technical infirmities that violated various circulars and issuances of this Court.¹⁵

Petitioner's Motion for Reconsideration,¹⁶ praying for the relaxation of the procedural rules in the interest of substantial justice, was denied by the CA in a Resolution dated 16 July 2010.¹⁷

⁸ Id. at 55; Annex D of Petition; Decision of the BLGF-DOF dated 2 October 2008, p. 5.

⁹ Id. at 56-59, Annex E of Petition; Request for Reconsideration dated 27 November 2008.

¹⁰ Id. at 60-62, Annex F of Petition; Resolution of BLGF-DOF dated 2 February 2009.

¹¹ Id. at 75-86; Annex K of Petition; Decision of the Ombudsman dated 30 April 2008.

¹² Id. at 87-91; Annex L of Petition; Motion for Reconsideration dated 13 March 2009.

¹³ *Rollo*, pp. 92-96; Annex M of Petition; Order of the Ombudsman dated 13 April 2009.

¹⁴ Id. at 97-107; Annex N of Petition; CA Petition dated 7 April 2009.

¹⁵ Id. at 108-110; Annex O of Petition; CA Resolution dated 5 June 2009.

¹⁶ Id. at 111-118; Annex P of Petition; Motion for Reconsideration dated 1 July 2009.

¹⁷ Id. at 140-143; Annex R of Petition; CA Resolution dated 16 July 2010.

In the meantime, on 24 February 2010, the BLGF-DOF sent a letter to the ICO-Regional Director, BLGF-DOF, Caraga, directing the implementation of the Ombudsman's Decision dated 30 April 2008 dismissing petitioner from the service.¹⁸

Hence this Petition.

The Solicitor General filed his Comment on 21 February 2011 and petitioner his Reply on 29 March 2011.

ISSUE

The issue for resolution is whether the CA committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on Certiorari on the ground of noncompliance with the Rules of Court and Supreme Court circulars.

THE COURT'S RULING

The Petition is dismissed for being devoid of merit.

Discussion

This Petition invokes the liberality of the Court and considerations of substantial justice in seeking to overturn the Resolutions of the CA. For noncompliance with the Rules of Court and Supreme Court circulars, the Petition filed by petitioner with the CA was properly dismissed. And yet, in the instant Petition, he once again ignores the Rules of Court and a circular issued by this Court.

Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is a petition for review on certiorari. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.

By filing a special civil action for *certiorari* under Rule 65, petitioner therefore clearly availed himself of the wrong remedy. Under Supreme Court Circular 2-90,¹⁹ an appeal taken to this Court or to the CA by a wrong

¹⁸ Id. at 136-137; Annex Q of Petition; BLGF-DOF Letter dated 24 February 2010.

¹⁹ GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT dated 9 March 1990.

or an inappropriate mode merits outright dismissal.²⁰ On this score alone, the instant Petition may be dismissed.

In *Ybanez v. Court of Appeals*,²¹ we have said that the Court cannot tolerate this ignorance of the law on appeals. It has in fact reproached litigants who have sought to delegate to this Court the task of determining under which rule their petitions should fall. In the cited case, we emphasized that paragraph 4(e) of Supreme Court Circular 2-90 specifically warns litigants' counsels to follow to the letter the requisites prescribed by law on appeals. This provision reads:

Duty of counsel. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

The inexcusability of this disregard for the rules becomes even more glaring, considering that petitioner has previously shown grave indifference to technical rules before the CA. As already explained above, the assailed CA Resolution properly dismissed his Petition for failure to comply with procedural rules. He should have learned his lesson from that experience instead of repeating the same disregard for the rules before this Court.

We reiterate that under Supreme Court Circular 2-90, the filing of an improper remedy of special civil action for *certiorari* under Rule 65, when the proper remedy should have been to file a petition for review on *certiorari* under Rule 45, merits the outright dismissal of a Petition such as this one.

We remind petitioner, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules.²² This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the Rules.

In any event, even if we were to be liberal and overlook our own Circular 2-90, we rule that there was no grave abuse of discretion on the part of the CA in dismissing, for technical infirmities, the Petition for Review on *Certiorari* filed by petitioner under Rule 43.

²⁰ *Villaran v. Department of Agrarian Reform Adjudication Board*, G.R. No. 160882, 7 March 2012; *Sea Power Shipping Enterprises v. Court of Appeals*, 412 Phil. 603 (2001).

²¹ 323 Phil. 643 (1996).

²² *Panay Railways, Inc. v. Heva Management and Development Corporation*, G.R. No. 154061, 25 January 2012; *Daikoku Electronics Phils., Inc v. Raza*, G.R. No. 181688, 5 June 2009, 588 SCRA 788; *Suzuki v. De Guzman*, 528 Phil. 1033 (2006); *Zaragoza v. Nobleza*, G.R. No. 144560, 13 May 2004, 428 SCRA 410; *El Reyno Homes, Inc. v. Ernesto Ong*, 445 Phil. 612 (2003); *Lazaro v. CA*, 386 Phil. 412 (2000); *Ginete, et al. v. CA*, 357 Phil. 36 (1998); *Ditching v. CA*, 331 Phil. 665 (1996); *Pedrosa v. Hill*, 327 Phil. 153 (1996); *Galang v. CA*, 276 Phil. 748 (1991).

At the outset, we emphasize that a writ of *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right.²³ To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.²⁴

Applying the above definition to the instant case, we find that there is no basis to ask this Court to hold the CA guilty of grave abuse of discretion when the latter was simply implementing the rules that we ourselves have set forth in several circulars. We quote hereunder the pertinent part of the assailed CA Resolution:

However, the Petition suffers from several infirmities rendering the Petition fatally defective.

First, no Affidavit of Service was attached to the Petition, in violation of Supreme Court Revised Circular Nos. 1-88 and 19-91, and of Section 13 of Rule 13 of the Rules of Court. They respectively read:

Supreme Court Revised Circular Nos. 1-88:

“(2) Form and Service of petition

A petition file (under) Rule 45, or under Rule 65, or in a motion for extension **may be denied outright** if it is not clearly legible, or **there is no proof of service on the lower court, tribunal, or office concerned and on the adverse party** in accordance with Section 3, 5 and 10 of Rule 13, attached to the petition or motion for extension when filed.” (Emphasis in the original)

Supreme Court Revised Circular Nos. 19-91:

“Effective September 15, 1991, henceforth, **a petition** or motion for extension filed **before this Court shall be dismissed/ denied outright if there is no such proof of service** in accordance with Sections 3 and 5 in relation to Section 10 of Rule 13 of the Rules of Court attached to the petition/motion when filed.” (Emphasis in the original)

Section 13 of Rule 13 of the Rules of Court:

“Sec. 13. Proof of Service.

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an

²³ *Angeles v. Gutierrez*, G.R. Nos. 189161 & 189173, 12 March 2012.

²⁴ *Roquero v. The Chancellor of UP-Manila*, G.R. No. 181851, 9 March 2010, 614 SCRA 723.

affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If **service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office.** The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.” (Emphasis in the original)

Second, The office of the Ombudsman is impleaded as nominal party in the Petition for Review, which is not in accordance with Section 6 of Rule 43 of the Rules of Court, stating as follows:

“SEC. 6 Contents of the Petition.-The petition for review shall (a) state the full names of the parties to the case, **without impleading the court or agencies** either as petitioners or respondents.” (Emphasis in the original)

Last, the Court of Origin, as well as the Case Number and the Title of the action are not indicated in the Caption of the Petition. This is in contravention of Supreme Court Circular No. 28-91, which requires that:

“1. Caption of petition or complaint. **The caption of the petition or complaint must include the docket number of the case in the lower court of quasi-judicial agency whose order or judgment is sought to be reviewed.**

x x x x x x x x x

“3. Penalties.

(a) **Any violation of this Circular shall be a cause for the summary dismissal of the, multiple petition or complaint;** x x x.

IN VIEW OF ALL THESE, the Petition is DISMISSED.

SO ORDERED.”²⁵ (Emphasis in the original)

There is no question that the CA was simply applying the rules laid down by this Court. In fact, petitioner does not question the proper application of the technical rules by the CA. It is precisely for this reason that he is merely invoking the liberal application of those rules. We also note that not only one but several rules have not been complied with.

We emphasize that an appeal is not a matter of right, but of sound judicial discretion. Thus, an appeal may be availed of only in the manner provided by law and the rules.²⁶ Failure to follow procedural rules merits the dismissal of the case, especially when the rules themselves expressly say so, as in the instant case. While the Court, in certain cases, applies the policy of liberal construction, this policy may be invoked only in situations in which there is some excusable formal deficiency or error in a pleading, but not

²⁵ *Rollo*, pp. 108-110, CA Resolution dated 5 June 2009.

²⁶ *Muñoz v. People of the Philippines*, G.R. No. 162772, 14 March 2008, 548 SCRA 473.

when the application of the policy results in the utter disregard of procedural rules, as in this case.²⁷

We dread to think of what message may be sent to the lower courts if the highest Court of the land finds fault with them for properly applying the rules. That action will surely demoralize them. More seriously, by rendering for naught the rules that this Court itself has set, it would be undermining its own authority over the lower courts.

Finally, we note that for a proper invocation of the remedy of certiorari under Rule 65 of the Revised Rules of Court, one of the essential requisites is that there be no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

As already discussed earlier, the proper remedy of petitioner should have been to file a petition for review on certiorari. We cannot help but suspect that his failure to avail himself of that remedy within the reglementary period of 15 days was the reason he filed, instead, the present special civil action. A special civil action provides for a longer period of 60 days from notice of the assailed judgment, order or resolution. We note that the instant Petition was filed 35 days after that notice, by which time petitioner had therefore lost his appeal under Rule 45. In *Republic of the Philippines v. Court of Appeals*,²⁸ we dismissed a Rule 65 Petition on the ground that the proper remedy for the petitioner therein should have been an appeal under Rule 45 of the Rules of Court. In that case, we stressed how we had time and again reminded members of the bench and the bar that a special civil action for certiorari under Rule 65 lies only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Thus, *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. *Certiorari* is not a substitute for a lost appeal.²⁹

WHEREFORE, premises considered, the instant Petition is **DISMISSED**. The 05 June 2009 and 16 July 2010 Resolutions of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 02855-MIN are hereby **AFFIRMED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

²⁷ *BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.*, G.R. No. 188365, 29 June 2011; *Dadizon v. Court of Appeals*, G.R. No. 159116, 30 September 2009, 601 SCRA 351.

²⁸ 379 Phil. 92 (2000).

²⁹ *Id.*

WE CONCUR:



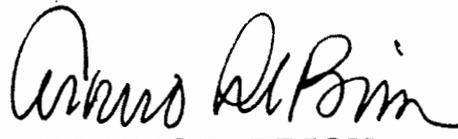
ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



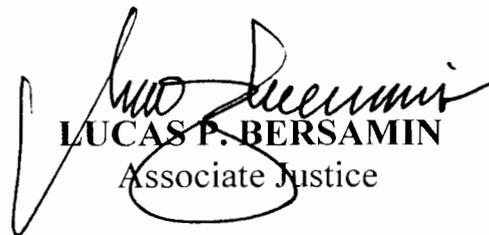
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

(On official leave)
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



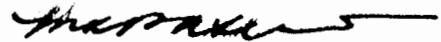
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



MARIA LOURDES P. A. SERENO
Chief Justice