



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **17 February 2021** which reads as follows:*

“G.R. No. 254166 (*Gemino A. Imperial v. Augustus Caesar M. Cruz III and Rene Francisco*). –

Section 5, Rule 7 of the Revised Rules of Court embodies the rule on forum shopping:

Sec. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Forum-shopping involves the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.¹

Petitioner Gemino A. Imperial asserts that he did not commit forum shopping because there was in fact no petition for review filed in **CA-G.R. SP No. 157413**. Rather, what was filed in the first case was only a motion for extension of time to file a petition for review. As such, there was actually no first petition to speak of.

The argument fails. *Mega-Land Resources and Development Corporation v. C-E Construction Corporation*² relevantly provides:

There certainly is all the opportunity to accomplish the wrong intended by forum-shopping through the filing of two petitions for review with a collegiate court such as the Court of Appeals, as each petition would be docketed separately and assigned to a division of that court, thus allowing two different divisions to act independently as each considers and treats the petition. Thus, no petition for review on *certiorari* may be filed in the Court of Appeals if there is already a similar petition already filed or pending with that same court.

There is no requirement that motions for extension of time be accompanied by a certification against forum-shopping. At the same time, our Rules of Civil Procedure specifically provide that if the petitioner/appellant were to file the said motion for extension of time, they were obligated as well to make a payment of the full amount of the docket fee before the expiration of the original reglementary period. In effect, the payment of the full docket fees must be made simultaneously with the filing of the motion for extension. This holds true whether the extension is sought to undertake an appeal under Rule 43 (as in this case), or whether the extension is sought to file a petition for review with the Court of Appeals under Rule 42.

Thus, the filing of each motion for extension along with the corresponding full docket fees gives rise to a separate case before the Court of Appeals or Supreme Court that is accordingly docketed and raffled for

¹ *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 211 (1999).

² 555 Phil. 581, 590-592 (2007).

evaluation and eventual deliberation. **If each of the cases involve the same petitioner, the same respondents, and seek the extension of time to file a petition or appeal concerning the same decision of the lower court or tribunal, then all the opportunity and dangers of forum shopping are imminent. The evil itself would finally be actualized once a separate appeal or petition for each case is actually filed.**

Thus, even if forum-shopping had not yet been consummated, the steps undertaken by petitioner herein may give rise to a *prima facie* indication that it was about to commit forum-shopping. Neither would there have been any rational or legal justification for having filed two separate motions for extension, as such steps are not oriented towards any valid legal outcome. **Accordingly, a party who commits such error in good faith has the obligation to correct the same upon becoming aware of the anomaly.** (Emphases supplied)

Petitioner filed two (2) motions for extension of time to file a petition for review, each bearing a different docket number assigned by the Court of Appeals. Both actions ultimately seek to overturn the Office of the Ombudsman's decision finding petitioner guilty of conduct prejudicial to the best interest of the service and grave misconduct. Thus, between **CA-G.R. SP No. 157413** and **CA-G.R. SP No. 157028**, there was certainly identity of the parties, subject matter, evidence, and factual and legal issues involved. Indeed, petitioner committed forum shopping.

The fact that there was no actual petition for review filed in **CA-G.R. SP No. 157413** is of no moment. On this score, We agree with the Court of Appeals' disquisition, thus:

[T]he motion filed by Atty. Ballebar was not a simple motion for extension of time to file the [first] petition. The same was filed with all intents of appealing the Office of the Ombudsman's issuances, considering that she posted the amount of P5,000.00 as payment for docket fees. As a result thereof, the Court, in its Resolution dated 18 September 2018, granted additional fifteen days to file the [first] petition and directed Imperial to remit the remaining P530.00 in docket fees. After that, Imperial and Atty. Ballebar no longer took action because the former already filed the [second] petition for review on 22 August 2018. x x x

x x x x

Verily, the two motions for extension to file petition for review proceeded separately because Imperial disregarded the rules on forum shopping. Imperial knew that the [first] petition existed but did not do anything about it in the hopes that the same would be dismissed eventually. As a rule, Imperial should have informed the Court about the existence of the [first] petition upon becoming aware of the anomaly. Unfortunately, this is something he failed to do.³ (Underscoring supplied)

³ *Rollo*, p. 136.

More, petitioner deliberately failed to inform the Court about the previous case (**CA-G.R. SP No. 157413**) based on his so called belief that the same was not perfected anyway since he did not file a petition for review nor pay the complete docket fees.

A party should not benefit from his own omission. As *Department of Public Works and Highways v. Quiwa*⁴ held, parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be “free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter.” To be sure, petitioner’s filing of separate motions for extension of time to file a petition for review involving the same parties, subject matter, and factual and legal issues is in itself trifling with the rules of procedure.

Neither can petitioner put the blame on his counsel’s alleged negligence. It is settled that clients are bound by the actions of their counsel in the conduct of their case. If it were otherwise, and a lawyer’s mistake or negligence was admitted as a reason for the opening of the case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned. The only exception to the general rule is when the counsel’s actuations are gross or palpable, resulting in serious injustice to client, that courts should accord relief to the party.⁵

In this case, however, petitioner failed to prove that Atty. Gina P. Ballebar’s act deprived him of his right to due process to warrant the Court’s relief. Contrariwise, in his comment on respondents Augustus Caesar M. Cruz III and Rene Francisco’s motion to dismiss, petitioner admitted that he knew about the filing of the motion for extension in **CA-G.R. SP No. 157413** by his counsel but reasons that since a petition for review had already filed in **CA-G.R. SP No. 157028** on August 22, 2018, he no longer complied with the said Court of Appeals’ Resolution requiring him to file a petition for review in the first case. But his worse omission was not at all informing the Court of Appeals about the first case and its developments, albeit the case is exactly similar to the second case.

Verily, based on the rule and jurisprudence, the Court of Appeals did not err when it dismissed the petition on ground of forum shopping.

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 the relaxation of procedural rules in the interest of justice was never

⁴ 681 Phil. 485, 489-490 (2012).

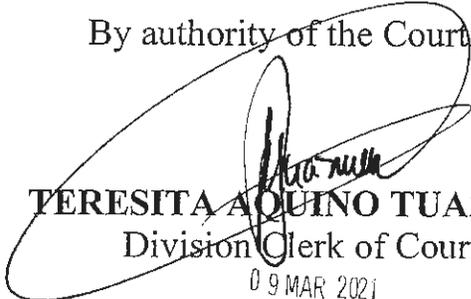
⁵ See *Bagaporo v. People*, G.R. No. 211829, January 30, 2019.

intended to be a license for erring litigants to violate the rules with impunity. 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.⁶

WHEREFORE, the petition is **DENIED** and the assailed Resolutions dated August 16, 2019 and October 12, 2020 of the Court of Appeals in CA-G.R. SP No. 157028, **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


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Division Clerk of Court
09 MAR 2021

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⁶ *Philippine Savings Bank v. Papa*, 823 Phil. 725, 736 (2018).