



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

K & G MINING  
CORPORATION,

G.R. No. 188364

Petitioner, Present:

VELASCO, JR., J.,  
Chairperson,  
BERSAMIN,\*  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

- versus -

ACOJE MINING COMPANY,  
INCORPORATED and  
ZAMBALES CHROMITE  
MINING COMPANY,  
INCORPORATED,

Promulgated:

Respondents. February 11, 2015

*Vincent Agustin*

X-----X

DECISION

REYES, J.:

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeks to annul and set aside the Resolutions dated March 16, 2009<sup>2</sup> and June 5, 2009<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 107700 dismissing K & G Mining Corporation's (KGMC) petition for *certiorari*<sup>4</sup> for being an improper remedy for the review of the Decision<sup>5</sup> dated July 14,

\* Additional member per Special Order No. 1912 dated January 12, 2015 *vice* Associate Justice Arturo D. Brion.

<sup>1</sup> *Rollo*, pp. 18-43.

<sup>2</sup> *Id.* at 45-46.

<sup>3</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta concurring; *id.* at 47-48.

<sup>4</sup> *Id.* at 131-148.

<sup>5</sup> Rendered by Chairman Michael T. Defensor with Board Members Deinrado Simon D. Dimalibot and Jeremias L. Dolino; *id.* at 49-58.

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2005 and Resolution<sup>6</sup> dated December 18, 2008 of the Mines Adjudication Board (MAB) in MAB Case No. 0133-02.

### **The Facts**

Petitioner KGMC and respondents Acoje Mining Company Incorporated (AMCI) and Zambales Chromite Mining Company Incorporated (ZCMCI) are mining corporations organized and existing by virtue of Philippine laws.<sup>7</sup>

In 1970, ZCMCI acquired the 60 mining claims of Spouses Gonzalo and Purificacion Nava located in Sta. Cruz, Zambales. These mining claims were registered under Act of Congress of July 1, 1902.<sup>8</sup>

ZCMCI thereafter filed its application for patent and availment of rights and privileges over the mining claims pursuant to Presidential Decree (P.D.) No. 463.<sup>9</sup> On July 13, 1977, ZCMCI's application for availment of rights and privileges was approved by the Bureau of Mines.<sup>10</sup>

On October 14, 1977, P.D. No. 1214<sup>11</sup> was promulgated requiring “[h]olders of subsisting and valid patentable mining claims, lode or placer, located under the provisions of the Act of Congress of July 1, 1902, as amended, [to] file a mining lease application therefor with the Mines Regional office concerned within a period of one (1) year x x x.”

ZCMCI complied with the new law by filing on October 11, 1978 a lease application (under protest) covering its 60 mining claims. ZCMCI also questioned the constitutionality of P.D. No. 1214 before the Court and prayed that the Minister (now Secretary) of the Department of Environment and Natural Resources (DENR) be enjoined from implementing the same. In G.R. No. 49143 promulgated on August 21, 1989, the Court upheld the constitutionality of P.D. No. 1214.<sup>12</sup>

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<sup>6</sup> Rendered by Chairman Jose L. Atienza, Jr. with Board Members Horacio C. Ramos and Eleazar P. Quinto; id. at 59-63.

<sup>7</sup> Id. at 21.

<sup>8</sup> Id. at 50.

<sup>9</sup> Mineral Resources Development Decree of 1974.

<sup>10</sup> *Rollo*, p. 50.

<sup>11</sup> Entitled REQUIRING ALL LOCATORS UNDER THE ACT OF CONGRESS OF JULY 1, 1902, AS AMENDED, TO SECURE MINING LEASE CONTRACTS UNDER THE PROVISIONS OF PRESIDENTIAL DECREE NO. 463 INVOLVING THEIR PATENTABLE MINING CLAIMS.

<sup>12</sup> *Rollo*, pp. 51-52.

In the interim or on July 25, 1987, Executive Order (E.O) No. 279<sup>13</sup> was issued authorizing the Secretary of the DENR to negotiate and conclude joint venture, co-production or production-sharing agreements for the exploration, development and utilization of mineral resources.

On June 11, 1988, ZCMCI entered into an operating agreement with AMCI over the former's 60 mining claims.<sup>14</sup>

On October 24, 1988 and January 10, 1989, a certain Dominador Ilagan registered with the DENR Region III his mining claims denominated as "Bong 1 to Bong 4" and "Bong 5 to Bong 6" all located at Sta. Cruz, Zambales. On May 29, 1989 and August 17, 1989, he assigned these mining claims to KGMC.<sup>15</sup>

On October 5, 1989, the Mines and Geo-Sciences Bureau (MGB) informed ZCMCI that its application for mining lease should be converted into a Mineral Production Sharing Agreement (MPSA) in accordance with E.O. No. 279.<sup>16</sup>

On June 1, 1990, KGMC filed its letter of intent to avail for itself an MPSA before the MGB of Region III over its mining claims denominated as "Bong 1 to Bong 6" with an approximate area of 1,620 hectares.<sup>17</sup>

On June 19, 1990, the DENR Secretary issued DENR Special Order No. 580, series of 1990, creating a technical committee that will review the status of ZCMCI. Three months thereafter, ZCMCI submitted documents in support of an MPSA application. On October 9, 1990, the technical committee submitted its Memorandum recommending that ZCMCI be allowed to apply for an MPSA in lieu of a mining lease because it had substantially complied with the requirements of applicable laws.<sup>18</sup>

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<sup>13</sup> AUTHORIZING THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO NEGOTIATE AND CONCLUDE JOINT VENTURE, CO-PRODUCTION, OR PRODUCTION-SHARING AGREEMENTS FOR THE EXPLORATION, DEVELOPMENT AND UTILIZATION OF MINERAL RESOURCES, AND PRESCRIBING THE GUIDELINES FOR SUCH AGREEMENTS AND THOSE AGREEMENTS INVOLVING TECHNICAL OR FINANCIAL ASSISTANCE BY FOREIGN-OWNED CORPORATIONS FOR LARGE-SCALE EXPLORATION, DEVELOPMENT, AND UTILIZATION OF MINERALS.

<sup>14</sup> *Rollo*, p. 51.

<sup>15</sup> *Id.* at 51-52.

<sup>16</sup> *Id.* at 52.

<sup>17</sup> *Id.* at 53.

<sup>18</sup> *Id.*

On November 20, 1990, the DENR Secretary issued Department Administrative Order No. 82, series of 1990<sup>19</sup> (DAO 1990-82), providing the procedural guidelines on the award of MPSA through negotiation. The order took effect on January 5, 1991 and it provided, among others, that an application for MPSA shall be accepted upon payment to the Regional Office concerned of filing and processing fees and that mining applicants with unperfected application shall submit a letter of intent and MPSA application/proposal within two years from the effectivity of DAO 1989-57<sup>20</sup> or until July 17, 1991.<sup>21</sup>

DAO 1989-57 contains the general guidelines on MPSA under E.O. No. 279 stating, among others, that:

The award of production sharing agreement shall be by bidding in areas previously explored and determined to be economically viable for Mining Operations. In all other cases and in case of failure of bidding, the award shall be by negotiation.

x x x x

b. Negotiation — Proposals for a negotiated Agreement shall be submitted to the Office of the Secretary, DENR, through the appropriate Regional Office. x x x.<sup>22</sup>

On May 21, 1991, ZCMCI, AMCI and the government, represented by the DENR Secretary, executed an MPSA covering ZCMCI's 60 mining claims with an approximate area of 540 ha.<sup>23</sup> The MPSA was approved by the Office of the President (OP) on September 5, 1991.<sup>24</sup>

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<sup>19</sup> Procedural Guidelines on the Award of Mineral Production Sharing Agreement (MPSA) Through Negotiation.

<sup>20</sup> Guidelines on Mineral Production Sharing Agreement under Executive Order No. 279.

<sup>21</sup> **Section 1. Acceptance of MPSA Application/Proposal** - An MPSA Application/Proposal in twelve (12) sets shall be accepted upon payment to the DENR Regional Office concerned of the following fees:

- a) filing fee - P100 per application/proposal
- b) processing fee - P5,000.00 per application/proposal
- c) P.D. 1856 as amended, for a and b - P20.00 per application/proposal.

x x x x

**Section 3. Submission of Letter of Intent (LOIs) and MPSAs** - The following shall submit their LOIs and MPSAs within two (2) years from the effectivity of DENR A.O. 57 or until July 17, 1991.

i. Declaration of Location (DOL) holders, mining lease applicants, exploration permittees, quarry applicants and other mining applicants whose mining/quarry applications have not been perfected prior to the effectivity of DENR Administrative Order No. 57.

x x x x

<sup>22</sup> DAO 1989-57, Article 3, Section 3.5.

<sup>23</sup> *Rollo*, pp. 82-97.

<sup>24</sup> *Id.* at 54.

Claiming that the issuance and approval of the above MPSA was highly irregular, KGMC filed a letter/protest with the OP.<sup>25</sup> The matter was referred to the DENR Secretary on October 22, 1991.<sup>26</sup>

KGMC claimed that the MPSA was irregularly executed because AMCI and ZCMCI did not file their application before the appropriate DENR Regional Office. There is also no record with the MGB-DENR Region III that AMCI and/or ZCMCI filed a proposal for a negotiated agreement with the said office. ZCMCI and AMCI also failed to comply with the documentary requirements and payments mandated in DAOs 1989-57 and 1990-82.

KGMC further alleged that the area covered by the subject MPSA is not available pursuant to paragraph 3.3, Article 3<sup>27</sup> of DAO 1989-57 since 540 ha thereof is in conflict with KGMC's Prospecting Permit Application covering a total area of 486 ha. No clearance was issued by the Regional Technical Secretariat of the MGB-DENR Region III. KGMC claimed to have been denied of due process because no publication of ZCMCI and AMCI's MPSA was ever made thus depriving it an opportunity to file an adverse claim.

KGMC sought the disapproval of the subject MPSA and its remand to the concerned DENR Regional Office so that its protest and adverse claim can be resolved.<sup>28</sup>

On December 1, 1991, ZCMCI wrote to the DENR Secretary stating that the MPSA has already become final and executory upon its approval by the President.<sup>29</sup>

On December 4, 1991, ZCMCI and AMCI paid with the MGB-DENR Region III of San Fernando, Pampanga the filing, processing, registration and other regulatory fees in connection with their MPSA.<sup>30</sup>

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<sup>25</sup> Id. at 98-103.

<sup>26</sup> Id. at 54.

<sup>27</sup> ARTICLE 3.

NATURE, TYPES AND AWARD OF PRODUCTION SHARING AGREEMENT

x x x x

3.3 **Available Areas** - The following areas are available for Production Sharing Agreements:

- a. Lands of public domain and alienable and disposable lands not covered by valid and existing Mining Lease and similar Agreements;
- b. Civil and other reservations where the Department retains jurisdiction;
- c. Lands covered by expired/cancelled Mining Lease Agreements;
- d. Private lands; and
- e. Offshore Areas within the Philippine Exclusive Economic Zone.

x x x x

<sup>28</sup> *Rollo*, p. 65.

<sup>29</sup> Id. at 104-105.

<sup>30</sup> Id. at 54.

KGMC's letter-protest was eventually forwarded to the DENR Panel of Arbitrators in Region III, San Fernando, Pampanga on November 25, 1996.<sup>31</sup>

In their Position Paper, ZCMCI and AMCI reiterated that the MPSA has already been approved by the President on September 5, 1991 and has thus become final and executory. KGMC can no longer validly oppose the MPSA and its protest thereto is already moot and academic. KGMC was given an opportunity to submit its application with the MGB but it was ZCMCI and AMCI's application that was recommended being the more qualified applicant. ZCMCI asserted that it filed its mining claim way back in 1934 while KGMC figured in the picture only in 1989.<sup>32</sup>

### **Ruling of the Panel of Arbitrators**

In an Order<sup>33</sup> dated April 23, 2002, the Panel of Arbitrators of the MGB ruled in favor of KGMC. They found that ZCMCI's failure to file its MPSA proposal with the MGB-DENR Region III as required in DAOs 1989-57 and 1990-82 made the approval of its MPSA highly irregular. Had the application of ZCMCI for an MPSA been duly filed with the MGB-DENR Region III in the same way that KGMC had so filed pursuant to DAOs 1989-57 and 1990-82, the overlapping of claims should have been avoided and the mining claims of KGMC should not have been included in the area covered by the questioned MPSA of ZCMCI and AMCI. Accordingly, the decretal portion of the order read:

WHEREFORE, the Panel of Arbitrators finds the Mineral Production Sharing Agreement of [r]espondents Acoje Mining Company, Inc., and the Zambales Chromite Mining Company, Inc. irregularly issued and its cancellation is recommended. The MPSA application of [petitioner] K & G Mining Corporation that was duly filed in accordance with the rules should be given due course subject to compliance with the documentation requirements under R.A. No. 7942 and its implementing guidelines, DAO No. 96-40, as amended.

SO ORDERED.<sup>34</sup>

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<sup>31</sup> Id. at 54-55.

<sup>32</sup> Id. at 66.

<sup>33</sup> Issued by MGB Panel of Arbitrators Chairman Wilfredo B. Saraos and its members Engr. Lauro S. Garcia, Jr. and Atty. Virgilio B. Tiongson; id. at 64-71.

<sup>34</sup> Id. at 70-71.

**Ruling of the MAB**

On appeal, however, the MAB reversed the ruling of the Panel of Arbitrators of the MGB. According to the MAB, Article 3, paragraph 3.5(b)<sup>35</sup> of DAO 1989-57 did not expressly prohibit the direct filing of an MPSA proposal before the MGB Central Office. The role of the Regional Office is only to facilitate the receipt and submission of the MPSA proposal to the Office of the Secretary for evaluation. The Panel of Arbitrators was held to have gravely abused its discretion in recommending the cancellation of the subject MPSA because such power is vested only on the Secretary being the one who has the authority to grant an MPSA. Thus, the MAB Decision<sup>36</sup> dated July 14, 2005 disposed as follows:

**WHEREFORE**, premises considered, the appealed Orders of the Panel of Arbitrators, DENR Region III, dated April 23, 2002 and June 27, 2002 are hereby **VACATED**. The Mineral Production Sharing Agreement executed by Zambales Chromite Mining Corporation and Acoje Mining Co., Inc[.] with the Government, through the DENR Secretary, is hereby declared valid.

**SO ORDERED.**<sup>37</sup>

KGMC moved for reconsideration<sup>38</sup> but its motion was denied in the MAB Resolution<sup>39</sup> dated December 18, 2008.

**Ruling of the CA**

On March 9, 2009, KGMC, through its previous counsel, filed before the CA a *Petition for Extension of Time to File Petition for Certiorari*.<sup>40</sup> In a Resolution<sup>41</sup> dated March 16, 2009, the CA denied extension for the reason that decisions of the MAB are appealable *via* a petition for review under Rule 43 and not by way of a petition for *certiorari* under Rule 65. Even

<sup>35</sup> **ARTICLE 3**  
**NATURE, TYPES AND AWARD OF PRODUCTION SHARING AGREEMENT**  
x x x x  
3.5 *Award of Production Sharing Agreement*  
x x x x  
b. *Negotiation* - Proposals for a negotiated Agreement shall be submitted to the Office of the Secretary, DENR, through the appropriate Regional Office. The proposal shall specify the location and area of the proposed Contract Area; the Mineral or Minerals to be explored, developed and produced; the justification for the negotiation; the proposed Exploration Work Program and Budget; proposed share of the Government; and such other matters as may guide the Secretary in the appreciation and evaluation of the proposal as expressed in Article 7 hereof.  
x x x x

<sup>36</sup> Id. at 49-58.  
<sup>37</sup> Id. at 58.  
<sup>38</sup> Id. at 113-119.  
<sup>39</sup> Id. at 59-63.  
<sup>40</sup> Id. at 122-125.  
<sup>41</sup> Id. at 45.

assuming that *certiorari* is an available remedy, the reglementary period for its filing has already prescribed.

KGMC thereafter filed a *Motion for Reconsideration and to Admit Petition*<sup>42</sup> explaining that its failure to file a petition for *certiorari* within the period allowed in Rule 65 was due to the non-availability of some of the annexes thereto which it still had to secure from the MAB. Attached to the motion was the intended petition for *certiorari*.<sup>43</sup>

In a Resolution<sup>44</sup> dated June 5, 2009, the CA denied reconsideration. Hence, the present recourse praying that the foregoing issuances be annulled and the orders of the Panel of Arbitrators be reinstated on the following grounds:

I. THE [CA] GRAVELY ERRED AND DECIDED THE ISSUES OF THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FAILED TO GRANT DUE COURSE TO THE PETITION OF [KGMC]:

A. THEREBY VALIDATING A PATENTLY ERRONEOUS DECISION BY THE [MAB] OF THE [DENR] WHICH APPROVED THE [MPSA] PERMITS OF [AMCI] AND [ZCMCI] DESPITE THEIR FAILURE TO FILE [THEIR] MPSA PROPOSAL WITH THE DENR-MINES SECTOR OF DENR REGION III AS REQUIRED BY LAW AND SUBMIT OTHER DOCUMENTARY REQUIREMENTS IN SUPPORT OF [THEIR] MPSA PURSUANT TO THE PROVISIONS OF [DAO] NOS. 57 AND 82;

B. THEREBY VALIDATING A[N] [MPSA] AWARDED TO [AMCI] AND [ZCMCI] IN LIEU OF A MINING LEASE APPLICATION DESPITE THE FACT THAT NO LESS THAN THE HONORABLE SUPREME COURT HAD RULED THAT THE MINING CLAIMS OF ZCMCI IS DEEMED ABANDONED FOR FAILURE TO MAINTAIN AND INTRODUCE THE MANDATED IMPROVEMENTS ON THE MINING CLAIMS;

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<sup>42</sup> Id. at 127-129.

<sup>43</sup> Id. at 131-148.

<sup>44</sup> Id. at 47-48.



- C. THEREBY VALIDATING A[N] [MPSA] AWARDED TO [AMCI] AND [ZCMCI] EVEN THOUGH BOTH [AMCI] AND ZCMCI HAVE DEFAULTED AND BREACHED THE TERMS AND CONDITIONS OF THE MPSA AND HAVE ABANDONED THEIR MINING OPERATION;
- D. EVEN THOUGH THE ERROR OF COUNSEL IS NOT BINDING ON THE CLIENT UNDER THE CIRCUMSTANCES OF THE INSTANT CASE.<sup>45</sup>

### **The Ruling of the Court**

The Court denies the petition.

KGMC faults its previous counsel in failing to timely file the correct mode of appeal from the MAB resolutions and submits that it should be excused from the repercussions of his ensuing omissions as they amounted to gross negligence, *viz:*

- (1) Counsel failed to file a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure, x x x within the pertinent period with the Honorable [CA];
- (2) Counsel waited for the passage of time before he belatedly filed a Petition for Certiorari under Rule 65 of the Rules of Court to the Honorable [CA];
- (3) Counsel failed to explain why the wrong remedy was availed of when he filed his MOTION FOR RECONSIDERATION AND TO ADMIT THE PETITION dated 3 April 2009 with the Honorable [CA];
- (4) When counsel received notice of the denial of the above MOTION FOR RECONSIDERATION on 18 June 2009, he only notified the petitioner about this development x x x on 26 June 2009.<sup>46</sup>

KGMC also did not dispute the following facts on record, *viz:*

- (1) KGMC received the Resolution dated December 18, 2008 of the MAB on January 9, 2008;

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<sup>45</sup> Id. at 18-19.

<sup>46</sup> Id. at 38.

(2) Hence, KGMC had 15 days or until January 24, 2009 within which to file with the CA a petition for review under Rule 43 of the Rules of Court. However, neither a Petition for Review under Rule 43 nor a Motion for Extension to file the same had been filed with the CA.

(3) Instead, on March 9, 2009, or two months after the lapse of the reglementary period within which to file an appeal under Rule 43, KGMC filed a petition for extension of time to file a petition for *certiorari* under Rule 65 of the Rules of Court.<sup>47</sup>

“It is settled rule that the mistake of a counsel binds the client.”<sup>48</sup> The Court explained the rationale for the rule in the recent *Lagua v. Court of Appeals*,<sup>49</sup> thus:

[A] counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.<sup>50</sup>

While there is a recognized exception to the rule that is - where the lawyer’s negligence was so gross that it results in the grave injustice of depriving his client of the due process of law<sup>51</sup> - it is inapplicable to the present case.

*First*, a counsel’s failure to perfect an appeal within the reglementary period is simple negligence. It is not one as gross, palpable, and reckless as to deprive a party of its day in court.<sup>52</sup>

*Second*, in cases where the counsel’s negligence consisted of his failure to timely file an appeal, any alleged deprivation of due process is negated by the fact that the client had the opportunity to be heard or was actually heard in the lower tribunal. This was the ruling in *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*<sup>53</sup> where the Court found no deprivation of due process because the client was able to

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<sup>47</sup> Opposition to the Petition for Review on *Certiorari* filed by ZCMCI, id. at 164.

<sup>48</sup> *Torres v. China Banking Corp.*, 624 Phil. 131, 142 (2010).

<sup>49</sup> G.R. No. 173390, June 27, 2012, 675 SCRA 176.

<sup>50</sup> Id. at 183, citing *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 330-331.

<sup>51</sup> *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 648.

<sup>52</sup> *Trust International Paper Corporation v. Pelaez*, 531 Phil. 150, 163 (2006); *Ong v. Ciba Geigy (Phils.), Inc.*, 527 Phil. 425, 429-430 (2006); *Producers Bank of the Phils. v. Court of Appeals*, 430 Phil. 812, 830-831 (2002).

<sup>53</sup> G.R. No. 198357, December 10, 2012, 687 SCRA 643.

fully present and argue her case before the Labor Arbiter (LA). She was accorded the opportunity to be heard and thus her failure to appeal the LA's decision cannot be deemed as a deprivation of her right to due process.<sup>54</sup>

A similar conclusion was reached in *Sofio v. Valenzuela*,<sup>55</sup> thus:

[T]he petitioners were able to participate in the proceedings before the [Provincial Agrarian Reform Adjudicator] and the [Department of Agrarian Reform Adjudication Board], and, in fact, obtained a favorable judgment from the DARAB. They also had a similar opportunity to ventilate their cause in the CA. That they had not been able to avail themselves of all the remedies open to them did not give them the justification to complain of a denial of due process. They could not complain because they were given the opportunity to defend their interest in due course x x x.<sup>56</sup>

The Court finds no cogent reason to depart from the foregoing jurisprudence considering that the factual milieu underlying them is analogous to the circumstances at bar.

KGMC was not deprived of due process. So long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. "The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy."<sup>57</sup> Records show that the case took its regular course in lower tribunals. KGMC had the opportunity to be heard, was so heard and actively participated, in the proceedings before the Panel of Arbitrators and the MAB.

While its letter/protest was pending before the DENR, KGMC filed a Memorandum dated July 23, 1995. It adopted this memorandum later on when the matter was eventually referred to the Panel of Arbitrators.<sup>58</sup> It also filed a motion for reconsideration<sup>59</sup> and a supplement to the motion for reconsideration<sup>60</sup> before the MAB when it reversed the ruling of the Panel of Arbitrators. Indeed, by failing to file its appeal within the reglementary period, it could not be successfully argued that KGMC was denied due process of law.

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<sup>54</sup> Id. at 648-649.

<sup>55</sup> G.R. No. 157810, February 15, 2012, 666 SCRA 55.

<sup>56</sup> Id. at 69.

<sup>57</sup> Id., citing *Pasiona, Jr. v. Court of Appeals, et al.*, 581 Phil. 124, 135 (2008).

<sup>58</sup> *Rollo*, p. 66.

<sup>59</sup> Id. at 113-116.

<sup>60</sup> Id. at 117-119.

Moreover, it is an established doctrine that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. In *Producers Bank of the Philippines v. Court of Appeals*,<sup>61</sup> the Court has held thus:

[R]ules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional.<sup>62</sup> (Citation omitted)

The attempt to resuscitate the lost appeal by filing a Petition for Extension of Time to File Petition for *Certiorari* was likewise ineffective. The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. It lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. “*Certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.”<sup>63</sup>

All told, the MAB Decision dated July 14, 2005 and Resolution dated December 18, 2008 have effectively lapsed into finality due to the simple negligence of KGMC’s counsel in allowing the reglementary period to lapse without perfecting an appeal. KGMC received the MAB Resolution dated December 18, 2008 on January 9, 2009 but sought a review thereof before the CA only on March 9, 2009 or beyond the 15-day reglementary period to appeal under Rule 43 of the Rules of Court.<sup>64</sup>

The Court, therefore, need no longer concern itself with the propriety of the said MAB issuances. The Court will not override the finality and immutability of a judgment based only on the simple negligence of a party’s counsel.<sup>65</sup>

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<sup>61</sup> 430 Phil. 812 (2002).

<sup>62</sup> Id. at 829.

<sup>63</sup> *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 578.

<sup>64</sup> See *Carpio v. Sulu Resources Devt. Corp.*, 435 Phil. 836, 838, 846-849 (2002).

<sup>65</sup> Supra note 55, at 58.


**WHEREFORE**, premises considered, the petition is hereby **DENIED**. The Resolutions dated March 16, 2009 and June 5, 2009 of the Court of Appeals in CA-G.R. SP No. 107700 are **AFFIRMED**.

**SO ORDERED.**

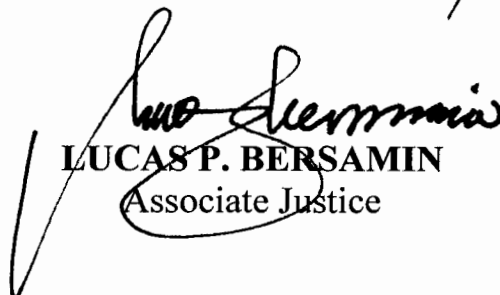


**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**




**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice




**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

## ATTESTATION

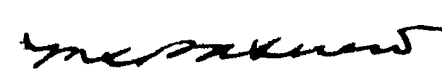
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**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

