



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **13 January 2021** which reads as follows:*

**“G.R. No. 252393 (Edmond J. Mariño for himself and as Attorney-In-Fact of Ma. Elena J. Mariño-Regullano v. Spouses Lazaro Antolin and Candelaria Antolin, Hon. Amalia S. Gumapos-Ricablanca, as Acting Presiding Judge of Metropolitan Trial Court, Branch 22, Manila and Hon. Merianthe Pacita M. Zuraek as Presiding Judge of Regional Trial Court, Branch 51, Manila). – We DENY the petition.**

The proper remedy to question the Court of Appeals’ judgment, final order or resolution is *via* Rule 45 of the Rules of Court or a petition for review on *certiorari*, *viz.*:

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, x x x 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.

Under Rule 45, decisions, final orders or resolutions of the Court of Appeals 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>1</sup>

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<sup>1</sup> *Albor v. Court of Appeals*, 823 Phil. 901, 909 (2018).

On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.<sup>2</sup>

Here, appeal *via* Rule 45 was not only available but also a speedy and adequate remedy.

We emphasize that *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.<sup>3</sup> By filing a special civil action for *certiorari* under Rule 65 of the Rules of Court, petitioner clearly availed of the wrong remedy.

Even assuming that a petition for *certiorari* is the proper remedy, the same must still fail.

Rule 42<sup>4</sup> of the Rules of Court governs an appeal from the judgment or final order rendered by the Regional Trial Court (RTC) in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the RTC committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.<sup>5</sup>

Verily, the Court of Appeals did not commit grave abuse of discretion when it dismissed the petition for *certiorari* in view of petitioner's availment of the wrong remedy.

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<sup>2</sup> *Id.* at 909-910.

<sup>3</sup> *Id.* at 910-911.

<sup>4</sup> Section 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)

<sup>5</sup> *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97, 104 (2015).

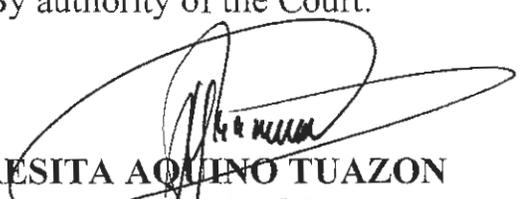
In any event, the right to appeal is not a natural right or a part of due process but a mere statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed is not only mandatory but also jurisdictional. The failure of the appellant to conform with the rules on appeal renders the judgment final and executory.<sup>6</sup> So must it be.

True, a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.<sup>7</sup>

**WHEREFORE**, the petition is **DENIED** and the Court of Appeals' Decision dated July 24, 2019 and Resolution dated February 17, 2020 in CA-G.R. SP No. 153033 are **AFFIRMED**.

**SO ORDERED.**" (Rosario, *J.*, additional member per S.O. No. 2797 dated November 5, 2020)

By authority of the Court:

  
**TERESITA AQUINO TUAZON**  
Division Clerk of Court p' 129  
23 JAN 2021

<sup>6</sup> See *Petalver v. People*, G.R. No. 242107, January 16, 2019.

<sup>7</sup> *Bethel Realty and Development Corporation v. Housing and Land Use Regulatory Board*, 690 Phil. 304, 319-320 (2012).

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*Please notify the Court of any change in your address.*

GR252393. 01/13/2021(157)URES

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