



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** which reads as follows:

“G.R. No. 213579 (Evangeline Adaya-Eickmeier, represented by Noel Adaya and Jerry Adaya v. The Hon. Court of Appeals, Twelfth Division, Manila, The Hon. Presiding Judge Isidoro T. Pobre of The Regional Trial Court, Branch 18, Batac City, and The Spouses Kenneth Michael O’Donnell and Anita Lacro-O’Donnell, represented by Romeo C. Lacro). — This is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Court of Appeals’ (CA’s) Resolution² dated May 20, 2014 in CA-G.R. SP No. 122022, which denied due course to petitioner’s action for annulment of judgment.

Petitioner availed the wrong remedy. A petition for *certiorari* 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:³

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

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¹ *Rollo*, pp. 3-21.

² *Id.* at 22-36. Penned by Associate Justice Michael P. Elbinias, with the concurrence of Associate Justices Isaias P. Dicdican (Chairperson) and Victoria Isabel A. Paredes.

³ G.R. No. 215817, *Tribunado v. Matubo* (Notice), November 25, 2020.

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. x x x⁴ (Emphasis in the original; citation omitted.)

Here, the CA's Resolution dated May 20, 2014, which denied due course the action for annulment of judgment completely disposed of the case and resolved the subject matter in its entirety, leaving nothing else to be done.⁵ As such, the proper recourse of the aggrieved party is a petition for review on *certiorari*.⁶ Apropos, is Section 1, Rule 45 of the Rules of Court, 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.

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⁴ Id.

⁵ *Olongapo City v. Subic Water and Sewerage Co., Inc.*, 740 Phil. 502, 517 (2014).

⁶ *Phil. Tourism Authority v. Phil. Golf Dev't. & Equipment, Inc.*, 684 Phil. 429, 437 (2012).

Also, “[m]ere 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*.”⁷ In *Indoyon, Jr. v. Court of Appeals*,⁸ 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. 2-90.⁹ Nonetheless, even if we disregard the impropriety of the remedy resorted to by petitioner and consider it under Rule 45 of the Rules of Court, the same must still be denied for having been filed out of time. Notably, petitioner received on June 6, 2014¹⁰ the CA’s Resolution dated May 20, 2014. Hence, petitioner had 15 days, or until June 21, 2014, to file an appeal. Yet, petitioner filed the petition only on August 4, 2014, or 44 days beyond the reglementary period. Thus, the CA’s Resolution had perfunctorily become final and executory. More importantly, the issues raised by petitioner as to the proper service of summons and extrinsic fraud are factual in nature and beyond the ambit of the Court’s jurisdiction in a petition for review on *certiorari*.

At any rate, even if the Court decides the issues, the petition would still be dismissed. To stress, an action to annul a final judgment is equitable in character and allowed only in exceptional cases.¹¹ Sections 1¹² and 2¹³ of Rule 47 of the Rules of Court, impose strict conditions to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.¹⁴ Moreover, the rule is explicit that this action may not be invoked where the party has availed himself of the remedy of new trial, appeal, petition for relief, or other appropriate remedy and lost, or where he has failed to avail

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⁷ *Philippine Amusement and Gaming Corporation (PAGCOR) v. Court of Appeals*, G.R. No. 230084, August 20, 2018.

⁸ 706 Phil. 200 (2013), Citing *Ybañez v. CA*, 323 Phil. 643, 651-652 (1996).

⁹ 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.

¹⁰ *Rollo*, p. 4.

¹¹ *Veneracion v. Mancilla*, 528 Phil. 309, 323 (2006). See also *Republic v. “G” Holdings, Inc.*, 512 Phil. 253, 259-262 (2005).

¹² SEC. 1. *Coverage*. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

¹³ SEC. 2. *Grounds for annulment*. – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

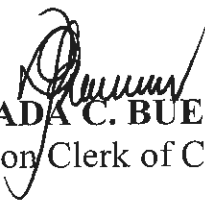
¹⁴ *Cerezo v. Tuazon*, 469 Phil. 1020, 1041 (2004).

himself of those remedies through his own fault or negligence.¹⁵ In this case, the CA did not commit grave abuse of discretion in denying due course the action for annulment of judgment. As the CA aptly held, petitioner already filed a petition for relief from judgment with the Regional Trial Court (RTC) invoking extrinsic fraud but was denied for insufficiency of form and substance.¹⁶ Having been unsuccessful, petitioner could no longer avail of the action for annulment of judgment, especially since the issue relied upon could have been properly raised in a timely motion for reconsideration or appeal. Furthermore, petitioner had every opportunity to avail of such appropriate remedies within the reglementary periods to question the denial of her petition for relief from judgment, but she failed without sufficient justification. Clearly, the condition that the ordinary and other appropriate remedies are no longer available through no fault of petitioner, was not satisfied. Lastly, the RTC's supposed lack of jurisdiction over the person of petitioner is barren of probative weight. Petitioner failed to substantiate this claim and offered only self-serving assertion without any corroborating evidence.

FOR THESE REASONS, the Petition for *Certiorari* under Rule 65 of the Rules of Court is **DISMISSED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *SK/15*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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Court of Appeals (x)
Manila
(CA-G.R. SP No. 122022)

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¹⁵ *Heirs of Maura So v. Obliosca*, 566 Phil. 397, 406 (2008).

¹⁶ *Rollo*, p. 55.



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The Hon. Presiding Judge
Regional Trial Court, Branch 18
Batac City, 2906 Ilocos Norte
(Civil Case No. 4829)

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