



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HEIRS OF AMADA A. G.R. No. 201234
ZAULDA, namely: ELESEO A.
ZAULDA and RODOLFO A. Present:
ZAULDA,

Petitioners,

- versus -

VELASCO, JR., J., *Chairperson*.
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

ISAAC Z. ZAULDA,
Respondent.

Promulgated:

March 17, 2014

X ----- X

DECISION

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court assailing the February 11, 2011 Resolution¹ of the Court of Appeals (CA), in CA G.R. SP No. 05379, dismissing the petition for review of the petitioners, and its March 6, 2012 Resolution,² denying the petitioners' motion for reconsideration. The February 11, 2011 CA Resolution reads:

A perusal of the Petition revealed there were impediments to the Court's subsequent action thereon:

1. the Petition was not filed in the nick of time inasmuch as the Court could not have pursued action on or before September 9, 2010 which was supposedly the last day specified on the Motion for

¹ *Rollo*, pp. 42-44. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Edgardo L. Delos Santos and Agnes Reyes Carpio.

² *Id.* at 30-32.

Extension of Time to File Petition for Review dated August 23, 2010, postmarked August 24, 2010, and received by this Court on September 13, 2010 for the simple reason that this Division apparently received a copy of the Motion only on September 14, 2010, and the *Rollo* was forwarded to the Office of the *ponente* only on January 5, 2011. Certainly, parties and counsel should not assume that Courts are bound to grant the time they pray for. By parity of reasoning, a motion that is not acted upon in due time is deemed denied.

2. there was no competent evidence regarding petitioners' identity on the attached Verification and Certification Against Forum Shopping as required by Section 12, Rule II of the 2004 Rules on Notarial Practice which now requires a photocopy of petitioners' competent evidence of identity.

Accordingly, petitioners' Petition for Review dated September 9, 2010 is hereby **DISMISSED**.

SO ORDERED.³

[Emphases supplied]

The Antecedents:

The controversy stemmed from a complaint for recovery of possession and declaration of ownership filed by the heirs of Amada Aguila-Zaulda, namely, Eleseo A. Zaulda and Rodolfo A. Zaulda (*petitioners*), against respondent Isaac Z. Zaulda (*respondent*), before the Municipal Circuit Trial Court, Banga-Libacao-Madalag, Banga, Aklan (*MCTC*).

The complaint⁴ alleged, among others, that petitioners were the legal heirs of the late Amada Aguila Zaulda; that the latter was one of the children and legal heirs of the late Teodulo Aguila and Dorotea Zolina (*Spouses Aguila*); that they were co-owners of a parcel of land, Lot 917-M, with an area of 4,263 square meters, situated in Barangay Guadalupe, Libacao, Aklan; that they acquired the subject property by inheritance from the Spouses Aguila per Deed of Extra-judicial Partition of Realty, dated November 2, 1993; that they have been in open, continuous and adverse possession of the subject property since time immemorial as evidenced by tax declarations for the years 1945, 1953, 1957, 1980, 1985, and 1990; that sometime in March 2000, respondent, through force and intimidation, forcibly entered the subject property and, there and then, cut and took with him bamboos and other forest/agricultural products; that on March 29, 2000, respondent, together with two (2) other unidentified persons, forcibly

³ Id. at 43-44.

⁴ Id. at 88-91.

entered the subject property and, with threat and intimidation, constructed and built a house made of light material; and that petitioners demanded respondent to vacate and turn over the subject property to them but the latter refused to do so.

In his Answer,⁵ respondent averred that Erene Aguila Zaula (*Erene*), his predecessor-in-interest, was the actual and physical possessor of the subject land; that the property which the petitioners were claiming was donated to the Municipality of Libacao, Aklan, for school site purposes; that after the donation, Tax Declaration No. 6636 covering the said land was cancelled, and a new Tax Declaration No. 8619 in the name of the Municipality of Libacao was issued and Tax Declaration No. 8618 for the remaining portion of 3,805 square meters was issued to Spouses Aguila; that in Tax Declaration No. 8618, it was erroneously entered therein that it contained 14,500 square meters when it should be only 3,805 square meters; that petitioners caused the survey of the land and instead of confining themselves to the remaining area of 3,805 square meters, they included part and portion of the property including the subject land which was owned by Erene; and that when the heirs of Erene found out that part of their land was included in the tax declaration issued to spouses Aguila, they filed a protest before the DENR.

On December 29, 2008, the **MCTC** rendered judgment,⁶ disposing as follows:

WHEREFORE, premises considered, the court finds preponderance of evidence in favor of plaintiffs (as regards Lots 1, 3 and 6) by:

1. Declaring plaintiffs the lawful owners entitled to possession of the Lots 1, 3 and 6 described in the Commissioner's Report and Sketches being part and parcel of plaintiff's inherited Lot 917;
2. Declaring Lot 1 as the portion owned by the heirs of Amada Zaulda and Lot 3 as the portion owned by the heirs of Coronacion A. Vidad by virtue of the Deed of Extra-judicial Partition executed by the heirs of spouses Teodulo and Dorotea Aguila; Lot 6 (portion of the barangay road) as included in plaintiffs' inherited Lot 917;
3. Ordering the defendant Isaac Zaulda and intervenors Celedonia Aguila-Villorente and Danny A. Villorente, their assigns and privies to peacefully deliver possession of the above-mentioned lots to plaintiffs and/or their representatives;

⁵ Id. at 99-103.

⁶ Id. at 147-162.

4. Ordering the defendant Isaac Zaulda to remove the nipa houses he built found on Lot 3 at his expense.

Further, (with respect to Lots A and B):

5. Declaring Lots A and B described in the Commissioner's Sketch found on page 164 of the record, as the combined area of Lot F-39 owned by parties' predecessor Estanislao Aguila covered by tax declaration no. 011-0458 and are therefore co-owned by his heirs: plaintiffs, defendant, and intervenors included along with the rest of the children and descendants of Teodulo Aguila, Erene Aguila Zaulda and Jaime Aguila;
6. Ordering all parties to respect the co-ownership among them over Lots A and B until they execute an agreement of partition into three (3) equal parts representing the shares of Teodulo, Erene and Jaime.

No pronouncement as to costs.

SO ORDERED.⁷

On appeal, the **Regional Trial Court**, Branch 4, Kalibo, Aklan (*RTC*), *partly modified* the decision of the MCTC and declared respondent as the owner and possessor of lots 1 and 3, the dispositive portion reads:

WHEREFORE, judgment is hereby rendered as follows:

- 1) Defendant Isaac Zaulda is declared, as reflected in the Commissioner's Sketches and Reports, dated July 11, 2002 and March 4, 2004, the lawful owner and possessor of Lot No. 916 (shaded blue) and parts of Lot 1 and 3 (shaded green) as against the plaintiffs;
- 2) Paragraphs 5 and 6 of the dispositive portion of the decision appealed from is affirmed.

Costs against the plaintiffs.

SO ORDERED.⁸

Petitioner Eleseo Zaulda, the lone surviving heir of Amada Aguila-Zaulda, after his co-heir Rodolfo Zaulda passed away, filed a petition for review under Rule 42 of the 1997 Rules of Civil Procedure before the CA. In the assailed resolution, dated February 11, 2011, the CA dismissed the petition for being filed out of time and for lack of competent evidence on affiant's identity on the attached verification and certification against forum shopping.

⁷ Id. at 161-162.

⁸ Id. at 83.

Petitioners' motion for reconsideration was likewise denied in the assailed resolution, dated March 6, 2012.

Hence, petitioners filed this petition, raising the following issues:

1. Whether or not the CA erred in dismissing the petition for being filed out of time despite the motion for extension of time having been timely filed; and
2. Whether or not the CA erred in not passing upon the issue of whether or not the RTC erred in reversing the decision of the MCTC based on erroneous findings of facts and on mere suppositions and presumptions absent any evidence on the same.

On January 17, 2013, respondent filed his Comment,⁹ reiterating that no special and important reason exists to warrant the Court's review of the assailed CA resolutions, the same having been issued in accord with law and supported by jurisprudence.

On June 6, 2013, petitioners filed their Reply,¹⁰ invoking the relaxation of the strict application of procedural rules in the interest of substantial justice. They submit that the petition should not have been dismissed based on technicalities because the appeal was instituted in accordance with the rules. They pray that the petition be given due course as they were deprived of their property without due process of law considering that the case was not properly ventilated upon, more so that the findings of fact of MCTC and RTC were different.

The Court's Ruling:

Petition for review from the RTC to the CA is governed by Rule 42 of the Rules of Court, which provides:

Section 1. *How appeal taken; time for filing.* A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, x x x. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration x x x. **Upon**

⁹ Id. at 192-201.

¹⁰ Id. at 226-228.

proper motion x x x, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. [Emphasis supplied]

In this case, the petitioners complied with the requirements laid down in the above quoted provision.

Records show that on March 10, 2010, petitioners timely filed a motion for reconsideration and/or new trial¹¹ of the RTC decision (dated January 20, 2010, received by petitioners on February 25, 2010), but the same was denied in the RTC Order,¹² dated August 4, 2010, copy of which was received by petitioners on **August 10, 2010**. Thus, they had **until August 25, 2010** within which to file a petition for review pursuant to said Section 1, Rule 42.

On **August 24, 2010**, petitioners filed their Motion for Extension of Time to File Petition for Review before the CA, paying the docket and other lawful fees and deposit for costs and prayed for an additional period of fifteen (15) days from August 25, 2010 or **until September 9, 2010**, within which to file the said petition.

On **September 9, 2010**, they filed the Petition for Review.¹³

The Court notes that the petition for review before the CA was filed within the additional fifteen (15) day period prayed for in their motion for extension of time to file it, which was filed on time by registered mail. To repeat, the petition was filed on **September 9, 2010**, within the fifteen (15) day period requested in their motion for extension of time to file the petition.

As earlier stated, the Motion For Extension Of Time To File Petition For Review, which was filed through registered mail on August 24, 2010, was filed on time. It was physically in the appellate court's possession long before the CA issued its Resolution on February 11, 2011, dismissing the petition for review for being filed out of time. The record shows that **1] the CA received the motion for extension of time to file petition for review on September 13, 2010; 2] the CA Division received the motion on September 14, 2010; and 3] the ponente's office received it on January 5, 2011.**

¹¹ Id. at 84-85.

¹² Id. at 87.

¹³ Id. at 44.

Indeed, there was a delay, but it was a delay that cannot be attributed at all to the petitioners. The almost four (4) months that lapsed before the records reached the *ponente's* office was caused by the gross incompetence and inefficiency of the division personnel at the CA. It was the height of injustice for the CA to dismiss a petition just because the motion for extension reached the *ponente's* office beyond the last date prayed for. Clearly, the petitioners were unreasonably deprived of their right to be heard on the merits because of the CA's unreasonable obsession to reduce its load. In allowing the petitioners to be fatally prejudiced by the delay in the transmittal attributable to its inept or irresponsible personnel, the CA committed an unfortunate injustice.

The petitioners could not also be faulted that the motion for extension of time was received by the CA on September 13, 2010. The rules allow parties to file a pleading by registered mail.¹⁴ They are not required to ensure that it would be received by the court on or before the last day of the extended period prayed for. Though no party can assume that its motion for extension would be granted, any denial thereof should be reasonable.

Granting that the petition was filed late, substantial justice begs that it be allowed and be given due course. Indeed, the merits of petitioners' cause deserve to be passed upon considering that the findings of the RTC were in complete contrast to the findings of the MCTC which declared petitioners as the lawful owners entitled to possession of the lots in question.

In *Montajes v. People of the Philippines*,¹⁵ petitioner therein, due to erroneous computation, filed his petition for review before the CA two (2) days after the expiration of the requested 15-day extension period. The Court held in that case that being a few days late in the filing of the petition for review did not automatically warrant its dismissal and where strong considerations of substantial justice were manifest in the petition, the stringent application of technical rules could be relaxed in the exercise of

¹⁴ **Rule 13. Filing and Service of Pleadings, Judgments and Other Papers.**

x x x.

Section 5. Modes of service. — Service of pleadings motions, notices, orders, judgments and other papers shall be made either personally or by mail. (3a)

x x x.

Section 7. Service by mail. — Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail. (5a; Bar Matter No. 803, 17 February 1998)

¹⁵ G.R. No. 183449, March 12, 2012, 667 SCRA 770.

equity jurisdiction. It found that the circumstances obtaining in that case merited the liberal application of the rule absent any intention to cause delay.

As regards the competent identity of the affiant in the Verification and Certification, records¹⁶ show that he proved his identity before the notary public through the presentation of his Office of the Senior Citizen (OSCA) identification card. Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* requires a party to the instrument to present competent evidence of identity. Sec. 12, as amended, provides:

Sec. 12. Competent Evidence of Identity. – The phrase “competent evidence of identity” refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver’s license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter’s ID, *Barangay* certification, Government Service Insurance System (GSIS) e-card, Social Security System (SSS) card, PhilHealth card, **senior citizen card**, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman’s book, alien certificate of registration/immigrant certificate of registration, government office ID, certificate from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development certification [as amended by A.M. No. 02-8-13-SC dated February 19, 2008]; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

It is clear from the foregoing provisions that a **senior citizen card** is one of the competent identification cards recognized in the 2004 Rules on Notarial Practice. For said reason, there was compliance with the requirement. Contrary to the perception of the CA, attachment of a photocopy of the identification card in the document is not required by the 2004 Rules on Notarial Practice. Even A.M. No. 02-8-13-SC, amending Section 12 thereof, is silent on it. Thus, the CA’s dismissal of the petition for lack of competent evidence on the affiant’s identity on the attached verification and certification against forum shopping was without clear basis.

¹⁶ *Rollo*, p. 39.

Even assuming that a photocopy of competent evidence of identity was indeed required, non-attachment thereof would not render the petition fatally defective. It has been consistently held¹⁷ that verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served. The Court, in *Altres v. Empleo*,¹⁸ issued guidelines based on previous jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of a defective, verification as well as on certification against forum shopping, as follows:

x x x

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

x x x.¹⁹

Again, granting arguendo that there was non-compliance with the verification requirement, the rule is that courts should not be so strict about procedural lapses which do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.²⁰

In *Coca-Cola Bottlers v. De la Cruz*,²¹ where the verification was marred only by a glitch in the evidence of the identity of the affiant, the Court was of the considered view that, in the interest of justice, the minor defect can be overlooked and should not defeat the petition.

¹⁷*Pagadora v. Ilao*, G.R. No. 165769, December 12, 2011, 662 SCRA 14, 25, citing *Millennium Erectors Corp. v. Magallanes*, G.R. No. 18432, November 15, 2010, 634 SCRA 708 and also *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, 637 SCRA 615 and *Robern Development Corporation v. Judge Quitain*, 373 Phil. 773, 786 (1999).

¹⁸ G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-597.

¹⁹ *Pagadora v. Ilao*, supra note 17, at 25-26.

²⁰ *Montajes v. People of the Philippines*, G.R. No. 183449, March 12, 2012, 667 SCRA 770, 781.

²¹ G.R. No. 184977, December 7, 2009, 608 SCRA 16.

The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, *giving a false impression of speedy disposal of cases* while actually resulting in more delay, if not miscarriage of justice."²² [Italicization supplied]

What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.²³ At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of *Alonso v. Villamor*:²⁴

Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.

WHEREFORE, the petition is **GRANTED**. The February 11, 2011 and March 6, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 05379 are **SET ASIDE**.

Accordingly, the Court **GRANTS** petitioners' Motion For Extension Of Time To File Petition For Review filed with the Court of Appeals and gives due course to their Petition for Review. The case is **REMANDED** to the Court of Appeals for decision on the merits of the petition.

SO ORDERED.



JOSE CATRAL MENDOZA
Associate Justice

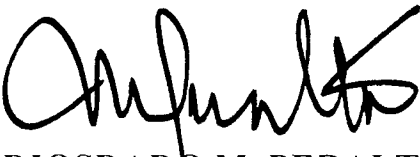
²² *Aguam v. Court of Appeals*, 388 Phil. 587, 594 (2000).

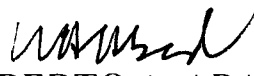
²³ *De Los Santos v. Court of Appeals*, 594 Phil. 361, 376 (2008), citing *Alberto v. Court of Appeals*, 390 Phil. 253, 272 (2000).

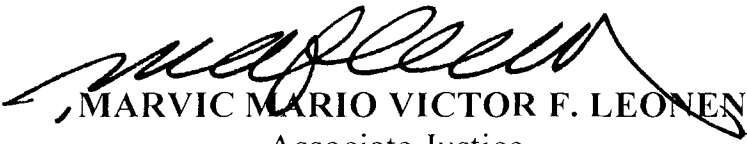
²⁴ 16 Phil. 315, 322. (1910).

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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