



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated February 6, 2023, which reads as follows:*

**“G.R. No. 260450 (*Benedicta Ayroso Medina v. Court of Appeals and Olivia P. Duran*).** – Before the Court is Benedicta Ayroso Medina’s (Benedicta’s) Epigrammatic and Advanced Motion for Reconsideration with Request to be Furnished a Copy of the Resolution dated June 15, 2022 and with Compliance<sup>1</sup> (MR), assailing the July 27, 2022 Resolution<sup>2</sup> of the Court, which dismissed the Petition for *Certiorari* and for Review on *Certiorari*<sup>3</sup> for being filed out of time and for lack of merit.<sup>4</sup>

In the Resolution dated June 15, 2022, the Court denied Benedicta’s Motion for Fifteen (15) Days Extension of Time to File Petition for *Certiorari*<sup>5</sup> (MOTEX), as the same was filed late. Benedicta also failed to submit a soft copy of the MOTEX and the affidavit of service thereof upon the Court of Appeals (CA) and Olivia Duran.<sup>6</sup>

Meanwhile, on June 6, 2022, Benedicta filed, *via* a private courier (JRS), the Petition for *Certiorari* and for Review on *Certiorari*,<sup>7</sup> which was received by the Court on June 7, 2022.<sup>8</sup> It appears that Benedicta also posted a copy of the petition *via* registered mail on June 2, 2022, which the Court received on July 22, 2022.<sup>9</sup>

On July 27, 2022, the Court dismissed the petition for being filed beyond the reglementary period, the MOTEX having been denied by the Court in the June 15, 2022 Resolution. In any event, the Court held that the petition failed to show any grave abuse of discretion in the challenged CA

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<sup>1</sup> *Rollo*, pp. 119-123.  
<sup>2</sup> *Id.* at 61-62.  
<sup>3</sup> *Id.* at 8-15.  
<sup>4</sup> *Id.* at 61-62.  
<sup>5</sup> *Id.* at 3-5.  
<sup>6</sup> *Id.* at 6.  
<sup>7</sup> *Id.* at 8-15.  
<sup>8</sup> *Id.* at 8.  
<sup>9</sup> *Id.* at 70.

Decision and Resolution.<sup>10</sup>

In her MR, Benedicta insists that her MOTEX was timely filed as it was also posted *via* registered mail on May 17, 2022,<sup>11</sup> apart from filing the same *via* LBC on May 18, 2022. Consequently, the petition was filed within the requested extended period of 15 days and was timely filed.<sup>12</sup>

The Court resolves to deny the MR.

At the onset, Benedicta alleged that she received a copy of the February 23, 2022 CA Resolution (denying her motion for reconsideration) on March 18, 2022.<sup>13</sup> Thus, she had until May 17, 2022 to file her petition for *certiorari*.<sup>14</sup>

Granting that the MOTEX appears to have been timely filed (as a copy thereof was posted *via* registered mail on May 17, 2022), Benedicta's requested extension of 15 days was **until June 1, 2022**. Subsequently, Benedicta's filing of the petition on June 2, 2022 (*via* registered mail) and June 6, 2022 (*via* JRS) was beyond the requested extended period, and was still late. For this reason alone, the petition is dismissible outright.

Also, it must be stressed that the proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Section 1,<sup>15</sup> Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA **in any case, i.e., regardless of the nature of the action or proceedings involved**, may be appealed to the Supreme Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.<sup>16</sup>

Here, the CA Decision and Resolution are final issuances that disposed of Benedicta's petition for *certiorari*. Hence, Benedicta should have availed of the remedy of an appeal under Rule 45. Corollarily, the availability of the right to appeal is a bar to one's resort to a petition under Rule 65 for the

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<sup>10</sup> Id. at 61-62.

<sup>11</sup> Id. at 63-69.

<sup>12</sup> Id. at 119-121.

<sup>13</sup> Id. at 3.

<sup>14</sup> Id. at 1.

<sup>15</sup> Section 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.

<sup>16</sup> *Philippine Bank of Communications v. Hon. Court of Appeals*, 805 Phil. 964, 971 (2017), citing *Mercado v. Valley Mountain Mines Exploration, Inc.*, 677 Phil. 13, 51 (2011).

apparent reason that a special civil action for *certiorari* may be pursued when there is no appeal that may be resorted to.<sup>17</sup>

At any rate, the Court has already examined the allegations in the petition as well as the challenged CA Decision and Resolution. In the July 27, 2022, the Court stated that the petition failed to clearly show that the CA committed grave abuse of discretion in the subject issuances. Indeed, apart from general allegations of grave abuse of discretion, Benedicta failed to show that the CA acted capriciously and whimsically in issuing the challenged Decision and Resolution.

Anent Benedicta's request to be furnished with a copy of the Court's June 15, 2022 Resolution, records show that a copy of said Resolution had already been sent to her counsel on record, Atty. Ellis F. Jacoba.<sup>18</sup>

**WHEREFORE**, petitioner Benedicta Ayroso Medina's Epigrammatic and Advanced Motion for Reconsideration with Request to be Furnished a Copy of the Resolution dated June 15, 2022 and with Compliance is **DENIED**.

**SO ORDERED."**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *JB 3/10/23*

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<sup>17</sup> *Olivarez v. Hon. Court of Appeals*, G.R. No. 240084, September 16, 2020.

<sup>18</sup> *Rollo*, p. 119.