



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **23 November 2020** which reads as follows:*

**“G.R. No. 215817 (*Reynaldo S. Tribunalo, Prudencio D. Gomez, Julito Albiar, et al. v. Ismael Magtubo, Teodoro Aman, Recarido Arances, et al.*).**

The petitioners Reynaldo S. Tribunalo, Prudencio D. Gomez, Julito Albiar, *et al.* (petitioners) avail the wrong remedy. A petition for *certiorari* under Rule 65 of the Rules of Court is proper only when there is neither appeal nor any plain, speedy and adequate remedy in the ordinary course of law. The special civil action for *certiorari* is not a substitute for a lost appeal, thus:

It is settled that a petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

[x x x x]

On the other hand, Section 1, Rule 45 of the Rules of Court provides that the proper remedy to question a judgment, final order or resolution of the CA, as in the present case, is a petition for review on *certiorari* regardless of the nature of the action or proceeding involved. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner’s motion for reconsideration filed in due time after notice of the judgment.

This Court has ruled that because an appeal was available to the aggrieved party, the action for *certiorari* would not be entertained. We emphasized in that case that the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion.

**By filing the present special civil action for *certiorari* under Rule 65, petitioners, therefore, clearly availed themselves of the wrong remedy. Under Supreme Court Circular 2-90, an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal.<sup>1</sup> (Emphasis supplied; citations omitted.).**

Also, mere invocation of “grave abuse of discretion amounting to lack or excess of jurisdiction” will not permit the substitution of a lost remedy of appeal with a special civil action for *certiorari*.<sup>2</sup> In *Ybanez v. CA*,<sup>3</sup> the Court did not tolerate ignorance of the law on appeals and warned the litigants’ counsels to follow to the letter paragraph 4(e) of Supreme Court Circular No. 2-90.<sup>4</sup> Nonetheless, even if we disregard the impropriety of the remedy resorted to by petitioners and consider it under Rule 45, the same must still be denied for having been filed out of time. Notably, petitioners received on November 6, 2014<sup>5</sup> the Court of Appeal’s (CA) Resolution denying their motion for reconsideration. As such, petitioners had 15 days or until November 21, 2014 to file an appeal. Yet, petitioners filed the petition only on January 5, 2015 or 45 days beyond the reglementary period. Hence, the CA’s Decision and Resolution had perfunctorily become final and executory. Lastly, the issues raised by petitioners are factual in nature. It is settled in this jurisdiction that the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence. The factual findings of these quasi-judicial agencies, especially when affirmed by the CA, are binding on the Court.<sup>6</sup>

**FOR THESE REASONS, the petition is DISMISSED.**

**SO ORDERED. (Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)”**

<sup>1</sup> *Dungao v. CA*, G.R. No. 236666, February 14, 2018 (Notice), citing *Local Water Utilities Administration Employees Assn. for Progress v. Local Water Utilities Administration (LWUA)*, 794 Phil. 496, 504-505 (2016).

<sup>2</sup> *Philippine Amusement and Gaming Corp. (PAGCOR) v. CA*, G.R. No. 230084, August 20, 2018, 878 SCRA 142, 149-150.

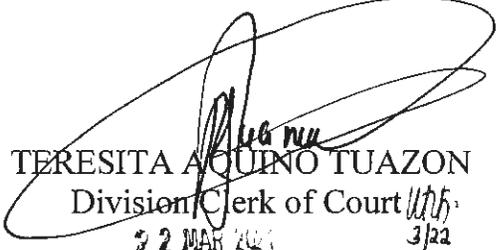
<sup>3</sup> 323 Phil. 643 (1996), cited in *Indoyon, Jr. v. CA*, 706 Phil. 200, 208 (2013).

<sup>4</sup> GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT. Based on the Resolution of the Court *En Banc* in UDK-9748, *Anacleto Murillo v. Rodolfo Consul*, March 1, 1990.

<sup>5</sup> *Rollo*, Vol. 1, p. 23.

<sup>6</sup> *NGEI Multi-Purpose Cooperative Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 443-444 (2012).

By authority of the Court:



TERESITA AQUINO TIAZON  
Division Clerk of Court  
22 MAR 2021 3/22

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