



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 17, 2023 which reads as follows:*

**“G.R. No. 232771 (*Spouses Marfelina and Herminigildo Mag-abo v. NAPICO Homeowners Association XIII, as represented by its President, Fernando Mejia, and Danilo S. Cruz, as Presiding Judge of RTC Branch 152, Pasig City*). — Before the Court is a Petition for *Certiorari*<sup>1</sup> with prayer for the Issuance of a Writ of Preliminary Injunction assailing the Order<sup>2</sup> dated February 17, 2017 of the Regional Trial Court (RTC) of Pasig City, Branch 152 in SCA Case No. 3511, which granted the Motion for Execution Pending Appeal filed by respondent NAPICO Homeowners Association XIII, Inc. (NAPICO).**

The instant case originated from a *barangay* complaint for ejectment filed by NAPICO before the *Barangay* Council of *Barangay* Manggahan, Pasig City, and docketed as Case No. M2005-0868.<sup>3</sup>

Petitioner Spouses Marfelina and Herminigildo Mag-abo (Spouses Mag-abo) and the representative of NAPICO, Ferdinand Mejia (Mejia), failed to reach an agreement on October 7, 2005. Hence, on October 17, 2005, a corresponding certificate to file action was issued by the then *Barangay* Captain Cresencio S. Cruz.<sup>4</sup>

On December 9, 2005, NAPICO, represented by Mejia, filed a Complaint for Ejectment before the Metropolitan Trial Court (MeTC) of Pasig City, Branch 68, which was docketed as Civil Case No. 11813.<sup>5</sup>

In its Complaint, NAPICO claimed that it is a non-profit and non-stock organization, and was established and existing under the Philippine laws.

<sup>1</sup> *Rollo*, pp. 3-31.

<sup>2</sup> *Id.* at 32-33. Penned by Judge Danilo S. Cruz.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

NAPICO claimed that it is the registered owner of a parcel of land covering an area of 24,406 square meters and covered by Transfer Certificate of Title (TCT) No. PT-119333 issued by the Registry of Deeds of the City of Pasig. NAPICO also claimed that it allowed the Spouses Mag-abo to stay and occupy the premises which formed part of the land by reason of humility and tolerance.<sup>6</sup>

NAPICO also averred that it filed a complaint before the *barangay* authorities of Manggahan, Pasig City, and notices for conciliation/mediation were sent to the Spouses Mag-abo. NAPICO prayed that the Spouses Mag-abo pay the amount of ₱50,000.00 as attorney's fees, ₱2,000.00 per appearance plus the costs of suit, and to pay the monthly rentals of ₱5,000.00 from September 2005.<sup>7</sup>

In their Answer with Counterclaim and with Urgent Motion to Dismiss, the Spouses Mag-abo denied all allegations in the Complaint. They raised the special and affirmative defense that the Complaint was susceptible to outright dismissal due to non-compliance with Rule 7, Section 4 of the Rules of Court. They also claimed that NAPICO was in bad faith in filing the ejectment case since it did not allege nor prove prior physical possession over the property. Moreover, they submitted that NAPICO has no cause of action, and that TCT No. PT-119333 was fraudulently and spuriously issued. Lastly, they contended that the MeTC had no jurisdiction over the subject matter due to the existence of the claim of ownership.<sup>8</sup>

On March 26, 2007, the Complaint was dismissed due to the non-appearance of NAPICO's counsel at the hearing on the said date. NAPICO filed a Motion for Reconsideration and the parties thereafter filed several motions before the parties submitted their Position Papers.<sup>9</sup>

In their respective Position Papers, both parties reiterated the allegations in their Complaint and Answer.<sup>10</sup> The only issue added by the Position Papers is whether the case for ejectment was for forcible entry or unlawful detainer.<sup>11</sup>

In a Decision dated September 30, 2010,<sup>12</sup> the MeTC ruled in favor of NAPICO. The dispositive portion reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff, and defendants and all persons claiming rights under them, are hereby ordered:

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<sup>6</sup> Id.

<sup>7</sup> Id. at 6-7.

<sup>8</sup> Id. at 7.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 8.

<sup>12</sup> Id. Penned by Presiding Judge Eduardo Ramon R. Reyes.

- a) to immediately vacate and surrender peaceful possession of the subject premises;
- b) to pay plaintiff the amount of ₱2,000.00 per month as reasonable compensation for the use and occupation of the subject premises starting from September 2005 until the subject premises is vacated;
- c) to pay plaintiff the amount of ₱25,000.00 as attorney's fees; and
- d) the cost of suit.

SO ORDERED.<sup>13</sup>

On November 11, 2010, the Spouses Mag-abo filed a Notice of Appeal. On November 15, 2010, Lorenzo D. Ordoveza, another representative of NAPICO, filed a Manifestation, which the Spouses Mag-abo opposed, urging the MeTC to deny the Notice of Appeal on grounds of failure to comply with the provisions of Sec. 19, Rule 70 of the Rules of Court and failure of the Spouses Mag-abo's counsels to provide their MCLE III compliance.<sup>14</sup>

In an Order dated November 23, 2010, the MeTC denied NAPICO's prayer in its Manifestation and gave the Notice of Appeal due course.<sup>15</sup>

In a Decision<sup>16</sup> dated August 31, 2011, the RTC affirmed the MeTC Decision in full.<sup>17</sup> The dispositive portion reads, as follows:

WHEREFORE, premises considered, the assailed decision of the Court *a quo* is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>18</sup>

The Spouses Mag-abo filed a Motion for Reconsideration<sup>19</sup> which was denied in an Order<sup>20</sup> dated February 15, 2017. The said Order was received by the Spouses Mag-abo on April 19, 2017.<sup>21</sup>

In the interim, and on NAPICO's motion, the RTC issued the assailed Order dated February 17, 2017 which granted the issuance of a Writ of Execution due to the petitioners' failure to post the requisite supersedeas bond.<sup>22</sup>

The Spouses Mag-abo alleged that, due to economic incapacity, they could no longer engage the services of a private counsel. Thus, they looked

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<sup>13</sup> Id. at 8; 71.

<sup>14</sup> Id. at 8.

<sup>15</sup> Id. at 8-9.

<sup>16</sup> Id. at 9.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Not attached to the Petition, but mentioned in the RTC Order dated February 15, 2017, *id.* at 34-35.

<sup>20</sup> Id. at 34-35.

<sup>21</sup> Id. at 9.

<sup>22</sup> Id. at 71.

for a person who could assist in elevating the case before the Court of Appeals (CA). However, the said person filed a Notice of Appeal instead of a Petition for Review before the CA.<sup>23</sup>

The Spouses Mag-abo received two registered mails. The first mail was from Atty. Joel F. Fradia which contained a Motion for Execution dated May 22, 2017, which was received by the Spouses Mag-abo on May 26, 2017. The second mail was sent by the RTC, which contained the Order dated February 17, 2017, granting the Motion for Execution Pending Appeal. This was received by the Spouses Mag-abo on June 2, 2017.<sup>24</sup>

There being no appeal or any plain, speedy and adequate remedy in the ordinary course of law in seeking the reversal or nullification of the Order dated February 17, 2017, the Spouses Mag-abo filed the present Petition for *Certiorari* with prayer for the issuance of a writ of preliminary injunction.<sup>25</sup>

The Spouses Mag-abo argues that while it is ideal to post a supersedeas bond at the MeTC level within the 15-day appeal period, there are cases where this Court has allowed the delayed posting thereof. The RTC, without first affording the Spouses Mag-abo the necessary legal reliefs and remedies, or two days after the denial of their Motion for Reconsideration, immediately issued the assailed Order. The same is considered grave abuse of discretion.<sup>26</sup>

Moreover, NAPICO claims that it is a non-stock organization established and existing under and by virtue of Philippine laws at the time of the initiation of the complaint. However, it did not present any proof to support such claim. Thus, its representatives could not have claimed succession to an entity that never came to exist. Thus, NAPICO's representatives committed material concealment and fraud. The principle of separate juridical personality be made applicable since there was no registered or incorporated homeowners association to speak of.<sup>27</sup>

Lastly, pursuant to Sec. 24(b) of the Implementing Rules and Regulations (IRR)<sup>28</sup> of Republic Act (RA) No. 9904, otherwise known as the Magna Carta for Homeowners and Homeowners Association, NAPICO is considered to have lost its legal personality for failure to register with the Housing Land Use and Regulatory Board (HLURB).<sup>29</sup>

In its Comment/Opposition,<sup>30</sup> NAPICO argues that the present Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction

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<sup>23</sup> Id. at 9-10.

<sup>24</sup> Id. at 10.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id. at 10-11.

<sup>28</sup> Id. at 11. HLURB Board Resolution No. 877. This was adopted on June 24, 2011.

<sup>29</sup> Id.

<sup>30</sup> Id. at 70-79.

was filed by the petitioners for the sole purpose of delaying the execution of the MeTC's Decision. Just like the previous pleadings interposed by the petitioners, the obvious frivolity of the instant petition is to impede the processes of the lower court, which is a clear affront and mockery of the court and its processes. Thus, it deserves no consideration.<sup>31</sup>

NAPICO added that petitioners filed a Notice of Appeal on the RTC Decision instead of a Petition for Review under Rule 42 of the Rules of Court. Being a wrong mode of appeal, it did not toll the running of the period to file a Petition for Review before the CA. Hence, the RTC Decision became final and executory.<sup>32</sup>

The sole issue for consideration is whether the RTC gravely abused its discretion when it issued the Order dated February 17, 2017 which granted NAPICO's Motion for Execution Pending Appeal.

The Petition for *Certiorari* must be dismissed for utter lack of merit.

At the outset, We note that the filing of the Petition for *Certiorari* before this Court, instead of filing the same with the CA, violates the principle of hierarchy of courts. Pursuant to the doctrine enunciated in *GIOS-Samar, Inc. v. Department of Transportation and Communications*,<sup>33</sup> the Petition is dismissible on this ground *alone*, to wit:

This doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs. Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court. **Failure to comply is sufficient cause for the dismissal of the petition.**<sup>34</sup> (Citations omitted and emphasis supplied)

Time and again, We have held that in order to justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>35</sup>

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<sup>31</sup> Id. at 70.

<sup>32</sup> Id. at 71.

<sup>33</sup> 849 Phil. 120, 166-167 (2019).

<sup>34</sup> Id.

<sup>35</sup> *Symex Security Services, Inc. v. Rivera, Jr.*, 820 Phil. 653, 664 (2017), citing *Sta. Isabel v. Perla Compania De Seguros, Inc.*, 798 Phil. 165, 172-173 (2016).

In this case, We find that the RTC did not gravely abuse its discretion when it issued the Order dated February 17, 2017 granting NAPICO's Motion for Execution Pending Appeal.

As correctly argued by NAPICO, the grant of the said Motion was practically ministerial on the part of the RTC pursuant to Sec. 19, Rule 70 of the Rules of Court, which provides:

Sec. 19. *Immediate execution of judgment; how to stay same.* — If judgment is rendered against the defendant, execution shall issue immediately upon motion unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the papers, to the clerk of the Regional Trial Court to which the action is appealed. (Underscoring supplied)

From the above Rule, the judgment in an ejectment case when in favor of the plaintiff is immediately executory unless the following requisites are complied with: 1) an appeal has been perfected; 2) a supersedeas bond approved by the Court has been filed by the defendant; and 3) the periodic deposit of the rentals due or the reasonable compensation for the use and occupation of the property during the pendency of the appeal. Failure of the defendant to comply with any of these requirements is a ground for the outright execution of judgment despite appeal, the duty of the Court in this respect being mandatory and ministerial.<sup>36</sup>

In this case, there is no question that while the Spouses Mag-abo were able to file a Notice of Appeal before the MeTC, they failed to file a supersedeas bond as well as deposit the monthly rentals for the use and occupation of the property. Such failure to comply with the requirements merits the outright execution of the judgment despite appeal. Since the RTC merely applied the directive under Sec. 19, Rule 70 of the Rules of Court, no grave abuse of discretion could be ascribed to it.

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<sup>36</sup> *Air Transportation Office v. Court of Appeals*, 590 Phil. 604, 609-610 (2008).

Moreover, as correctly pointed out by NAPICO, the filing of a Petition for *Certiorari* is prohibited under Sec. 13, Rule 70.<sup>37</sup>

We also hold that the RTC Decision dated August 31, 2011 of the RTC, which affirmed the MeTC Decision, has already attained finality in view of the Spouses Mag-abo's resort to a wrong mode of appeal.

Sec. 1, Rule 42 of the Rules of Court provides that a party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction may file a verified petition for review before the CA. In their Petition before this Court, the Spouses Mag-abo have stated that they filed a Notice of Appeal of the RTC Decision instead of a Petition for Review under Rule 42 of the Rules of Court. While the specific details of the filing of the appeal of the RTC Decision before the CA is wanting, the petitioners readily admitted that they "looked for a person who could be of assist to them in elevating their case in the Honorable Court of Appeals," and that the said person filed a Notice of Appeal, instead of a Petition for Review.<sup>38</sup> Clearly, the petitioners resorted to a wrong mode of appeal which, in turn, did not toll the running of the period to file a petition for review before the CA. Thus, the RTC Decision had already become final and executory leaving nothing more to be done except to enforce the same through execution.

In *Yalong v. People*,<sup>39</sup> this Court has expounded on the difference between a notice of appeal and a petition for review, and held that the failure to perfect an appeal within the period and in the manner prescribed by law is considered fatal, to wit:

In this relation, it must be pointed out that Yalong's contention that a petition for review may be treated as a notice of appeal since the contents of the former already include the required contents of the latter cannot be given credence since these modes of appeal clearly remain distinct procedures which cannot, absent any compelling reason therefor, be loosely interchanged with one another. For one, a notice of appeal is filed with the regional trial court that rendered the assailed decision, judgment or final order, while a petition for review is filed with the CA. Also, a notice of appeal is required when the RTC issues a decision, judgment or final order in the exercise of its original jurisdiction, while a petition for review is required when such issuance was in the exercise of its appellate jurisdiction.

<sup>37</sup> Sec. 13, Rule 70 of the 1997 Revised Rules of Civil Procedure, As Amended, provides:

RULE 70

*Forcible Entry and Unlawful Detainer*

x x x x

SECTION 13. *Prohibited pleadings and motions.* — The following petitions, motions, or pleadings shall not be allowed:

x x x x

7. Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;

x x x x

<sup>38</sup> *Rollo*, p. 10.

<sup>39</sup> 716 Phil. 657 (2013).



Thus, owing to these differences, Yalong's filing of the subject petition for review cannot be simply accorded the same effect as the filing of a notice of appeal.

**Verily, jurisprudence dictates that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such requirements is considered fatal and has the effect of rendering the judgment final and executory.** To be sure, the rules on appeal must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. **Though as a general rule, rules of procedures are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations, which are not present in the instant case.**<sup>40</sup> (Emphases supplied)

Moreover, Sec. 2, Rule 50 of the Rules of Court clearly provides that an appeal by notice of appeal instead of by petition for review from the appellate judgment of the RTC is an improper appeal and shall be dismissed by the CA.<sup>41</sup>

We likewise agree with NAPICO's observation that the present Petition for *Certiorari* is being treated by the Spouses Mag-abo as an appeal. We have consistently held that *certiorari* is not and cannot be a substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.

In *Liu v. Court of Appeals*,<sup>42</sup> We ruled that:

Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. [Remedies of appeal (including petitions for review)] and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. x x x<sup>43</sup>

The inevitable conclusion is that the RTC Decision, which affirmed the MeTC Decision in *toto*, had already attained finality. Hence, Spouses Mag-abo and all persons claiming rights under them, should immediately vacate and surrender the peaceful possession of the subject property. They should also pay the amount of ₱2,000.00 per month as reasonable compensation for

<sup>40</sup> Id. at 665-666.

<sup>41</sup> See *Maslag v. Monzon*, 711 Phil. 274, 284 (2013).

<sup>42</sup> G.R. No. 238805, September 23, 2020.

<sup>43</sup> Id.



the use and occupation of the property starting from September 2005 until the property is vacated. They should also pay NAPICO the amount of ₱25,000.00 as attorney's fees as well as the cost of suit.

**WHEREFORE**, the Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction is **DISMISSED** for lack of merit.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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**MAY 08 2023**

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The Hon. Presiding Judge  
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(SCA Case No. 3511)

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