

## SECOND DIVISION

[ G.R. No. 208393, June 15, 2016 ]

**CITY OF TAGUIG, PETITIONER, VS. CITY OF MAKATI,  
RESPONDENT.**

### DECISION

**LEONEN, J.:**

Simultaneously pursuing an appeal (or motion for reconsideration) and a petition for annulment of judgment is an act of forum shopping. This act, which heaps vexation upon courts and parties-litigants, is illustrated by the facts of this case in which conflicting decisions have been rendered by different courts upon the same issue. The actions of respondent City of Makati (Makati) through its counsels is at the border of what appears to be a contumacious attempt to obfuscate the resolution of cases through the abuse of legal processes.

We grant the Petition.

This resolves a Petition for Review on Certiorari<sup>[1]</sup> praying that the assailed Court of Appeals Resolutions dated April 30, 2013<sup>[2]</sup> and July 25, 2013<sup>[3]</sup> in CA-G.R. SP No. 120495 be modified by including a declaration that Makati is guilty of wilful and deliberate forum shopping, and that appropriate sanctions be imposed for it.<sup>[4]</sup>

Petitioner City of Taguig (Taguig) suggests that the assailed rulings should be considered a "denial of the relief sought"<sup>[5]</sup> when the Court of Appeals, in its July 25, 2013 Resolution, supposedly took no action on Taguig's prayer in a Motion for Clarification that the Court of Appeals' April 30, 2013 Resolution "be reinforced with the pronouncement that respondent City of Makati did commit forum shopping."<sup>[6]</sup>

CA-G.R. SP No. 120495 relates to the Petition for Annulment of Judgment that Makati filed before the Court of Appeals after an unfavorable Decision rendered by the Regional Trial Court in Makati's territorial dispute with Taguig. The assailed April 30, 2013 Resolution denied Makati's Motion for Reconsideration in CA-G.R. SP No. 120495 and dismissed its Petition for Annulment of Judgment.<sup>[7]</sup> The assailed July 25, 2013 Resolution was issued in response to a Motion for Clarification dated May 20, 2013, which Taguig filed before the Court of Appeals following the April 30, 2013 Resolution.<sup>[8]</sup>

On November 22, 1993, Taguig, then a municipality, filed before the Regional Trial Court of Pasig City a Complaint against Makati (then also a municipality), Former Executive Secretary Teofisto P. Guingona, Jr., Former Department of Environment and Natural Resources Secretary Angel Alcala, and Former Director of the Lands Management Bureau Abelardo Palad, Jr.<sup>[9]</sup>

The Complaint (Territorial Dispute Case) was denominated as one for "Judicial Confirmation of the Territory and Boundary Limits of Tagig [sic] and Declaration of the Unconstitutionality and Nullity of Certain Provisions of Presidential Proclamations 2475 and 518, with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order."<sup>[10]</sup> This was docketed as Civil Case No. 63896 and raffled to Branch 153 of the Regional Trial Court of Pasig City.<sup>[11]</sup> In this Complaint, Taguig asserted that the areas comprising the Enlisted Men's Barangays, or EMBOs, as well as the area referred to as Inner Fort in Fort Bonifacio, were within its territory and jurisdiction.<sup>[12]</sup>

In the Decision<sup>[13]</sup> dated July 8, 2011, the Regional Trial Court, through Judge Briccio C. Ygaña (Judge Ygaña), ruled in favor of Taguig. The dispositive portion of this Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiff Municipality, now City of Taguig and against all the defendants, as follows:

1. Fort Bonifacio Military Reservation consisting of Parcels 3 and 4, Psu-2031, is confirmed part of the territory of the plaintiff City of Taguig;
2. Proclamation No. 2475, Series of 1986 and Proclamtion [sic] No. 518, Series of 1990 are hereby declared UNCONSTITUTIONAL and INVALID, insofar as they altered boundaries and diminished the areas of territorial jurisdiction of the City of Taguig without the benefit of a plebiscite as required in Section 10, Article X of the 1987 Constitution.
3. Making the Writ of Preliminary Injunction dated August 2, 1994 issued by this Court, explicitly referring to Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio, be made PERMANENT, to wit:
  - a) enjoining defendants Secretary of the Department of Environment and Natural Resources and Director of Lands Management Bureau, from disposing of, executing deeds of conveyance over, issuing titles, over the lots covered by Proclamation Nos. 2475 and 518; and
  - b) enjoining defendant Municipality, now City of Makati, from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory, Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio.
4. Ordering defendants to pay the cost of the suit.

SO ORDERED.<sup>[14]</sup> (Emphasis in the original)

On July 28, 2001, Makati filed before the Court of Appeals a Petition for Annulment of Judgment<sup>[15]</sup> under Rule 47 of the 1997 Rules of Civil Procedure. This Petition was docketed as CA-G.R. SP No. 120495.<sup>[16]</sup> It assailed the Regional Trial Court's July 8, 2011 Decision as having been rendered without jurisdiction and in violation of due process.<sup>[17]</sup> It claimed that the July 8, 2011 Decision was rendered by Judge Ygaña after he had retired, and was merely antedated (i.e., to make it appear that it

was rendered before he retired).[18] It prayed that this Decision be annulled and set aside.[19]

Specifically, the Petition for Annulment of Judgment alleged that in the afternoon of July 12, 2011, three (3) days after Judge Ygaña's retirement took effect and four (4) days after Judge Ygaña could have validly promulgated a judgment, three (3) of Makati's legal counsels—Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano—went to the Regional Trial Court to check if Judge Ygaña had rendered judgment and, if so, to obtain a copy for Makati.[20] Atty. Jerome T. Victor (Atty. Victor), Clerk of Court of Branch 153 of the Regional Trial Court of Pasig City, allegedly could not produce any copy of a promulgated Decision. Likewise, he was supposedly unable to produce Branch 153's Book of Judgments.[21] The Petition for Annulment of Judgment further cited Atty. Victor as saying that the only record (or "book"[22]) he had was Branch 153's Book of Entry of Final Judgments.[23]

The Petition added that "right there and then" Makati's three (3) counsels made a hand-written letter[24] asking Atty. Victor to issue a certification to the effect that, as of July 8, 2011, Judge Ygaña had not promulgated a Decision on the territorial dispute case. Atty. Victor then issued a Certification dated July 12, 2011, which reads:

#### **CERTIFICATION**

This is to certify that the draft of the Decision in the above-entitled case has already been finished on July 8, 2011, but the same is still undergoing review, revision and counterchecking with the voluminous records by Judge Briccio C. Ygaña, before the same is finalized.

This Certification is issued upon the request of Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason and Atty. Gwyn Gareth T. Mariano.

City of Taguig, July 12, 2011.

(sgd.)

**Atty. JEROME T. VICTOR**

Branch Clerk of Court[25]

(Emphasis in the original)

Makati's Petition for Annulment of Judgment further alleged that in the morning of July 13, 2011, Makati received a copy of the July 8, 2011 Decision.[26] This copy was supposedly received under protest as it was Makati's position that the July 8, 2011 Decision was void for having been rendered by a retired judge.[27] A handwritten note on the registry return receipt reads:

The undersigned counsel receives this Decision under PROTEST because in light of the July 12, 2011 Certification of the Clerk of Court of this Court, this Decision is void.

(sgd.)

Pio Kenneth I. Dasal

Also following the Regional Trial Court's July 8, 2011 Decision, Makati filed before the same court its Motion for Reconsideration *Ad Cautelam* of the July 8, 2011 Decision.<sup>[29]</sup> Like the Petition for Annulment of Judgment, this Motion was dated July 28, 2011.

On August 8, 2011, Taguig filed before the Court of Appeals a Motion to Dismiss Makati's Petition for Annulment of Judgment.<sup>[30]</sup> This Motion assailed Makati's Petition: (1) for being fatally defective as it supposedly failed to comply with the requirement for Rule 47 petitions to prosper, that is, that the ordinary remedies of new trial, reconsideration, appeal, petition for relief, and other appropriate remedies are not available;<sup>[31]</sup> (2) for being unnecessary and premature, given that Makati had a pending Motion for Reconsideration before the Regional Trial Court;<sup>[32]</sup> (3) for supposedly not having a certification of non-forum shopping appended to it;<sup>[33]</sup> and (4) for forum shopping, as Makati was simultaneously pursuing its Petition for Annulment of Judgment before the Court of Appeals and its Motion for Reconsideration before the Regional Trial Court.<sup>[34]</sup>

Makati then filed a Comment (on Taguig's Motion to Dismiss)<sup>[35]</sup> dated December 15, 2011.

In its Comment, Makati argued that there was no need to wait for ordinary remedies to become unavailable. It cited *Tiu v. First Plywood Corporation*<sup>[36]</sup> as supposedly providing an exception to the requirement invoked by Taguig. Makati asserted that, in accordance with Tin, "a judgment rendered by a court without jurisdiction is null and void, and may therefore be assailed anytime, without having to wait for ordinary remedies to become unavailable."<sup>[37]</sup> Citing *Nazareno v. Court of Appeals*,<sup>[38]</sup> it emphasized that the subject of its Petition for Annulment of Judgment was a supposedly void, i.e., non-existent, Decision. Thus, as there was no "effective or operative judgment to appeal from[,]"<sup>[39]</sup> it was not necessary to wait for the expiration of ordinary remedies.<sup>[40]</sup>

On Taguig's claim that it engaged in forum shopping, Makati claimed that its Petition for Annulment of Judgment and Motion for Reconsideration *Ad Cautelam* were based on different causes of action, raised different issues, and sought different remedies. The Petition for Annulment of Judgment related to the validity of the July 8, 2011 Decision, that is, that it was void for having been rendered by a retired judge. On the other hand, the Motion for Reconsideration *Ad Cautelam* pertained to the merits of the territorial dispute or to the substance of the respective territorial claims of Taguig and Makati.<sup>[41]</sup> Makati also emphasized that pages 21 to 22 of its Petition for Annulment of Judgment contained a verification and certification of non-forum shopping duly signed by the Mayor of Makati, Jejomar Erwin S. Binay, Jr.<sup>[42]</sup>

Meanwhile, Pairing Judge Leili Cruz Suarez (Judge Suarez) took over the territorial dispute case in the Regional Trial Court. On December 19, 2011, Judge Suarez issued an Order<sup>[43]</sup> denying Makati's Motion for Reconsideration *Ad Cautelam*. In another Order dated February 13, 2012, which acted on a Motion for Clarification filed by Taguig, the Regional Trial Court, also through Judge Suarez, stated that "the

findings of fact and conclusions of law in the Decision dated 8 July 2011, are all in order and soundly based."<sup>[44]</sup>

Makati then filed a Notice of Appeal *Ad Cautelam* dated January 3, 2012.<sup>[45]</sup> This appeal before the Court of Appeals was docketed as CA-G.R. CV No. 98377.<sup>[46]</sup> On October 5, 2012, Makati filed its Appellant's Brief *Ad Cautelam*.<sup>[47]</sup>

On January 6, 2012, Taguig filed its Reply to Makati's Comment on its Motion to Dismiss the Petition for Annulment of Judgment.<sup>[48]</sup> Taguig claimed that the Regional Trial Court's December 19, 2011 Order in the territorial dispute case, issued through Judge Suarez, rendered *functus officio* Makati's Petition for Annulment of Judgment, and reduced its resolution to "a mere academic exercise."<sup>[49]</sup> It insisted on its assertion that the Petition for Annulment of Judgment was fatally defective for failing to comply with Rule 47's requirements. It also assailed the jurisprudence cited by Makati as being inapplicable since in those cases, nullity of the subject cases were "obvious and beyond dispute."<sup>[50]</sup> It underscored its claim that Makati engaged in forum shopping as "[t]here is only one cause of action [which] revolves around the alleged rendition of a wrongful decision."<sup>[51]</sup>

Makati then filed a Rejoinder<sup>[52]</sup> dated February 2, 2012 reiterating its position that it did not commit forum shopping. It emphasized that the Motion for Reconsideration *Ad Cautelam* was merely a precautionary measure.<sup>[53]</sup> It claimed that the Petition for Annulment of Judgment was not rendered *functus officio* by the Regional Trial Court's December 19, 2011 Order as that Order included an express recognition that the matter of lack of jurisdiction was a matter in which the trial court would have to defer to the Court of Appeals:

This Court agrees with Makati on this point. This Court cannot state, at this juncture, if the assailed decision is void for lack of jurisdiction since Makati has already filed a Petition for Annulment of Judgment with the Court of Appeals... This Court cannot pass judgment and has to defer to the Court of Appeals (Tenth Division) with regard to Makati's Petition for Annulment of Judgment.<sup>[54]</sup>

Taguig then filed a Sur-rejoinder<sup>[55]</sup> dated February 15, 2012.

In the Resolution<sup>[56]</sup> dated May 16, 2012, the Court of Appeals denied Taguig's Motion to Dismiss. It favored Makati's assertion in its Comment on the Motion to Dismiss that Judge Ygaña's July 8, 2011 Decision may be assailed at any time as this Decision was assailed for being void and having been issued without jurisdiction.<sup>[57]</sup> It also noted that contrary to Taguig's allegation, a Verification and Certificate of Non-forum Shopping was attached to the Petition.<sup>[58]</sup> It likewise agreed with Makati's position that the Petition for Annulment of Judgment and Motion for Reconsideration *Ad Cautelam* were based on different causes of action, raised different issues, and sought different remedies.<sup>[59]</sup>

On June 4, 2012, Taguig moved for reconsideration.<sup>[60]</sup> Taguig asserted that the Regional Trial Court's December 19, 2011 and February 13, 2012 Orders, penned by Judge Suarez, "stand on their own, independently of the assailed judgment as the