



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 250078 [Formerly UDK-16540] (*Hawkson’s Truck and Parts Center Corporation, represented by Thomas Y. Haw v. Honorable Court of Appeals, [Sixth Division], represented by Justice Rafael Antonio M. Santos, and the Anti-Money Laundering Council.*) — This Petition for *Certiorari* under Rule 65,¹ with prayer for the issuance of a temporary restraining order or writ of preliminary injunction, seeks to annul the Resolution² dated 15 July 2019 of the Court of Appeals (CA) in CA-G.R. AMLA No. 00222. The CA denied the motion to lift the Freeze Order³ issued against the bank accounts of petitioner Hawkson’s Truck and Parts Center Corporation (petitioner).

Antecedents

This case stemmed from an *Ex-Parte* Petition for the Issuance of a Freeze Order⁴ filed by respondent Anti-Money Laundering Council (AMLC) against several bank accounts, insurance policies, and cryptocurrencies held by Joel Abatonon Apolinario (Joel), Reyna Lobitana Apolinario (Reyna), their businesses, and individuals and entities they transacted with.⁵

The AMLC alleged that, in February 2017, the Enforcement and Investor Protection Department (EIPD) of the Securities and Exchange Commission (SEC) received several reports regarding a

¹ *Rollo*, pp. 3-41.

² *Id.* at 117-130; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

³ *Id.* at 118-130.

⁴ *Id.* at 70-96.

⁵ *Id.* at 70-73.

certain Kapa (Kabus Padatoon)⁶ soliciting investments with a guaranteed 30% return “every month until forever.”⁷ Kapa was allegedly founded by local pastor Joel.⁸ Upon verification, the EIPD discovered that Kapa was not registered with the SEC and was not authorized to solicit investments.⁹

The SEC also received similar reports that Kapa-Community Ministry International (KCMI), also founded by Joel, was soliciting investments guised as donations, with a promise of 30% monthly return.¹⁰ KCMI was registered as a religious society on 03 March 2016.

Consequently, the SEC issued advisories on its website, informing the public that Kapa and KMCI are not authorized to solicit investments.¹¹ Eventually, the EIPD filed a petition for the revocation of KCMI’s corporate registration, which was granted by the SEC on 03 April 2019.¹²

In a letter dated 04 March 2019, the EIPD referred the matter to the AMLC.¹³ Upon investigation, it found that Joel’s back account had substantial transactions during the investment scam’s material dates. Meanwhile, Joel’s wife, Reyna, an elementary school teacher and Kapa’s Corporate Secretary, maintained several bank accounts that registered large transactions.¹⁴ Between October 2017 and March 2019, up to ₱1,260,525,603.80 was deposited in Reyna’s accounts, with an average of ₱6.4 Million per deposit and a highest single deposit of ₱50,285,600.00.¹⁵ These transactions were found to be suspicious as they had no underlying legal or trade obligation, purpose, or economic justification. They were also not commensurate with Reyna’s financial capacity.¹⁶

The AMLC further found that, during the scam’s material dates, Reyna made several transactions in the hundreds of millions. Among those found to have transacted directly with Reyna was petitioner.¹⁷

⁶ Also referred to as “Kappa” in some parts of the *rollo* (see *rollo*, pp. 126, 204, and 217).

⁷ *Rollo*, p. 76.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 76-77.

¹³ *Id.* at 77.

¹⁴ *Id.* at 78-79.

¹⁵ *Id.* at 79.

¹⁶ *Id.* at 83.

¹⁷ *Id.*

Petitioner is a Philippine corporation engaged in the business of selling and dealing with trucks, truck parts, and heavy equipment.¹⁸ The AMLC discovered that petitioner was formerly registered as Hawkson's Home Gallery Corporation, which was incorporated on 23 July 2016 with an authorized capital stock of ₱1 Million.¹⁹ Its name was changed to Hawkson's Truck and Parts Center Corporation on 26 April 2017, but its authorized capital stock was retained at ₱1,000,000.00.²⁰ It had a paid-up capital of ₱100,000.00.²¹

According to AMLC, several checks drawn from Reyna's accounts were deposited in petitioner's bank accounts: (1) ₱10.55 Million in petitioner's Philippine Business Bank (PBB) Account No. CASA-312010005991; and (2) ₱39.51 Million in petitioner's Bank of the Philippine Islands (BPI) Account No. IM020019-3400009340007066.²² The AMLC argued that these circumstances show the bank accounts' relation to money laundering and/or a violation of the Securities Regulation Code (SRC).²³

In a Resolution²⁴ dated 04 June 2019, the CA issued a Freeze Order²⁵ against the bank accounts, insurance policies, and cryptocurrencies enumerated by the AMLC in its petition. These included petitioner's PBB and BPI bank deposits. The Freeze Order was made effective for six (6) months.²⁶ Aggrieved, petitioner moved for the lifting of the Freeze Order.²⁷

Ruling of the CA

In the assailed Resolution²⁸ dated 15 July 2019, the CA denied petitioner's motion, thus:

WHEREFORE, in view of the foregoing considerations, this Court resolves to **DENY** movant-oppositor Hawkson's Truck and Parts Center Corporation[*'s*] *Urgent Motion to Lift Freeze Order*. The Freeze Order on the PBB Account No. CASA 312-01-000-599-1 and BPI Account No. IM020019340000934-0007066 of Hawkson's Truck and Parts Center Corporation's [*sic*] **STANDS** in

¹⁸ Id. at 5.

¹⁹ Id. at 126.

²⁰ Id.

²¹ Id.

²² Id. at 126-127.

²³ Id. at 179.

²⁴ Id. at 70-96.

²⁵ Id.

²⁶ Id. at 93.

²⁷ Id. at 97-112.

²⁸ Id. at 117-130; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser.

accordance with the 4 June 2019 Resolution of the Court.²⁹

The CA held that there is probable cause to freeze petitioner's bank accounts. Serious doubts exist on whether petitioner is a *bona fide* company engaged in the business of selling trucks and truck parts.³⁰ While petitioner attached to its motion sales invoices, delivery receipts, and photos of truck deliveries to Kapa, these only show that petitioner was dealing with Kapa; they do not establish that petitioner's business is *bona fide*.³¹

Likewise, the CA highlighted that, in 2018, petitioner's gross sales amounted to ₱150,000.00, but in just one year, or in 2019, its gross sales skyrocketed to ₱63,903,619.77.³² This sudden increase in sales coincide with the material dates of Kapa's alleged unlawful activity in 2018 and 2019.³³ The transactions between petitioner and Kapa and related companies are further rendered suspicious in view of the notation in petitioner's Independent Auditor's Report dated 29 March 2019.³⁴ The note states that petitioner "faces economic and regulatory challenges," and "events or conditions are present that cast significant doubt on [petitioner's] ability to operate its business."³⁵

The CA concluded that petitioner's low capitalization and business profile appear to be manifestly disproportionate to the nature, volume, and amount of its transactions.³⁶ Thus, there is reason to believe that the funds of Kapa and its related entities were transferred to petitioner's bank accounts on the pretext of sale transactions to launder money.³⁷

Petitioner did not file any motion for reconsideration. Instead, it filed this petition before the Court. Petitioner challenges the duration and scope of the Freeze Order, claiming that its six-month effectivity and inclusion of all funds within the same bank accounts are unwarranted.³⁸

²⁹ Id. at 129.

³⁰ Id. at 127.

³¹ Id. at 127.

³² Id. at 128.

³³ Id.

³⁴ Id. at 114.

³⁵ Id. at 128.

³⁶ Id.

³⁷ Id. at 129.

³⁸ Id. at 18.

Issue

The main issue for the Court's resolution is whether the CA gravely abused its discretion in not lifting the Freeze Order against petitioner's PBB Account No. CASA-312010005991 and BPI Account No. IM020019-3400009340007066.

Ruling of the Court

The Petition is dismissed for being a wrong remedy and for having become moot and academic.

Petitioner availed of the wrong remedy

This Petition is one for *certiorari* under Rule 65 of the Rules of Court. Among the requisites to sustain a petition for *certiorari* is the absence of a plain, speedy, and adequate remedy in the ordinary course of law.³⁹

In this case, however, A.M. No. 05-11-04-SC⁴⁰ explicitly provides a remedy to a party aggrieved by a freeze order is a petition for review on *certiorari* under Rule 45 of the Rules of Court.⁴¹ Petitioner failed to allege and substantiate how a Rule 45 petition is inadequate under the circumstances, or why this case falls among the exceptions warranting resort to a Rule 65 petition.

Worse, petitioner did not even file a motion for reconsideration of the assailed CA Resolution. As a rule, the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*.⁴² While there are exceptions to the rule, petitioner failed to invoke and prove any of them in this instance.

Moreover, this petition does not fall under the exception where a defective petition for *certiorari* may be treated as a petition for review on *certiorari*. An important consideration in applying the exception is that the petition must be filed within the reglementary period to file an appeal.⁴³ Here, the petition was filed 60 days from

³⁹ Rules of Court, Sec. 1, Rule 65.

⁴⁰ Entitled "Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense Under Republic Act No. 9160, as Amended."

⁴¹ A.M. No. 05-11-04, Sec. 57.

⁴² *Jolo's Kiddie Carts v. Caballa*, 821 Phil. 1101, 1107 (2017),

⁴³ *Republic of the Philippines v. Court of Appeals*, 379 Phil. 92, 98 (2000).

receipt of the assailed CA Resolution. This is evidently beyond the 15-day period prescribed in Section 2, Rule 45 of the Rules of Court.

A petition for *certiorari* cannot be used as a substitute for a lost appeal where the latter remedy is available.⁴⁴ On this ground alone, the Petition should be dismissed.

Even assuming that this Petition may be treated as a petition for review on *certiorari*, the Petition should still be dismissed for being moot.

The Petition has been rendered moot by the lapse of the six-month period and the issuance of an asset preservation order in AMLA Case No. 19-007-37

We agree with the AMLC that the Petition has become moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.⁴⁵

A freeze order may only be effective for a maximum period of six months.⁴⁶ It shall be deemed *ipso facto* lifted upon the expiration of the six-month period, unless a petition for civil forfeiture against the frozen monetary instrument or property has been filed.⁴⁷ In which case, the freeze order shall remain effective until an asset preservation order is issued.⁴⁸

⁴⁴ *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 399 (2008).

⁴⁵ *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).

⁴⁶ Sec. 10, Republic Act No. 9160, as amended.

⁴⁷ Sec. 2.10 (a), Rule 10, 2018 Implementing Rules and Regulations of Republic Act No. 9160, Otherwise Known as the Anti-Money Laundering Act of 2001, as amended.

⁴⁸ *Id.*

Thus, a freeze order is merely an interim relief intended to temporarily preserve monetary instruments.⁴⁹ It is pre-emptive in character, meant to prevent the owner from disposing the property and thwarting the State's effort in building its case and eventually filing civil forfeiture proceedings and/or prosecuting the owner.⁵⁰

Here, the CA issued the Freeze Order on 04 June 2019. Clearly, the six-month period had long lapsed, thereby rendering this case moot.⁵¹ Moreover, the AMLC pointed out that the incident in this case had been overtaken by the AMLC's filing of a petition for civil forfeiture before the Regional Trial Court of Manila on 03 December 2019, docketed as AMLA Case No. 19-007-37.⁵² In said case, the Office of the Executive Judge issued a provisional asset preservation order⁵³ and, eventually, an asset preservation order⁵⁴ over the same bank accounts subject of this petition.⁵⁵ Petitioner participated in the civil forfeiture proceedings and raised the same arguments on the supposed legality of its dealings with Kapa and Rosalie.⁵⁶

In light of supervening events, passing upon the merits of this petition would neither have practical value, nor accord substantial relief to petitioner. The Freeze Order had since been rendered ineffective. While the Court may resolve a moot case for compelling reasons,⁵⁷ We find none of such exceptional circumstances present in this case, as, in fact, petitioner failed to show any.

Further, since civil forfeiture proceedings had been initiated and an asset preservation order had been issued over the same bank accounts, We find it all the more appropriate to abstain from ruling on the merits of the case. Otherwise, We risk pre-empting the proceedings before the trial court based on the very limited facts before Us. For orderly proceedings, it would be best for the parties to focus their resources on the main case, rather than this petition on a

⁴⁹ *Ligot v. Republic*, 705 Phil. 477 (2013)

⁵⁰ *Id.* at 505.

⁵¹ See *Republic v. Bloomberry Resorts and Hotels, Inc.*, G.R. No. 224112, 02 September 2020.

⁵² *Rollo*, pp. 210-251.

⁵³ The provisional asset preservation order was issued on 04 December 2019 (see *rollo*, p. 192).

⁵⁴ The asset preservation order was issued on 10 January 2020 (see *rollo*, p. 207).

⁵⁵ *Id.* at 188-207.

⁵⁶ *Id.* at 203.

⁵⁷ *MRM Asset Holdings 2, Inc. v. Standard Chartered Bank*, G.R. No. 202761, 10 February 2021: "While the Court may pass upon issues albeit supervening events had rendered the petition moot and academic, the Court does so only when there is grave violation of the Constitution; when the exceptional character of the situation and paramount public interest is involved; when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading review."

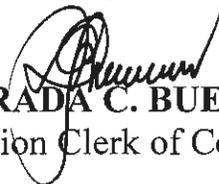
moot, interim incident.

WHEREFORE, the Petition is **DISMISSED** for being a wrong remedy and for being moot. The application for the issuance of a temporary restraining order or writ of preliminary injunction is likewise **DENIED** for being moot.

The petitioner’s reply with motion to admit, praying that the incorporated reply be admitted and noted and that the petition for certiorari with injunction be resolved, is **NOTED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *g-118*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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FALGUI LAW OFFICES
Counsel for Petitioner
2nd Floor, Falgui Bldg.
cor. Marin Village, National Highway
General Santos City, 9500 South Cotabato

Court of Appeals (x)
Manila
(CA-G.R. AMLA No. 00222)

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The Solicitor General
Amorsolo St., Legaspi Village
1229 Makati City 

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