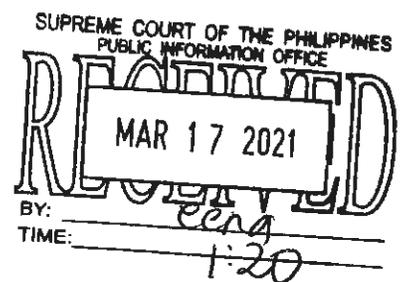




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 27, 2021**, which reads as follows:

“**G.R. No. 247921** (*Felix P. Siboliniao v. The Court of Appeals, Twenty-First Division; and Frabelle Fishing Corporation, Inc. and/or Francisco Tiu Laurel*). – The Court resolves to **NOTE**:

- (1) counsel for petitioner’s Compliance dated October 29, 2020 informing the Court that on October 27, 2020, she received the Resolution dated June 29, 2020; and
- (2) petitioner’s Reply dated November 5, 2020, to respondents’ comment on the petition for *certiorari*.

After a judicious study of the case, the Court resolves to **DISMISS** the present Petition for *Certiorari*¹ and **AFFIRM** the Decision² dated October 18, 2018 and the Resolution³ dated April 16, 2019 of the Court of Appeals (CA) in CA - G.R. SP No. 08230-MIN for: *first*, being the wrong mode of appeal; and *second*, failure of Felix P. Siboliniao (petitioner) to show that the CA committed any grave abuse of discretion amounting to lack of or excess of jurisdiction as to warrant the exercise of the Court’s discretionary appellate jurisdiction.

At the outset, it is important to stress that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.⁴ Thus, the proper recourse for petitioner was to file a petition for review on *certiorari* under Rule 45 and *not* to resort to *certiorari* under Rule 65 of the Rules of Court as a substitute for the lost remedy of

¹ *Rollo*, pp. 3-36.

² *Id.* at 39-47; penned by Associate Justice Oscar V. Badelles with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.

³ *Id.* at 48-50; penned by Associate Justice Oscar V. Badelles with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.

⁴ RULES OF COURT, Rule 65, Section 1.

appeal.⁵ As such, the present Petition for *Certiorari* should be dismissed outright for being an *improper remedy*.

In any case, even if the Petition is treated as one duly filed under Rule 45, it would still be denied for its late filing and because the CA committed no reversible error as to warrant the Court's discretionary appellate jurisdiction.

Petitioner was hired by Frabelle Fishing Corporation, Inc. (respondent) as an oiler assigned to different fishing boats owned by the latter since October 9, 1990. He received a monthly salary of ₱21,114.00 a month with a 50% increase in his basic daily pay every time the boat entered the sea of Papua New Guinea.⁶ In November 2014, respondent received a Letter⁷ from the Papua New Guinea Customs Services, Northern Region Operations-Wewak (Customs Services) which stated that on November 6, 2014, its crewmen were seen trading with some local ladies on the dugout canoe in violation of the Customs Act. In particular, petitioner and his other companions gave the local ladies a ream of Red Mighty Cigarettes in exchange for one bunch of banana and three pieces of ripe papayas. As a result thereof, respondent received a strong warning from the Customs Services which, in turn, noted an instance of noncompliance against respondent.⁸

On March 27, 2015, through Company Inspector Zosimo C. Justimbaste, respondent conducted an interview investigation with petitioner at its office in General Santos City. During the meeting, petitioner admitted to the incident. On May 6, 2015, respondent issued a Termination Letter⁹ to petitioner for violating its Memo No. P-2006-010,¹⁰ issued on March 13, 2006 prohibiting the bringing down and selling of alcoholic beverages and cigarettes, among others, and imposed a penalty of dismissal for the violation thereof. The sanction against petitioner was also based on respondent's Code of Discipline.¹¹

In the assailed Decision,¹² the CA ruled in favor of respondent. Contrary to the findings of the Labor Arbiter and the National Labor Relations Commission, the CA found valid grounds for respondent to dismiss petitioner. Respondent had the right to dismiss petitioner because it found reasonable ground to believe that he violated company

⁵ Notably, petitioner received the notice of denial of his Motion for Reconsideration with the CA on April 30, 2019, but he only filed the present Petition on July 1, 2019, or after the lapse of the reglementary period for the filing of a petition for review on *certiorari* under Rule 45 of the Rules of Court. See *rollo*, p. 1.

⁶ *Id.* at 40.

⁷ *Id.* at 102.

⁸ *Id.* at 40-41.

⁹ *Id.* at 100.

¹⁰ *Id.* at 119.

¹¹ *Id.*

¹² *Id.* at 39-47.

policies. In dismissing petitioner, respondent was merely protecting its business interest.¹³

The Court agrees with the CA. Respondent was able to establish that petitioner violated its prohibition regarding the illegal trade of cigarettes. Petitioner himself admitted that he traded a ream of cigarettes in exchange for fruits with the locals of Papua New Guinea.¹⁴ Furthermore, petitioner was given the opportunity to explain his side through an investigation conducted on March 27, 2015.¹⁵ Thus:

To reiterate, private respondent was validly dismissed from his employment because petitioner company found reasonable ground to believe that private respondent violated company policies. Petitioner company's Code of Discipline specifically mentioned that carrying of any contraband is prohibited, otherwise, an employee shall be dismissed. Subsequently, petitioner company issued Memo No. P-2006-010, which imposed the penalty of dismissal for any employee, who brings down and sells cigarettes, alcoholic beverages and other products, which are not from Papua New Guinea and sell the same in the said country.¹⁶

Under the circumstances, respondent cannot legally be compelled to continue with the employment of petitioner who violated not just the company rules but also the laws of a foreign country and whose continuance in the service could be inimical to its interest. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer.¹⁷

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Decision dated October 18, 2018 and the Resolution dated April 16, 2019 of the Court of Appeals in CA-G.R. SP No. 08230-MIN are hereby **AFFIRMED**.

SO ORDERED." (LEONEN, J., on official business; HERNANDO, J., Acting Chairperson).

By authority of the Court:

Misael C. Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
GER
27/1/21

¹³ *Id.* at 44.

¹⁴ *Id.* at 45.

¹⁵ *Id.* at 46.

¹⁶ *Id.* at 50.

¹⁷ *Loadstar International Shipping, Inc. and Bernardino v. Erispe, Jr.*, G.R. No. 221227, February 19, 2020, citing *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 217 (2015).

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