

Republic of the Philippines  
**Supreme Court**  
Manila

FIRST DIVISION

**HADJA RAWIYA SUIB,**  
Petitioner,

G.R. No. 182375

Present:

- versus -

SERENO, C. J.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

**EMONG EBBAH and the  
HONORABLE COURT OF  
APPEALS, 22<sup>ND</sup> DIVISION,  
MINDANAO STATION,  
CAGAYAN DE ORO CITY,**  
Respondents.

Promulgated:

**DEC 02 2015**

x ----- x

**DECISION**

**PEREZ, J.:**

Before us is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Court of Appeals Resolutions<sup>1</sup> dated 9 October 2007 and 26 February 2008, in CA-G.R. SP No. 00985-MIN, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts as culled from the records are as follows:

Petitioner Hadja Rawiya Suib's (Suib) husband, Saab Hadji Suib (deceased), was the owner of a parcel of land with a total area of 12.6220

<sup>1</sup> CA rollo, pp. 176-177 and 220-221; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

hectares, located in Sapu Masla, Malapatan, Sarangani Province, covered by OCT No. P-19714, which he acquired through a duly notarized Deed of Absolute Sale from Sagap Hadji Taib on 14 December 1981.

Due to alleged illegal harvesting of coconuts from the subject property, Suib, in March 1990, filed a criminal case of qualified theft against respondent Emong Ebbah (Ebbah) before the Regional Trial Court (RTC), Branch 22 of General Santos City, docketed as Criminal Case No. 6385, which was re-raffled to the RTC, Branch 38 of Alabel, Sarangani Province.

As defense, Ebbah claimed that he has a right to harvest coconuts from the subject property because he was instituted as a tenant by Suib's deceased husband and has been such tenant since 1963. On the other hand, Suib claimed that it was impossible for her husband to institute tenancy in favor of Ebbah in 1963 because her husband acquired the subject property only in 1981.

The RTC dismissed the case on the ground of *res judicata* or bar by former judgment.<sup>2</sup> It turned out that it was not the first time that Suib filed a criminal case of qualified theft against Ebbah. Suib previously filed a criminal case of qualified theft against Ebbah before the Municipal Trial Court (MTC) of Malapatan, docketed as Criminal Case No. 1793-M, which the MTC dismissed.<sup>3</sup>

Ebbah then filed the present case against Suib before the Provincial Agrarian Reform Adjudication Board (PARAB) in Region XI, docketed as Case No. XI-0330-SC-90, on 31 January 1990. The case is for Immediate Reinstatement and Damages.

Finding the absence of a tenancy relationship between Suib and Ebbah, the PARAB, in a Decision<sup>4</sup> dated 10 September 1993, dismissed the case for lack of merit.

On appeal to the Department of Agrarian Reform Adjudication Board Central Office (DARAB), the DARAB<sup>5</sup> reversed the PARAB Decision. According to the DARAB, “[in] Republic Act No. 3844, [it] provides that in case there is doubt in the interpretation and enforcement of laws or acts relative to tenancy, it should be resolved in favor of the latter to protect him

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<sup>2</sup> *Rollo*, p. 245

<sup>3</sup> *Id.* at 171.

<sup>4</sup> *CA rollo*, pp. 37-44; penned by Provincial Adjudicator Norberto P. Sinsona.

<sup>5</sup> *Id.* at 45-49; penned by Assistant Secretary Lorenzo R. Reyes with Secretary Ernesto D. Garilao, Undersecretary Artemio A. Adasa, Jr., Assistant Secretaries Sergio B. Serrano, Augusto P. Quijano and Clifford C. Burkley, concurring.

from unjust exploitation and arbitrary ejection by unscrupulous landowners.”<sup>6</sup> The DARAB also ruled that:

An examination of the records reveal (sic) that Plaintiff-Appellant was on the land of Respondent-Appellee since 1963. It must be remembered that at the time Respondent-Appellee rejected Plaintiff-Appellant on 30 March 1990, the latter had already harvested thousands of coconuts and had already converted twenty-five (25) sacks of copra. There was also a sharing of the produce of the land between the parties. Undoubtedly, the requisites for the establishment of tenancy relation are present in this case. Moreover, the fact that they did not at all question his tenancy over the land in question for quite several years, there is an implied recognition or consent to the establishment of a tenancy relationship between the parties.<sup>7</sup>

The dispositive portion of the DARAB Decision dated 5 June 1998 reads:

WHEREFORE, the decision appealed from is SET ASIDE and an (sic) new one entered:

1. Declaring Emong Ebbah a tenant of Hadji Rawiya Suib who is hereby ordered to respect and maintain Ebbah in the peaceful possession and cultivation of the subject landholding.

SO ORDERED.<sup>8</sup>

The motion for reconsideration was likewise denied in a Resolution<sup>9</sup> dated 21 December 1998.

To appeal the adverse Decision, Suib filed a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure before the Court of Appeals on 7 April 2006.<sup>10</sup> Without giving due course to the petition, the Court of Appeals issued a Resolution<sup>11</sup> dated 10 May 2006, with the following directives:

- A) **REQUIRE** petitioner to **SUBMIT** a written explanation why copies of the petition were not personally served to the agency a quo and the adverse parties;
- B) **REQUIRE** petitioner to **SUBMIT** a legible copy of the subject DARAB decision duly certified by the proper authority and therein

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<sup>6</sup> Id. at 48. (Underscoring omitted).

<sup>7</sup> Id. at 47-48.

<sup>8</sup> Id. at 48.

<sup>9</sup> Id. at 62.

<sup>10</sup> Id. at 7-34.

<sup>11</sup> Id. at 97.

- clearly indicated the designation of office of the person certifying to its authenticity;
- C) **REQUIRE** petitioner's counsel to **MANIFEST** in writing to this Court the place of issue of his IBP number;
  - D) **REQUIRE** petitioner to **REMIT**, within a non-extendible period of five (5) days from notice, the amount of ₱1180.00 representing the balance in the payment of the docket fees for petitions with prayer for TRO and/or WPI;
  - E) **REQUIRE** DARAB to show proof that copy of its Resolution dated December 21, 1998 denying petitioner's Motion for Reconsideration in DARAB Case No. 5402 was sent to petitioner and/or counsel of record;
  - F) **REQUIRE** DARAB to **INFORM** this Court if any motion to withdraw as counsel has been filed by Atty. Marcelino Valdez, and if any corresponding entry of appearance has been filed by Atty. Jose Jerry Fulgar, both as counsels for petitioner in DARAB Case No. 5402;
  - G) Without necessarily giving due course to the petition, **DIRECT** respondent to file a comment thereon (not a motion to dismiss), within ten (10) days from notice, and to **SHOW CAUSE** therein why the prayer for the issuance of a temporary restraining order and/or preliminary injunction should not be **GRANTED**. Petitioner may file a Reply within five (5) days from receipt of the Comment. Said Comment may be treated as Answer of respondent in the event the petition is given due course.<sup>12</sup>

In partial compliance with the Resolution, Suib filed a Compliance<sup>13</sup> and Supplement to Compliance<sup>14</sup> dated 25 May 2006 and 29 May 2006, respectively, *sans* the DARAB Decision. Meanwhile, Suib sent a letter to DARAB-Koronadal City, requesting for a copy of the DARAB Decision.

Upon receipt of the DARAB Decision, Suib filed a 2<sup>nd</sup> Supplement to Compliance<sup>15</sup> dated 2 June 2006 with the DARAB Decision finally attached.

Acting on the various supplements filed by Suib, the Court of Appeals, in a Resolution<sup>16</sup> dated 9 October 2007, dismissed the petition for failure of Suib to submit the DARAB Decision pursuant to Section 7, Rule 43 in relation to Section 1(g) of Rule 50 of the Rules of Court.

Suib's Motion for Reconsideration with Compliance<sup>17</sup> was likewise denied in a Resolution<sup>18</sup> dated 26 February 2008. The dispositive portion of the Resolution reads:

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<sup>12</sup> Id.  
<sup>13</sup> Id. at 99-102.  
<sup>14</sup> Id. at 146-150.  
<sup>15</sup> Id. at 151-154.  
<sup>16</sup> Id. at 197-198.  
<sup>17</sup> Id. at 178-182.  
<sup>18</sup> Id. at 220-221.

On November 26, 2007, this Court issued a Resolution directing the private respondent to file a comment on the *Motion for Reconsideration with Compliance* filed by petitioner within a period of ten (10) days from receipt of notice of the said resolution. The same was received by the private respondent on November 8, 2007. On January 24, 2008, private respondent filed with this Court his Comment thru registered mail and a copy thereof was received by this Court on January 31, 2008.

A perusal of petitioner's Motion for Reconsideration with Compliance reveals that the directive of this Court May 10, 2006 requiring her to submit the DARAB decision was not complied with.

Accordingly, the Motion for Reconsideration with compliance is hereby denied.

SO ORDERED.<sup>19</sup> (Citations omitted).

Hence, this petition accusing the Court of Appeals of grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing Suib's appeal for failure to timely file a copy of the appealed DARAB Decision together with her petition.

The petition is devoid of merit.

Before proceeding to resolve the question on jurisdiction, the Court deems it proper to address the penultimate issue of procedural error which Suib committed.

Suib availed of the wrong remedy by filing the present special civil action for *certiorari* under Rule 65 of the Rules of Court to assail a final judgment of the Court of Appeals. Suib should have filed a petition for review under Rule 45 of the Rules of Court.

A special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law; it cannot be a substitute for a lost appeal.<sup>20</sup> In the case at bar, Suib is not without any plain, speedy, and adequate remedy as the remedy of an appeal is still available. Hence, the present petition for *certiorari* will not prosper even if the ground is grave abuse of discretion.<sup>21</sup>

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<sup>19</sup> Id. at 220-221.

<sup>20</sup> *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, 4 February 2014, 715 SCRA 182, 194-195.

<sup>21</sup> *Leynes v. Former Tenth Division of the Court of Appeals*, G.R. No. 154462, 19 January 2011, 640 SCRA 25, 41.

In cases where the petitioner availed of the wrong remedy, the Court, in the spirit of liberality and in the interest of substantial justice, has the right to treat the petition as a petition for review: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.<sup>22</sup>

Consulting the records, we find that the present petition was filed within the reglementary period within which to file a petition for review under Rule 45, which also raised errors of judgment. In detail, after receipt of the assailed Resolution dated 26 February 2008, Suib filed a Motion for Extension of Time to File Petition (with Motion for Leave) on 3 April 2008, requesting for an additional thirty (30) days or until 3 May 2008 within which to file a petition for review under Rule 45 of the Rules of Court. However, on 2 May 2008, Suib filed a Petition for *Certiorari* under Rule 65, well within the reglementary period within which to file a petition for review under Rule 45, which was until 3 May 2008.

Therefore, the Court deems it proper and justified to relax the rules and, thus, treat the instant petition for *certiorari* as a petition for review.<sup>23</sup>

Suib averred that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition due to Suib's failure to attach a copy of the DARAB Decision with the petition within a reasonable period.

We rule in the negative.

On 10 May 2006, the Court of Appeals ordered Suib, among others, to submit a legible copy of the DARAB Decision pursuant to Section 7, Rule 43 in relation to Section 1(g), Rule 50 of the Rules of Court. However, Suib was able to submit a copy of the DARAB Decision to the Court of Appeals only after filing two (2) Compliances or only after almost two (2) months since Suib filed the petition. The pertinent Rules read:

Section 1(g), Rule 50:

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

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<sup>22</sup> Supra note 20.

<sup>23</sup> Id.

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order; x x x x

Section 7, Rule 43:

**Section 7. *Effect of failure to comply with requirements.*** — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof.** (n) (Emphases supplied)

A reading of the aforesaid provisions reveals that the requirement in Section 1, Rule 50 in relation to Section 7, Rule 43 of the Rules of Court is mandatory and jurisdictional. Thus, Suib's failure to attach the required copy of the appealed DARAB Decision is a sufficient ground for the dismissal of her appeal.

A litigant, before filing a pleading to the courts, must first prepare all the necessary attachments to his/her pleading. As it stands, suitors do not have the luxury of filing a pleading without the necessary attachments; otherwise, the court shall consider the same as a mere scrap of paper and may dismiss the same outright.

One glaring fact that cannot escape us is that the petition for review filed before the Court of Appeals, which assailed the Decision and Resolution of the DARAB, was filed beyond the reglementary period. As borne by the records, Suib received a copy of the DARAB Decision and Resolution on 5 June 1998 and 21 December 1998, respectively, and it was only after eight (8) long years since the assailed DARAB Decision and Resolution were received when Suib filed an appeal to the Court of Appeals on 7 April 2006. Without doubt, eight (8) years is beyond the reglementary period within which to file an appeal from a decision of the DARAB to the Court of Appeals as provided in Rule 43, Section 4 of the Rules of Court, which mandates that appeals should be filed within fifteen (15) days from notice of the judgment:

**Section 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. (n)

Considering the period of eight (8) years between the receipt of the questioned Decision and the filing of the appeal with the Court of Appeals, it cannot be said that Suib was not given an ample time to prepare and request for a copy of the assailed Decision from the DARAB. Indeed, Suib was given more than enough time to secure a copy of the Decision.

Upon receipt of the adverse DARAB Decision in 1998, it was incumbent upon Suib to exercise due diligence to keep or in case of loss, to secure another copy of the Decision from the DARAB. Time and again, this Court has reminded suitors to be diligent in record keeping. Thus, the DARAB cannot be faulted for Suib's negligence. For its part, DARAB served Suib a copy of its Decision long before Suib filed an appeal. As soon as a litigant receives a copy of an adverse decision, it is incumbent upon the losing litigant to request a copy from the court or tribunal should he/she lose a copy of the same. After all, losing litigants should be mindful of the legal remedies available to them.

Furthermore, the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege and must be exercised in accordance with the law. This doctrine has been reiterated in *Spouses Ortiz v. Court of Appeals*,<sup>24</sup> where the Court held that:

x x x [T]he right to appeal is not a natural right or a part of due process; it is merely a statutory priv[i]lege, and may be exercised only in the manner and in accordance with the provisions of the law. **The party who seeks to avail of the same must comply with the requirements of the Rules, Failing [sic] to do so, the right to appeal is lost. Rules of Procedure are required to be followed.** xxx. <sup>25</sup>(Emphases and underscoring supplied)

As the appeal is procedurally infirm, it is within the discretion of the appellate court to dismiss the same. As long as the lower court acts judiciously and within the bounds of the law, the Court has no discretion to question the lower court's judgment in dismissing the appeal.

Once more we find occasion to reiterate this Court's pronouncement in *De Liano v. Court of Appeals*,<sup>26</sup> where we held:

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<sup>24</sup> 360 Phil. 95 (1998).

<sup>25</sup> Id. at 100-101.

<sup>26</sup> 421 Phil. 1033 (2001).

**Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration.** It comes as an unpleasant shock to us that the contents of an appellant's brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, which took effect on July 1, 1940, as well as the Revised Rules of Court, which took effect on January 1, 1964, until they were superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions.<sup>27</sup> (Emphases and underscoring supplied)

And, even if we consider this petition as rightfully one under Rule 65, we say that it should likewise be dismissed as no grave abuse of discretion was shown.

A petition for *certiorari* under Rule 65 of the Rules of Court is limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. In order to constitute grave abuse of discretion, Suib must prove that the lower court acted in a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. "Mere abuse of discretion is not enough. It must be *grave* abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be 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."<sup>28</sup> Evidently, the Court of Appeals acted within the bounds of law as the dismissal of the appeal was based on Section 1(g), Rule 50 in relation to Section 7, Rule 43 of the Rules of Court. Although the decision of the Court of Appeals, which dismissed the petition, did not mention Suib's failure to file the present petition within the reglementary period pursuant to Rule 43, Section 4 of the Rules of Court, still, the Court of Appeals was correct in dismissing the same based on Section 1(g), Rule 50 in relation to Section 7, Rule 43 of the same Rule. Far from it, the dismissal of Suib's appeal was neither arbitrary nor despotic.

The rules of procedure serve a noble purpose of orderly and speedy administration of justice. Suib's attempt to persuade this Court to liberally

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<sup>27</sup> Id. at 1046-1047.

<sup>28</sup> *Solvic Industrial Corporation v. NLRC*, 357 Phil. 430, 438 (1998); *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil. 859, 864 (1999).

interpret the technical rules must fail. This Court shall not depart from rules of procedure only in the guise of liberal construction, which would render such noble purpose nugatory.<sup>29</sup>

**WHEREFORE**, the Petition is hereby **DENIED**.

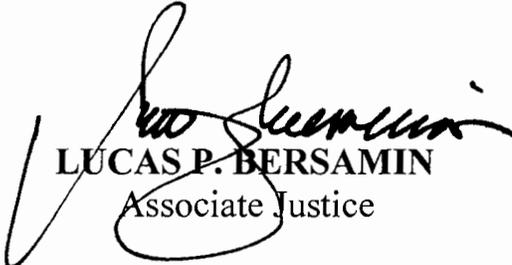
**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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<sup>29</sup> *Lumbre, et al. v. Court of Appeals, et al.* 581 Phil. 390, 404 (2008).

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice