

SECOND DIVISION

[G.R. No. 232806, January 21, 2019]

**EDGARDO M. AGUILAR, PETITIONER, V. ELVIRA J. BENLOT AND
SAMUEL L. CUICO, RESPONDENTS.**

D E C I S I O N

J. REYES, JR., J.:

For this Court's consideration is the Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, assailing the Resolutions^[2] of the Court of Appeals-Cebu City (CA) dated February 7, 2017 and June 14, 2017, respectively, in CA-G.R. SP No. 10219. The CA dismissed Edgardo M. Aguilar's appeal from the September 30, 2015 Order^[3] of the Office of the Ombudsman-Visayas (Ombudsman) due to procedural infirmities, and subsequently denied reconsideration.

The facts follow.

Edgardo M. Aguilar (petitioner) was elected and had served as *Punong Barangay* of *Barangay* Bunga, Toledo City, Cebu, for three consecutive terms prior to the October 25, 2010 barangay elections where he was elected *Barangay Kagawad* and ranked third. During the same elections, petitioner's sister, Emma Aguilar-Arias (Arias), was elected *Punong Barangay*, while Leonardo Oralde (Oralde) and Emiliana Mancao (Mancao) were elected *Barangay Kagawads* and ranked first and second, respectively.^[4] They took their oaths of office on December 1, 2010.

On December 2, 2010, Arias, Oralde, and Mancao resigned from their respective positions, citing personal reasons and inability to concurrently fulfill official and familial obligations.^[5] Their resignations were accepted and approved by the Mayor of Toledo City on the same day. Being third in rank, petitioner succeeded as *Punong Barangay*. Five days after, or on December 7, 2010, petitioner was re-elected as President of the Association of *Barangay* Captains of Toledo City, by which he once more earned a seat in the City Council.^[6]

Subsequently, Oralde and Mancao were appointed back as *Barangay Kagawads* by the Mayor of Toledo City on January 1, 2011.^[7] Arias, on the other hand, was hired as an employee of the city government after her resignation.^[8]

Convinced that Arias, Oralde, and Mancao resigned from their respective positions to pave the way for petitioner's succession as *Punong Barangay*, Elvira J. Benlot and Samuel L. Cuico (herein respondents) filed a Complaint^[9] on January 31, 2012 before the Ombudsman against the former for violation of Republic Act No. 6713 or *The Code of Conduct and Ethical Standards for Public Officials and Employees* and Dereliction of Duty. According to respondents, the concerted resignations were part of a ruse to enable petitioner to serve a fourth consecutive term in circumvention of

the three-term limit. For this reason, petitioner was subsequently included as one of the respondents in the complaint.^[10]

During the intervening October 28, 2013 *barangay* elections, petitioner was re-elected as *Punong Barangay*, while Arias and Oralde were re-elected as *Barangay Kagawads*. Treating this development as a condonation by the electorate of their previous misconduct, the Ombudsman, in a Decision^[11] dated February 23, 2015, dismissed the administrative complaint against Arias, Oralde and petitioner for being moot and academic pursuant to the *Aguinaldo Doctrine*,^[12] also known as the doctrine of condonation. The administrative case was dismissed for lack of jurisdiction as against Mancao, who was by then no longer in government service.

On motion by the respondents, the Ombudsman reconsidered its Decision through an Order^[13] dated September 30, 2015. It reasoned that petitioner and Arias could not benefit from the condonation doctrine because they were not re-elected in 2013 to the same positions that they were elected for in the 2010 *barangay* elections. Petitioner and Arias were thus found liable for Grave Misconduct and meted the penalty of dismissal from the service, with forfeiture of benefits and perpetual disqualification to hold public office. As regards Oralde, however, the Decision was affirmed. The condonation doctrine was viewed as applicable to Oralde, who was elected as *Barangay Kagawad* and served as such in both the 2010 and 2013 elections.

Petitioner and Arias separately moved for reconsideration of the adverse order. Through a Joint Order^[14] on January 26, 2016, the Ombudsman denied the motions for failure to introduce any new issue or evidence.

When petitioner sought a review of his case before the CA, it dismissed the petition for failure to allege the date when the September 30, 2015 Order of the Ombudsman was received, as well as for lack of explanation why the petition was neither personally filed before the CA nor personally served to the parties.^[15]

In his Motion for Reconsideration^[16] before the CA, petitioner explained that another lawyer previously handled the case, and that there was no stamp as to petitioner's date of receipt on the certified true copy of the Ombudsman Order. Petitioner himself could not remember when he personally received a copy as it was just handed to him by a *barangay* staff. He further argued that the CA could infer that he received his copy of the Order on the same date as Arias did, and that the Ombudsman having jointly entertained their motions for reconsideration should be regarded in his favor on the matter of the timeliness of his appeal.

On his failure to explain why the petition was not personally filed and served, petitioner merely invoked honest mistake. Counsel's office messenger allegedly ran out of time, so the petitions were mailed, even though the affidavit accompanying the petition averred personal filing and service.

In the exercise of its discretion on procedural defects, the CA did not find the reasons advanced by the petitioner compelling, particularly the belated explanation why the petitions were mailed. The CA declared that personal filing and service would have been more practicable than mailing copies of the petition, considering that the Ombudsman, the CA, and counsels of the parties all have offices in close proximity with each other within Cebu City.

Aggrieved, petitioner now seeks relief before this Court, raising three grounds:

A

The Honorable Court of Appeals gravely erred in dismissing outright the petition and in failing to decide the case on its merit.

B

The Office of the Ombudsman (Visayas) gravely erred in failing to apply the condonation doctrine.

C

The Office of the Ombudsman (Visayas) gravely erred in finding conspiracy to circumvent the three-term limit.^[17]

On October 18, 2017, respondents filed their Comment^[18] on the present petition, essentially echoing the rulings of the CA and the Ombudsman.

In response, petitioner filed a Reply^[19] on November 7, 2017, arguing this time that he did not violate the three-term rule when he accepted his appointment and succeeded as *Punong Barangay* to serve a fourth term.

We resolve.

At the threshold is the CA's dismissal of petitioner's appeal based on procedural infirmities, which we address first.

In citing *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*,^[20] the petitioner essentially concedes that the application of the rules must be upheld, and the suspension, or even mere relaxation of its application is the exception. Petitioner contends that his case falls within the exception.

We find that while the CA had good reason to find petitioner's belated explanation unsatisfactory, the present case merits the relaxation of the rules.

This Court has often emphasized that the liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances.^[21] As mandated by Section 11, Rule 13 of the Rules of Court, personal filing and personal service of pleadings remain the preferred mode. In *Aberca v. Ver*,^[22] this Court reiterated *Domingo v. Court of Appeals*,^[23] as follows:

Section 11, Rule 13 of the Rules of Court states:

SEC. 11. *Priorities in modes of service and filing.* Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Section 11 is **mandatory**. In *Solar Team Entertainment, Inc. v. Judge Ricafort*, the Court held that:

Pursuant x x x to Section 11 of Rule 13, *service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally.* x x x

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the **mandatory nature** of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is **mandatory**. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the [*prima facie*] merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

x x x x

x x x [F]or the guidance of the Bench and Bar, **strictest compliance with Section 11 of Rule 13 is mandated.** (Emphases in the original; italics supplied)

Here, the CA had judicial notice of the proximity of the counsels' offices to the CA, to the Ombudsman, and with each other. It could not, thus, be faulted for not