



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 15, 2020 which reads as follows:

“G.R. No. 250015 - Leticia Comsti-Trespalacios v. Anita Flores – The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

This is a Petition¹ filed under Rule 45 of the Rules of Court assailing the August 16, 2019 Decision² and the October 23, 2019 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 110836. The CA upheld the trial court’s judgment in the Complaint for Cancellation of Sale and Recovery of Ownership filed by Anita Flores (respondent) against Leticia Comsti-Trespalacios (petitioner) and Gloria Luat (Luat).

The case involves a 300-square-meter parcel of land previously registered in the name of respondent’s mother, Soledad Ramos (Ramos), who died on June 22, 2007 due to rectal cancer. Respondent assailed the Deed of Absolute Sale executed on June 14, 2007 or eight days before Ramos passed away, conveying the said property to petitioner, a half-sister of Ramos, for allegedly ₱200,000.00.⁴

After trial, the Regional Trial Court (RTC) of the City of Malabon, Branch 170, rendered judgment on March 6, 2017.⁵ The trial court found the testimony of respondent’s witness more credible

- over – six (6) pages ...

¹ *Rollo*, pp. 13-24.

² Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Danton Q. Bueser and Louis P. Acosta, concurring; *id.* at 30-54.

³ *Id.* at 55-56.

⁴ *Id.* at 31.

⁵ *Id.* at 41.

and in accord with human experience than that of petitioner's witness.⁶ The RTC also doubted that the 75-year-old Ramos, who was bedridden and in the advanced stages of cancer, had the capacity to give consent.⁷ Not only was the element of consent lacking, it also found no evidence that there was consideration paid or received for the subject property.⁸ Luat's participation was, however, limited only to the registration of the Deed of Sale.⁹ Thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring the Deed of Absolute Sale executed by [SOLEDAD] LAZARO RAMOS in [favor] of LETICIA CLOE COMSTI dated 14 June 2007 as null and void;
2. Ordering the Register of Deeds of Malabon City to cancel Transfer Certificate of Title No. M-36644 and, in lieu thereof, issue a new Transfer Certificate of Title in the name of Soledad Ramos; and
3. Ordering defendant Leticia Comsti-Trespalacios to pay plaintiff the amount of Fifty Thousand Pesos (Php50,000.00) as and for attorney's fees.

The case against Gloria Luat is dismissed.

SO ORDERED.¹⁰

Petitioner's motion for reconsideration was denied by the RTC on June 5, 2017.¹¹

On appeal to the CA, petitioner alleged that respondent is not the daughter of Ramos and, thus, respondent had no legal capacity to sue. The CA, however, ruled that this matter of defense was deemed waived because petitioner failed to file a motion to dismiss based on the said ground with the RTC, or alternatively raise it as an affirmative defense in petitioner's answer to respondent's complaint.¹² Upon scrutiny of the pre-trial order and the pretrial briefs, the CA observed that the matter was not raised as an issue before the trial court.¹³ The CA finally observed that the material details clearly

- over -

⁶ Id. at 44.

⁷ Id.

⁸ Id.

⁹ Supra note 5.

¹⁰ *Rollo*, pp. 41-42.

¹¹ Id. at 42.

¹² Id. at 47-48.

¹³ Id. at 48-49.

indicated in the certificate are more consequential than the late registration of respondent's birth certificate on June 25, 1997 under Registry No. 97-51818, although respondent's date of birth is February 5, 1954.¹⁴

As to the Deed of Absolute Sale, the CA agreed that it does not enjoy the presumption of due execution although notarized, as there is clear and convincing evidence showing irregularity in its execution.¹⁵ The failure to present the notary public to affirm or deny his presence at the residence of Ramos on June 14, 2007, to personally witness the signing of the Deed of Absolute Sale and the mental condition of Ramos at that time, is fatal.¹⁶ This was necessary due to evidence that Ramos signed the Deed of Absolute Sale while lying down and the signature appears to have been made by someone who lost control over her hand and unlikely to be capable of personally appearing before a notary public.¹⁷

The CA also held that the fact that the judge who penned the decision was not the same judge who heard the case does not render the judgment erroneous, where the evidence on record is sufficient to support its conclusions.¹⁸ Finding no valid reason to disturb the RTC's findings of fact, the CA disposed:

WHEREFORE, the trial court's Decision dated March 6, 2017 and Order dated June 5, 2017 are AFFIRMED.

SO ORDERED.¹⁹

Aggrieved, petitioner moved for reconsideration of the CA's Decision, which the appellate court denied through the presently assailed October 23, 2019 Resolution.²⁰

Petitioner received the said Resolution on October 29, 2019 and correctly averred that the current petition should have been filed on or before November 13, 2019.²¹ Petitioner instead sought a 30-day extension or until December 13, 2019 within which to file the petition.²² The intended petition, however, was received by the Court on February 24, 2020 by private courier, well beyond the period prayed for.²³

- over -

¹⁴ Id. at 50.
¹⁵ Id. at 51-52.
¹⁶ Id. at 52.
¹⁷ Supra note 15.
¹⁸ Id. at 53.
¹⁹ Id. at 54.
²⁰ Supra note 3.
²¹ *Rollo*, p. 3.
²² Id.
²³ Id. at 13.

In a bid for leniency, it is alleged that counsel for petitioner departed for the United States of America on December 12, 2019 to visit an ailing brother-in-law. The petition was entrusted with a friend of petitioner who was unable to file it because counsel forgot to indicate the case number. This Court's receiving section allegedly failed to assist the person entrusted with the filing, by failing to retrieve and furnish the case number to this person. Counsel for petitioner then allegedly returned on January 15, 2020, but was still unable to file the petition sooner, citing distance and busy schedules.²⁴

Due to the lapse of the period within which to file the instant petition, the Court has lost jurisdiction to review the case. Recall that:

The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal. The case before us calls for the application of the requirements of appeal under Rule 45, to wit:

Sec. 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, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Sec. 2. Time for filing; extension. - **The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.** (Emphasis supplied.)²⁵

Suffice it to say that the excuses tendered by petitioner's counsel are flimsy and demonstrate an entitled perception of procedural rules. Even if we were to give credence to the attached

- over -

²⁴ Id.

²⁵ *Nueva Ecija II Electric Cooperative, Inc. v. Mapagu*, 805 Phil. 823, 832 (2017).

electronic ticket and itinerary printout, which do not, by themselves, prove being on board the stated flights, counsel's explanation for the considerable delay in filing the petition leaves much to be desired. There are various electronic means to communicate with counsel and retrieve a case number, instead of shifting the blame on court frontliners who could not be heard on the allegation and have limited access to case information. Affixing the case number to ensure that the necessary pleading is timely filed is counsel's lookout, and no one else's. To compound the delay, there is also no justifiable or meritorious reason why the petition could not have been filed immediately upon counsel's supposed arrival from abroad.

To stress:

Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction. But even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

x x x x

Litigants must bear in mind that procedural rules should always be treated with utmost respect and due regard since these are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Though litigations should, as much as possible, be decided on their merits and not on technicalities, this does not mean, however, that procedural rules are to be belittled to suit the convenience of a party. Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases[.]²⁶ (Underscoring in the original)

ACCORDINGLY, the motion to admit the instant petition is **DENIED** for lack of merit.

- over -

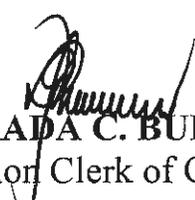
8

²⁶ *Zosa v. Consilium, Inc.*, G.R. No. 196765, September 19, 2018.

The petitioner is hereby required to **SUBMIT**, within five (5) days from notice hereof, the verified declarations of the motion for extension of time to file a petition for review on certiorari and the signed motion to admit petition pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

SO ORDERED.” Leonen, J., designated Additional Member in lieu of Peralta, C.J., per Raffle dated June 29, 2020.

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court _{m10/17}

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

8

Atty. Amelia S. Tansinsin
Counsel for Petitioner
360 Tomas Pinpin Street, Binondo
1006 Manila

Court of Appeals (x)
Manila
(CA-G.R. CV No. 110836)

Atty. Gloria Morte
Counsel for Respondent
5-A Miami Street, Brgy. Silangan, Cubao
1109 Quezon City

The Hon. Presiding Judge
Regional Trial Court, Branch 170
1470 Malabon City
(Civil Case No. 5264-MN)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court



UR

