



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NESTOR N. PADALHIN and ANNIE
PADALHIN,

Petitioners,

G.R. No. 183026

Present:

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

Promulgated:

NOV 14 2012

NELSON D. LAVIÑA,

Respondent.

X-----X

RESOLUTION

REYES, J.:

For review is the Decision¹ rendered on February 14, 2008 and Resolution² issued on May 20, 2008 by the Court of Appeals (CA) in CA-G.R. CV No. 81810. The CA affirmed, albeit with modification relative to the award of attorney's fees, the Decision³ rendered on October 3, 2003 by the Regional Trial Court (RTC), Pasig City, Branch 165, which ordered herein petitioner Nestor Padalhin (Nestor), to pay herein respondent Nelson D. Laviña (Laviña) the total amount of ₱775,000.00 as damages.

¹ Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice of the CA) and Jose C. Mendoza (now a member of this Court); *rollo*, pp. 35-48.

² *Rollo*, pp. 50-51.

³ Penned by Judge Marietta A. Legaspi; *id.* at 54-81.

Antecedent Facts

Laviña and Nestor were both Filipino diplomats assigned in Kenya as Ambassador and Consul General, respectively.

In the course of their stay in Kenya, the residence of Laviña was raided twice. Prior to the raids, Bienvenido Pasturan⁴ (Pasturan) delivered messages to the Filipino household helpers in the ambassador's residence instructing them to allow the entry of an officer who would come to take photographs of the ivory souvenirs kept therein.

The first raid on April 18, 1996 was conducted while Laviña and his wife were attending a diplomatic dinner hosted by the Indian High Commission. Lucy Ercolano Muthua, who was connected with the Criminal Investigation Division's Intelligence Office of Kenya and David Menza, an officer in the Digirie Police Station in Nairobi, participated in the raid. Photographs of the first and second floors of Laviña's residence were taken with the aid of James Mbatia,⁵ Juma Kalama,⁶ Zenaida Cabando⁷ (Cabando), and Edna Palao⁸ (Palao). The second raid was conducted on April 23, 1996 during which occasion, the ambassador and his spouse were once again not present and additional photographs of the residence were taken.

On September 27, 1996, Laviña received an information from the Department of Foreign Affairs (DFA) in Manila that an investigating team was to be sent to Nairobi to inquire into the complaints filed against him by the employees of the Philippine Embassy in Kenya, on one hand, and his own complaint against the spouses Padalhin, on the other. The investigating team was led by Rosario G. Manalo (Manalo) and had Franklin M. Ebdalin (Ebdalin) and Maria Theresa Dizon (Dizon) as members. The team stayed in Kenya from April 20, 1997 to April 30, 1997. On April 29, 1997, the

⁴ Assistant and driver in the Philippine Embassy in Nairobi.

⁵ Personal driver of Padalhin.

⁶ Laviña's gardener.

⁷ Household helper in Laviña's residence.

⁸ Likewise a household helper in Laviña's residence.

team entered Laviña's residence unarmed with a search warrant, court order or letter from the DFA Secretary. Laviña alleged that in the course of the inspection, the team destroyed cabinet locks, damaged furnitures and took three sets of carved ivory tusks.

Subsequently, both Nestor and Laviña were recalled from their posts in Kenya.

On November 17, 1997, Laviña filed before the RTC a complaint for damages against Nestor and his wife, petitioner Annie Padalhin (Annie) Palao, Cabando, Manalo, Ebdalin and Dizon. On July 6, 1998, Laviña amended his complaint to include Pasturan as a defendant.

Laviña's complaint alleged the following causes of action, to wit: (a) affront against his privacy and the sanctity and inviolability of his diplomatic residence during the two raids conducted by the Kenyan officials, supposedly instigated by Padalhin and participated by all the defendants as conspirators; (b) infringement of his constitutional rights against illegal searches and seizures when the investigating team sent by the DFA entered into his residence without a warrant, court order or letter from the DFA Secretary and confiscated some of his personal belongings; and (c) bad faith, malice and deceit exhibited by the defendants, including Padalhin, in conspiring on the conduct of the raids, engaging in a smear campaign against him, and seizing without authority his personal effects. Laviña sought payment of actual, moral, exemplary and nominal damages, attorney's fees and costs of suits.

In the course of the trial, Nestor denied any involvement in the raids conducted on Laviña's residence. As counterclaims, he alleged that the suit filed by Laviña caused him embarassment and sleepless nights, as well as unnecessary expenses which he incurred to defend himself against the charges. On the other hand, Annie denied prior knowledge of and participation in the raids.

On February 24, 2000, the RTC, upon oral motion of Laviña's counsel informing the court that a settlement had been reached, dismissed the charges against Palao, Cabando, Manalo, Ebdalin and Dizon. As a consequence, the RTC deemed it proper to no longer resolve the claims of Laviña relative to the alleged seizure of his personal effects by the DFA investigating team. Laviña pursued his charges against Nestor, Annie and Pasturan.

The Ruling of the RTC

On October 3, 2003, the RTC rendered a Decision⁹ ordering Nestor to pay Laviña ₱500,000.00 as moral damages, ₱50,000.00 as nominal damages, ₱75,000.00 as exemplary damages, ₱150,000.00 as attorney's fees and litigation expenses, and costs of suit for the former's participation in the raid conducted in the Ambassador's residence on April 18, 1996. The RTC ruled that:

[D]efendant Nestor N. Padalhin admitted in his sworn statement dated October 10, 1997 which was subscribed and sworn to on October 13, 1997 before the Executive Director Benito B. Valeriano, Office of Personnel and Administrative Services of the Department of Foreign Affairs, that he caused the taking of pictures of the raw elephant tusks in the official residence of the ambassador (Exh. "B"). x x x[.]

x x x x

The said affidavit was submitted by Nestor Padalhin in answer to the administrative charge filed against him by then Secretary of the Department of Foreign Affairs Domingo L. Siazon, Jr. in connection with the violation of the diplomatic immunity of the residence of the Philippine Ambassador to Kenya on April 18, 1996. x x x[.]

x x x x

When Nestor Padalhin was presented by the plaintiff as hostile witness, he affirmed the truth of the contents of his affidavit marked as Exhibit "B". x x x.

It is therefore clear that the taking of the pictures of the elephant tusks inside the residence of Ambassador Nelson Laviña while the latter and his wife were out and attending a diplomatic function, was upon order of Nestor Padalhin to his driver James Mbatia with the cooperation of

⁹ Rollo, pp. 54-81.

Juma Kalama, a gardener in the ambassador's residence. The admission of defendant Nestor Padalhin that he was the one who caused the taking of the pictures of the elephant tusks in the official residence of Ambassador Laviña in effect corroborates the latter's testimony that it was Nestor Padalhin who masterminded the invasion and violation of the privacy and inviolability of his diplomatic residence in Kenya on April 18, 1996.

The invasion of the diplomatic residence of the plaintiff in Kenya and the taking of photographs of the premises and the elephant tusks inside the residence upon order of defendant Nestor Padalhin without the knowledge and consent of the plaintiff were done by the said defendant in bad faith. The intention to malign the plaintiff is shown by the fact that Nestor Padalhin even went to the Kenyan Ministry of Foreign Affairs and reported the raw elephant tusks of Ambassador Laviña as admitted in paragraph 2.a of his affidavit marked as Exhibit "B".

This incident reached not only the Ministry of Foreign Affairs of Kenya but also the Filipino community in Kenya, the Department of Foreign Affairs in Manila and the circle of friends of plaintiff. As a result, plaintiff felt insulted, betrayed, depressed and even feared for his life because the intelligence and local police were involved in this incident. Plaintiff suffered humiliation, sleepless nights, serious anxiety, besmirched reputation and wounded feeling.

The admission of defendant Nestor Padalhin in his affidavit (Exh. "B") regarding the first cause of action is binding upon him only but cannot bind his co-defendants Annie Padalhin and Bienvenido Pasturan who were not included in the administrative case where the affidavit of Nestor Padalhin was submitted.

The affidavits of plaintiff's maids Zenaida Cabando and Edna Palao who implicated Annie Padalhin and Bienvenido Pasturan in this case is hearsay evidence because the said househelpers did not appear to testify in this case and to identify their affidavits although the record will show that plaintiff exerted all efforts to present them as witnesses but failed because their address/whereabouts could not be traced and/or ascertained. In view of this, defendants Annie Padalhin and Bienvenido Pasturan did not have the opportunity to cross-examine the said affiants.¹⁰ (Italics ours)

The RTC was, however, not convinced of Nestor's involvement in the raid staged on April 23, 1996. Laviña's testimony relative to the raid was not based on his own personal knowledge as it was only derived from the affidavits subscribed and sworn to before him by Cabando, Palao, Helen Tadifa,¹¹ John Ochieng¹² and Leonidas Peter Logarta.¹³ During the trial before the RTC and even in the proceedings before the DFA, Laviña had not presented the aforementioned persons as witnesses. Their affidavits were

¹⁰ Id. at 76-79.

¹¹ Finance Officer in the Philippine Embassy in Nairobi.

¹² A Kenyan national hired locally to work in the Philippine Embassy in Nairobi.

¹³ Administrative Officer in the Philippine Embassy in Nairobi.

thus considered as hearsay evidence since the witnesses were not subjected to cross-examination. The RTC likewise found no sufficient evidence to render Annie and Pasturan liable and to grant Nestor's counterclaims.

Both Laviña and Nestor filed their respective appeals to assail the RTC decision. Laviña ascribed error on the part of the RTC when it absolved Annie and Pasturan from liability anent their supposed participation in the raid conducted on April 18, 1996. Laviña likewise assailed as insufficient the amount of exemplary and nominal damages imposed on Nestor by the RTC. Laviña also challenged the propriety of the RTC's dismissal of his claims relative to the conduct of the second raid on April 23, 1996. On the other hand, Nestor lamented that his participation in the April 18, 1996 raid was not proven by clear and substantial evidence, hence, the award of damages made by the RTC in favor of Laviña lacked basis.

The Ruling of the CA

On February 14, 2008, the CA rendered a Decision¹⁴ denying the appeals of both Laviña and Nestor. The CA, however, reduced to ₱75,000.00 the award of attorney's fees and litigation expenses made in Laviña's favor. In affirming, albeit with modification, the RTC's disquisition, the CA explained:

There is no doubt in our mind that defendant-appellant indeed participated in the first raid that happened on April 18, 1997 [sic]. This conclusion of ours is based on the admission made by the defendant-appellant himself in his affidavit dated October 10, 1997. x x x[.]

x x x x

Defendat-appellant's affidavit constitute[s] as [sic] an admission against his interest. Being an admission against interest, the affidavit is the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not. As a Consul General of the Republic

¹⁴

Rollo, pp. 35-48.

of the Philippines, defendant-appellant cannot pretend that the plain meaning of his admission eluded his mind. On the witness stand, he testified that he was the one who voluntarily and freely prepared his affidavit. He further stated that the contents thereof are true. *His affidavit likewise contained an apology for his lack of judgment and discretion regarding the April 18, 1996 raid.*

Anent plaintiff-appellant's second cause of action, the court *a quo* correctly ruled that plaintiff-appellant was not able to prove defendant-appellant's participation in the second raid that happened on April 26, 1996 [sic]. Basic is the rule in evidence that the burden of proof is on the part of the party who makes the allegations x x x. *Plaintiff-appellant's testimony regarding the second raid was not of his own personal knowledge. Neither does the affidavit of defendant-appellant admit that he had anything to do with the second raid.* Plaintiff-appellant came to know of the second raid only from the stories told to him by his household helps and employees of the Philippine Embassy in Nairobi, Kenya. Inasmuch as these people were not presented as witnesses in the instant case, their affidavits are considered hearsay and without probative value. x x x.

Next, plaintiff-appellant bewails the dismissal of the complaint against Annie Padalhin and Bienvenido Pasturan. He contends that the affidavits of Cabando and Palao, which were executed and sworn to before him, linking defendant Annie Padalhin and B[ie]nvenido Pasturan to the two raids are binding upon the latter two.

Such a contention by the plaintiff-appellant must fail. *The failure of the plaintiff-appellant to put Cabando and Palao on the witness stand is fatal to his case. Even if defendants Annie Padalhin and Bienvenido Pasturan failed to object to the hearsay evidence presented by the plaintiff-appellant, it would only mean that they have waived their right of confrontation and cross-examination, and the affidavits then are admissible. But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence, whether objected to or not, has no probative value.*

x x x x

Defendant-appellant contends that there is no factual basis to conclude that he was motivated by malice, bad faith or deceit, which would warrant the award of damages in favor of the plaintiff-appellant.

x x x Plaintiff-appellant's complaint is mainly anchored on Article 19 in relation to Articles 21 and 26 of the New Civil Code. These provisions of the law state thus:

“Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.”

“Article 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.”

“Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (1) Prying into the privacy of another’s residence;
- (2) Meddling with or disturbing the private life or family relations off [sic] another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his beliefs, lowly station in life, place of birth, physical defect, or other personal condition.”

The Comment of Tolentino on what constitute an abuse of rights under Article 19 of the New Civil Code is pertinent:

“Test of Abuse of Right. – *Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right. The principle does not permit acts which, without utility or legitimate purpose cause damage to another, because they violate the concept of social solidarity which considers law as rational and just. x x x.*”

The question, therefore, is whether defendant-appellant intended to prejudice or injure plaintiff-appellant when he did the acts as embodied in his affidavit.

We rule in the affirmative. *Defendant-appellant’s participation in the invasion of plaintiff-appellant’s diplomatic residence and his act of ordering an employee to take photographs of what was inside the diplomatic residence without the consent of the plaintiff-appellant were clearly done to prejudice the latter. Moreover, we find that defendant-appellant was not driven by legitimate reasons when he did the questioned acts. As pointed out by the court a quo, defendant-appellant made sure that the Kenyan Minister of Foreign Affairs and the Filipino community in Kenya knew about the alleged illegal items in plaintiff-appellant’s diplomatic residence.*

x x x x

Basic is the rule that trial courts are given the discretion to determine the amount of damages, and the appellate court can modify or change the amount awarded only when it is inordinate. x x x [W]e reduce the amount of attorney’s fees and expenses of litigation from [P]150,000.00 to [P]75,000.00 considering that the instant suit is merely for damages.

With regard to plaintiff-appellant’s contention that his prayer for “other reliefs which are just and equitable”, consisting of his remuneration, salaries and allowances which should have been paid to him in Nairobi if it were not for his illegal recall to Manila, the same must

likewise fail. First of all, *it is not within our powers to determine whether or not plaintiff-appellant's recall to Manila following the two raids was illegal or not.* Second, the "other reliefs" prayed for by the plaintiff-appellant are in the nature of actual or compensatory damages which must be duly proved with reasonable degree of certainty. *A court cannot rely on speculation, conjecture or guesswork as to the amount of damages, but must depend upon competent proof and on evidence of the actual amount thereof. Here, plaintiff-appellant failed to present proof of his salary and allowances.* x x x.¹⁵ (Citations omitted and italics ours)

The Resolution¹⁶ issued by the CA on May 20, 2008 denied the respective motions for reconsideration filed by Laviña and Nestor.

Hence, Nestor filed before us the instant Petition for Review on *Certiorari*¹⁷ anchored on the following issues:

I. WHETHER OR NOT NESTOR'S PARTICIPATION IN THE RAID CONDUCTED ON LAVIÑA'S RESIDENCE WAS PROVEN BY CLEAR AND SUBSTANTIAL EVIDENCE AS TO WARRANT THE AWARD OF MORAL, EXEMPLARY AND NOMINAL DAMAGES AND ATTORNEY'S FEES IN THE LATTER'S FAVOR.

II. WHETHER OR NOT NESTOR'S COUNTERCLAIMS SHOULD HAVE BEEN GRANTED CONSIDERING A CLEAR SHOWING THAT LAVIÑA'S SUIT WAS GROUNDLESS.

The Arguments in Support of the Petition

Nestor reiterates that his admission of having caused the taking of photographs in Laviña's residence was subject to the qualification that he did so *sans* malice or bad faith. Padalhin insists that he did nothing unlawful. He merely intended to verify the complaints of some embassy personnel against Laviña, with the end in mind of protecting and upholding the image of the Philippine diplomatic corps in Kenya. He may have committed a lapse in the exercise of his discretion, but he never meant to cause Laviña harm, damage or embarrassment.

¹⁵ Id. at 42-48.

¹⁶ Id. at 50-51.

¹⁷ Id. at 9-33.

Nestor avers that Laviña kept grudges against him based on a mistaken sentiment that the former intended to oust the latter from his post. This, however, did not justify Laviña's filing of a suit for damages against Nestor.

Laviña's Contentions

In his Comment,¹⁸ Laviña seeks the dismissal of the instant petition on both procedural and substantive grounds. He alleges that the verification and certification of non-forum-shopping attached to the petition was signed not by Spouses Padalhin but by their son, Norman Padalhin (Norman). Such being the case, it is as if the said verification and certification was not signed at all, hence, legally inexistent, rendering the petition defective. Besides, even if the Special Power of Attorney¹⁹ (SPA) signed by Nestor were to be considered as the source of Norman's authority to sign the said verification and certification of non-forum-shopping, still, the instrument is wanting as Annie, a co-petitioner in the case at bar, had no participation in its execution.

Laviña likewise emphasizes that since factual and not legal issues are raised, resort to a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure is erroneous.

In challenging the substantial merits of the instant petition, Laviña reiterates the arguments he proffered in the proceedings below. He also made affirmative references to the portions of rulings of both the RTC and the CA, relative to the binding effect of the affidavits submitted by some of the defendants either with the DFA or the RTC, to render all of them liable for damages for their participation in the conduct of the supposed raids.

¹⁸ Id. at 93-110.

¹⁹ Id. at 83.

Our Disquisition

The instant petition is procedurally flawed.

We deem it proper to first resolve the procedural issues raised by Laviña relative to the (a) alleged defective verification and certification of non-forum shopping attached to the instant petition, and (b) the circumstance that factual and not legal issues are presented before us, hence, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

Sections 4 and 5 of Rule 7 of the Rules of Civil Procedure provide:

Sec. 4. *Verification.* - Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of *his personal knowledge or based on authentic records*.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

Sec. 5. *Certification against forum shopping.* - The *plaintiff or principal party shall certify under oath* in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum-shopping, the

same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.
(Italics ours)

Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.²⁰ Time and again, this Court has strictly enforced the requirement of verification and certification of non-forum shopping under the Rules of Court.²¹ Verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.²² The attestation on non-forum shopping requires personal knowledge by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.²³

The circumstances surrounding the case at bar do not qualify to exempt compliance with the rules and justify our exercise of leniency. The verification and certification of non-forum shopping²⁴ attached to the instant petition was not signed personally by the petitioners themselves. Even if we were to admit as valid the SPA executed in Norman's favor allowing him to sign the verification and certification of non-forum shopping attached to the instant petition, still, his authority is wanting. Petitioner Annie did not participate in the execution of the said SPA. *In the pleadings filed with us, there is nary an explanation regarding the foregoing omissions. The petitioner spouses took procedural rules for granted and simply assumed that the Court will accord them leniency.* It bears stressing that procedural

²⁰ *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, April 23, 2012.

²¹ *Clavecilla v. Quitain*, 518 Phil. 53, 62 (2006).

²² *Id.*

²³ *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011, 650 SCRA 35, 46, citing *Athena Computers, Inc. and Joselito R. Jimenez v. Wesnu A. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 350.

²⁴ *Rollo*, p. 32.

rules are crafted towards the orderly administration of justice and they cannot be haphazardly ignored at the convenience of the party litigants.

Laviña also seeks the dismissal of the instant petition on the ground of being supposedly anchored on factual and not legal issues.

The case of *Vda. De Formoso v. Philippine National Bank*²⁵ is emphatic on what issues can be resolved in a petition for review on *certiorari* filed under Rule 45 of the Rules of Procedure, to wit:

Primarily, Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

*x x x [T]he substantive issue of whether or not the petitioners are entitled to moral and exemplary damages as well as attorney's fees is a factual issue which is beyond the province of a petition for review on certiorari.*²⁶ (Citation omitted and italics ours)

In the case at bar, the petitioner spouses present to us issues with an intent to subject to review the uniform factual findings of the RTC and the CA. Specifically, the instant petition challenges the existence of clear and substantial evidence warranting the award of damages and attorney's fees in Laviña's favor. Further, the instant petition prays for the grant of the Spouses Padalhin's counterclaims on the supposed showing that the complaint filed by Laviña before the RTC was groundless. It bears stressing that we are not a trier of facts. Undoubtedly, the questions now raised before us are factual and not legal in character, hence, beyond the contemplation of a petition filed under Rule 45 of the Rules of Civil Procedure.

²⁵ Supra note 23.

²⁶ Id. at 48-49.

**Even if we were to overlook the
aforecited procedural defects of the
instant petition, still, the reliefs
prayed for by the petitioner spouses
cannot be granted.**

As already exhaustively discussed by both the RTC and the CA, Nestor himself admitted that he caused the taking of the pictures of Laviña's residence without the latter's knowledge and consent. Nestor reiterates that he did so *sans* bad faith or malice. However, *Nestor's surreptitious acts negate his allegation of good faith.* If it were true that Laviña kept ivories in his diplomatic residence, then, his behavior deserves condemnation. However, that is not the issue in the case at bar. Nestor violated the New Civil Code prescriptions concerning the privacy of one's residence and he cannot hide behind the cloak of his supposed benevolent intentions to justify the invasion. Hence, the award of damages and attorney's fees in Laviña's favor is proper.

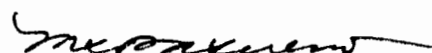
WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **DENIED.** The Decision dated February 14, 2008 and Resolution dated May 20, 2008 by the Court of Appeals in CA-G.R. CV No. 81810 are **AFFIRMED.**

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice


WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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