



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 4, 2022 which reads as follows:

“G.R. No. 227458 (*The Municipal Government of San Mateo, Province of Isabela, represented by its Mayor Crispina Agcaoili, M.D. and Atty. Alfredo S. Remigio in his capacity as the Municipal Legal Officer of the Municipality of San Mateo, Isabela vs. Court of Appeals and Globe Telecom, Inc.*).- Before the Court is a Petition for *Certiorari*¹ dated 13 September 2016 under Rule 65 of the Rules of Court assailing the Resolutions of the Court of Appeals dated 29 September 2015² and 28 June 2016³ in CA G.R. CV No. 102546, which dismissed the appeal of petitioner The Municipal Government of San Mateo, Province of Isabela and denied its motion for reconsideration, respectively.

Pursuant to Section 5, Article X, the Constitution, and Secs. 129 and 186, Local Government Code of 1991, the Municipal Government of San Mateo, Province of Isabela (petitioner municipality) enacted San Mateo Municipal Ordinance No. 2005-491, 27 June 2005, titled “*An Ordinance Imposing Regulatory Fee Known as Annual Antenna/Tower fee for the Operation of all Citizens Band (CB), Very High Frequency [VHF]/Ultra High Frequency [UHF] and Cellular Sites/Relay Stations Private and Commercial within the Municipality.*” Petitioner municipality sent notices to the *barangay* officials, concerned citizens, business establishments, and entities within its territorial jurisdiction including private respondent, Globe. Petitioner municipality conducted public hearings. However, despite notice, no representative from Globe attended. After publication and validation, the ordinance took effect on 27 June 2005, and notices of

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¹ *Rollo*, pp. 5-22.

² *Id.* at 27-28; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Marlene Gonzales-Sison and Nina G. Antonio-Valenzuela.

³ *Id.* at 32-33.

assessment were sent to all those doing business with petitioner municipality, including Globe. Thereafter, several demand letters were issued to Globe to settle its tax accountabilities starting from 27 June 2005 and onwards, or amounting to Php 1,100,000.00. Globe, however, refused to pay as it claimed that the imposition of the tower fee was vague and in violation of Secs. 130 and 186, Chapter 5, Title One, Book II, Local Government Code. Thus, on 26 September 2011, before the Municipal Trial Court of San Mateo, Isabela, petitioner municipality (joined by its Municipal Legal Officer, Atty. Alfredo S. Remigio) filed a Criminal Complaint for violation of the ordinance against Globe's President, Mr. Ernest L. Cu.⁴ On 28 December 2011, before the Regional Trial Court (RTC) of Cauayan City, Globe likewise filed a Complaint for the Declaration of Nullity of Ordinance No. 2005-491 with Prayer for a Writ of Preliminary Injunction and/or TRO against petitioners.⁵ Globe alleged that the fees imposed under the subject ordinance were excessive, confiscatory, and without bases. It further claimed that it was not furnished with notices of hearing, thus, deprived of its right to due process.⁶

In a Decision dated 11 July 2013,⁷ the RTC of Cauayan City declared San Mateo Municipal Ordinance No. 2005-491, 27 June 2005, as invalid, illegal and unconstitutional. Petitioners, through counsel, moved for reconsideration which was denied in an Order dated 27 January 2014.⁸ Thus, petitioners filed a notice of appeal.

In the assailed Resolution dated 29 September 2015, the CA considered the petitioners' appeal as abandoned and dismissed due to their failure to comply with the Resolution dated 22 April 2015 requiring their counsel to submit proof of receipt by the opposing counsel of their brief pursuant to Sec. 7, Rule 44,⁹ 1997 Rules of Civil Procedure. It further reminded that appeal is never demandable as a matter of right and that it may be dismissed for failure to comply with the court's orders, circulars, or directives without justifiable cause.¹⁰

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⁴ Id. at 172.

⁵ Id. at 34-58.

⁶ Id.

⁷ Id. at 82-97.

⁸ Id. at 111.

⁹ Section 7. *Appellant's brief* - It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

¹⁰ Id. at 27-28.

Petitioners moved for reconsideration and explained that they served the required brief to the opposing counsel and the OSG by registered mail on 5 January 2015, and they had no intention to abandon the appeal.¹¹

However, in the assailed Resolution dated 28 June 2016,¹² the appellate court denied petitioners' motion. It held that while it is true that the opposing counsel received the brief, petitioners, however, did not explain why they failed to comply with the Resolution dated 22 April 2015. The appellate court pointed out that the records showed that petitioners' counsel received the 22 April 2015 Resolution on 13 May 2015, yet, it was only on 20 October 2015 when they requested a certification from the Postmaster General to confirm the actual date of receipt by the opposing counsel of their brief, way beyond the 10-day deadline provided by the CA.¹³

Hence, the instant Petition for *Certiorari* under Rule 65 of the Rules of Court raising grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the CA when it dismissed the appeal due to petitioners' failure to comply with the resolution which required their counsel to submit proof of receipt by the opposing counsel of the appeal brief pursuant to Sec. 7, Rule 44, Rules of Court.¹⁴

This petition must be denied.

The proper remedy to question a CA 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, xxxx whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. xxxx and shall raise only questions of law which must be distinctly set forth.

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¹¹ *Rollo*, pp. 141-143.

¹² *Id.* at 32-33.

¹³ *Rollo*, p. 147.

¹⁴ *Rollo*, pp. 5-22.

Under Rule 45, decisions, final orders, or resolutions of the appellate court 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 on *certiorari*, which would be but a continuation of the appellate process over the original case.¹⁵

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 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 on *certiorari* under Rule 45 of the Rules of Court.¹⁶

Petitioners received on 15 July 2016 the CA Resolution dated 28 June 2016 denying their motion for reconsideration. Hence, they had until 30 July 2016 within which to file a petition for review on *certiorari*. However, instead of filing an appeal from the foregoing or a petition for review on *certiorari*, petitioners opted to file a petition for *certiorari* under Rule 65 of the Rules of Court when appeal under Rule 45 was not only available but was also a speedier and adequate remedy.

To emphasize, *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but has been lost through fault or negligence. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of. By filing a special civil action for *certiorari* under Rule 65, petitioners availed themselves of the wrong remedy.¹⁷

Further, even if we were to overlook the procedural error, the petition still fails as petitioners did not explain nor justify their non-compliance with the CA Resolution dated 22 April 2015 which required their counsel to submit proof of receipt by the opposing counsel of their brief.

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¹⁵ *Albor vs. Court of Appeals*, 823 Phil. 901, 909 (2018).

¹⁶ *Id.*

¹⁷ *Atianzar vs. Heirs of Bangoy*, G.R. No. 247815, 2 March 2020.

Section 7, Rule 44, 1997 Rules of Civil Procedure, provides:

Section 7. *Appellant's brief* - It shall be the **duty of the appellant to file with the court**, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, **seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.** (Emphasis Ours)

Corollarily, the appellate court may dismiss petitioners' appeal. Paragraph (e), Sec. 1, Rule 50, 1997 Rules of Civil Procedure, provides:

Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) **Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.** (Emphasis Ours)

Thus, the CA may dismiss an appeal for failure of the appellants to serve and file the required number of copies of their brief or memorandum within the time provided by the resolution or by the Rules. This is a power conferred on the court.

Herein petitioners received on 13 May 2015 the CA Resolution dated 22 April 2015 which required petitioners' counsel to submit the proof of receipt by the opposing counsel of the appeal brief within 10 days. However, as pointed out by the appellate court, petitioners complied only after the lapse of more than 5 months from receipt of the resolution, or on 20 October 2015 when they requested a certification from the Postmaster General to confirm the actual date of receipt by the opposing counsel of the appeal brief.¹⁸ Notably, despite the service of the copies of the appeal brief to the opposing counsel, petitioners still failed to submit the proof of service of the aforesaid brief to the CA.

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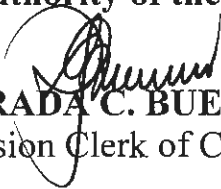
¹⁸ *Rollo*, p. 147.

To reiterate, the right to appeal is not a natural right but a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.¹⁹ Although a liberal application of the rules of procedure in a number of cases has been resorted to, this can be invoked only in proper cases and under justifiable causes and circumstances.²⁰ In the instant case, petitioners failed to cite any reasonable cause to justify their non-compliance with the CA Resolution of 22 April 2015 and the Rules in availing of a wrong remedy. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.²¹ The appellate court, therefore, rightly considered the appeal as abandoned and consequently dismissed the same.

WHEREFORE, premises considered, the petition is **DISMISSED**. The assailed Court of Appeals' Resolutions dated 29 September 2015 and 28 June 2016 in CA G.R. CV No. 102546 are **AFFIRMED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *k-1118*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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The Hon. Presiding Judge
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Cauayan City, 3305 Isabela
(Civil Case No. 20-3082)

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¹⁹ *Kumar vs. People*, G.R. No 247661, 15 June 2020.

²⁰ *Landbank vs. CA*, 789 Phil 577, 583 (2016).

²¹ See *Albor vs. Court of Appeals*, 823 Phil. 901, 911-912 (2018).

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