



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 3, 2020 which reads as follows:

“G.R. No. 253326 (Spouses Fernandina P. Pineda and Pepito O. Pineda, Maria Theresa Omega P. Pineda, Maria Christine P. Pineda, Pifer P. Pineda and Santiago G. Carlos v. Banco De Oro Unibank, Inc.). – After a judicious study of the case, the Court resolves to deny the petition for being procedurally infirm.

Firstly, the present petition lacks proof of service to the Regional Trial Court (RTC). Section 3, Rule 45 of the Rules of Court requires *inter alia* that proof of service of a copy of the petition on the lower court concerned should be submitted to the Court together with the petition, to wit:

Section 3. Docket and Other Lawful Fees; Proof of Service of Petition. – Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. **Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.¹**
(Emphasis supplied)

A perusal of the petition and its attachments show that petitioners failed to comply with the required proof of service of the petition to the RTC. Failure to comply with the requirements laid down in Sections 3 and 4 of Rule 45 is a ground for the dismissal of the petition under Section 5 of the same rule, *viz.*:

¹ RULES OF COURT, RULE 45, SECTION 3.

Section 5. *Dismissal or Denial of Petition.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, **proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** x x x² (Emphasis supplied; italics in the original)

Therefore, based on this procedural defect alone, the petition should be denied.

Secondly, a careful scrutiny of the impugned letters dated July 2, 2020³ and August 14, 2020⁴ of Atty. Nieto reveal that they do not constitute the “judgment, final order or resolution” contemplated in Rule 45. Section 1 of the same Rule explicitly states:

Section 1. *Filing of Petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a **judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, 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 may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied; italics in the original)

Appeals may be brought through a petition for review on *certiorari* but only from judgments, final orders or resolutions of the courts enumerated in Section 1 of Rule 45.

In construing the kind of “judgment, final order or resolution” contemplated in Section 1, Rule 45, this provision must be read together with Section 1, Rule 36 which states:

Section 1. *Rendition of Judgments and Final Orders.* – A judgment or final order determining **the merits of the case shall be in writing**

² RULES OF COURT, RULE 45, SECTION 5.

³ *Rollo*, p. 17.

⁴ *Id.* at 18.

personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.⁵ (Emphasis supplied; italics in the original)

Based on the foregoing, the requisites of a judgment or a final order are: (1) It should be in writing, personally and directly prepared by the judge; (2) It must state clearly and distinctly the facts and the law on which it is based; and (3) It should contain a dispositive part and should be signed by the judge and filed with the Clerk of Court.⁶

In this case, it is clear that the letters dated July 2, 2020 and August 14, 2020 do not constitute the judgment, final order or resolution envisioned in Rule 45. These letters were not personally and directly prepared by a judge. Instead, it was merely prepared by a clerk of court and noted by Executive-Judge Padron-Rivera.

Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules, any property brought within the ambit of Act No. 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.⁷ At best, the assailed letters are mere correspondences of the Clerk of Court, who is also the *Ex-Officio* Sheriff, to petitioners in compliance with his duties under A.M. No. 99-10-05-0⁸ that cannot be accorded the same degree of authority as the judgment, final order or resolution referred to in Rule 36 and Rule 45. The letters are not final in the sense that they put an end to a litigation and leave nothing more for the trial court to do. As a rule, any intervention of the court in an extrajudicial foreclosure proceeding pursuant to Act. No. 3135, as amended by Act No. 4118, is non-litigious in character. Therefore, the letters of Atty. Nieto are not the proper subject of a petition for review on *certiorari*.

WHEREFORE, the instant petition is **DENIED.**

⁵ RULES OF COURT, RULE 36, SECTION 1.

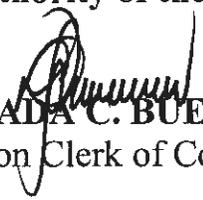
⁶ Herrera, Oscar M., Remedial Law Volume II (2007 Edition), p. 139.

⁷ *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 770 (2002).

⁸ Procedure in Extra-Judicial Foreclosure of Mortgage, A.M. No. 99-10-05-0, August 7, 2001.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

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Deputy Division Clerk of Court
174-A

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