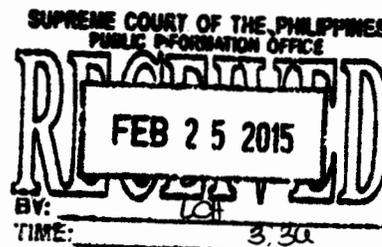




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 14, 2015** which reads as follows:*

**“G.R. No. 214566 – ROGELIO DEMELLETES, JR., *Petitioner*, v. LEGAL RIGHTS AND NATURAL RESOURCES CENTER/KASAMA SA KALIKASAN/FRIENDS OF THE EARTH-PHILIPPINES (LRC-KSK) and JUDY PASIMIO, *Respondents*.-** The petitioner’s motion for an extension of fifteen (15) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by the petitioner Rogelio Demelletes, Jr. (Demelletes) assailing the 25 April 2014 Decision<sup>2</sup> and 24 September 2014 Resolution<sup>3</sup> of the Fourth Division of the Court of Appeals in CA-G.R. SP No. 117189, which affirmed the 31 August 2010 Resolution of the National Labor Relations Commission (NLRC) dismissing the petition for non-perfection of the appeal for failure to attach a certificate of non-forum shopping.

The Court of Appeals ruled that the NLRC did not gravely abuse its discretion when it dismissed the appeal of Demelletes based on technicality. As correctly found by the NLRC, Demelletes filed his memorandum of appeal on 29 May 2009 but failed to attach a certificate of non-forum shopping which is a pre-requisite for a perfection of appeal pursuant to Section 4, Rule VI of the 2005 NLRC Revised Rules of Procedure.

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<sup>1</sup> *Rollo*, pp. 9-24.

<sup>2</sup> Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Amelita G. Tolentino and Ricardo R. Rosario, concurring. *Id.* at 27-40.

<sup>3</sup> *Id.* at 41-42.

We dismiss the petition.

Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC mandates the submission of such certification of non-forum shopping in appeals to the NLRC. The rule provides that:

**Section 4. Requisites for Perfection of Appeal.** a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; **iii) a certificate of non-forum shopping;** and iv) proof of service upon the other parties.

**b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period of perfecting an appeal.** (Emphasis ours).

The letters of the rule uses the word “shall,” indicative of a mandatory undertone to its compliance. It connotes an imperative nature and indicates the obligatory character of a statute.<sup>4</sup>

However, non-compliance accepts of an exception. In *Belza v. Canonero*<sup>5</sup> citing *Maricalum Mining Corp. v. National Labor Relations Commission*,<sup>6</sup> the Court held that substantial compliance with the requirement may be allowed when justified under the circumstances.

In this case, we agree with the appellate court that the reason given by Demelletes is not justifiable to exempt him from complying with the requirement. In his explanation, the petitioner cited his accident with the overheated car radiator as a cause of his failure to sign the certification on

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<sup>4</sup> *Gachon v. Devera, Jr.*, G.R. No. 116695, 20 June 1997, 274 SCRA 540, 548.

<sup>5</sup> G.R. No. 192479, 27 January 2014.

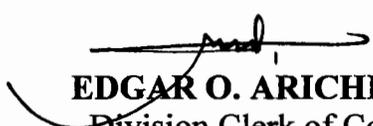
<sup>6</sup> 358 Phil. 864, 873 (1998).

non-forum shopping. Because of this, he underwent skin grafting from 17-18, 20-22 and 28 May 2009. However, taking a closer look, the petitioner still has one more day to sign the certification because the last day of filing the appeal fell on 29 May 2009. Given these circumstances, petitioner's legal counsel should have been more diligent in preparing the requirements for the perfection of an appeal like the certification.

**WHEREFORE**, the petition is **DENIED**. Accordingly, the Decision and Resolution of the Court of Appeals dated 25 April 2014 and 24 September 2014 are hereby **AFFIRMED**.

**SO ORDERED.**"

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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