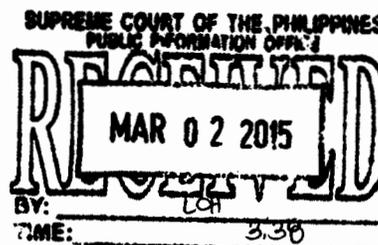




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 2, 2015 which reads as follows:*

“G.R. No. 215603 (Christian Tito and Emerma Tito v. Hon. Court of Appeals, Special Former Twenty-First Division, Mindanao Station, Cagayan de Oro City, Atty. Leoncio Villa Abrille, City Government of Davao, represented by City Administrator Wendel Avisado, Building Official Joaquin B. Cui, Jr., Engr. Gloria A. Lumapas, and Coastal Village Homeowners Association, Inc., represented by Flordeliza Ayuban). – After a judicious review of the records, the Court resolves to **DISMISS** the instant petition for *certiorari* under Rule 65 of the Rules of Court (Rules) for being the wrong mode of appeal from a decision of the Court of Appeals (CA) in CA-G.R. SP No. 02781-MIN, the proper remedy being a petition for review under Rule 45 of the same Rules.<sup>1</sup> It is hornbook principle that the special civil action of *certiorari* is allowed only if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* is not and cannot be a substitute for an appeal, especially if one’s own negligence or error in one’s choice of remedy occasioned such loss or lapse,<sup>2</sup> as in this case.

In any event, the CA did not gravely abuse its discretion in upholding the dismissal of petitioners Christian Tito and Emerma Tito’s complaint for forcible entry as it is supported by the evidence on record. “[G]rave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a

- over – two (2) pages .....

7

<sup>1</sup> See *Spouses Gonzaga v. CA*, 570 Phil. 130, 136 (2008).

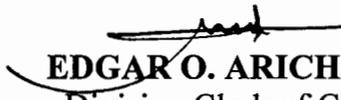
<sup>2</sup> *Chingkoe v. Republic*, G.R. No. 183608, July 31, 2013, 702 SCRA 677, 687.

positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility,"<sup>3</sup> which is absent in this case.

The petitioners are hereby directed to **SUBMIT** within five (5) days from notice hereof, a soft copy in compact disc, USB or e-mail containing the PDF file of the signed petition for certiorari and annexes pursuant to Resolution dated February 25, 2014 in A.M. Nos. 10-3-7-SC and 11-9-4-SC.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court *pk 2/10*  
7

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No. 12-7-1-SC)

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Supreme Court

Court of Appeals  
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(CA-G.R. SP No. 02781-MIN)

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The Hon. Presiding Judge  
Regional Trial Court, Br. 15  
Ecoland, Davao City 8000  
(Civil Case No. 32,540-08)

The Hon. Presiding Judge  
Municipal Trial Court in Cities, Br. 6  
8000 Davao City  
(Civil Case No. 20,079-D-G-F-2008)

SR

<sup>3</sup> *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011); citations omitted.