

THIRD DIVISION

[G.R. No. 176831, January 15, 2010]

UY KIAO ENG, PETITIONER, VS. NIXON LEE, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the August 23, 2006 Amended Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 91725 and the February 23, 2007 Resolution,^[2] denying the motion for reconsideration thereof.

The relevant facts and proceedings follow.

Alleging that his father passed away on June 22, 1992 in Manila and left a holographic will, which is now in the custody of petitioner Uy Kiao Eng, his mother, respondent Nixon Lee filed, on May 28, 2001, a petition for mandamus with damages, docketed as Civil Case No. 01100939, before the Regional Trial Court (RTC) of Manila, to compel petitioner to produce the will so that probate proceedings for the allowance thereof could be instituted. Allegedly, respondent had already requested his mother to settle and liquidate the patriarch's estate and to deliver to the legal heirs their respective inheritance, but petitioner refused to do so without any justifiable reason.^[3]

In her answer with counterclaim, petitioner traversed the allegations in the complaint and posited that the same be dismissed for failure to state a cause of action, for lack of cause of action, and for non-compliance with a condition precedent for the filing thereof. Petitioner denied that she was in custody of the original holographic will and that she knew of its whereabouts. She, moreover, asserted that photocopies of the will were given to respondent and to his siblings. As a matter of fact, respondent was able to introduce, as an exhibit, a copy of the will in Civil Case No. 224-V-00 before the RTC of Valenzuela City. Petitioner further contended that respondent should have first exerted earnest efforts to amicably settle the controversy with her before he filed the suit.^[4]

The RTC heard the case. After the presentation and formal offer of respondent's evidence, petitioner demurred, contending that her son failed to prove that she had in her custody the original holographic will. Importantly, she asserted that the pieces of documentary evidence presented, aside from being hearsay, were all immaterial and irrelevant to the issue involved in the petition--they did not prove or disprove that she unlawfully neglected the performance of an act which the law specifically enjoined as a duty resulting from an office, trust or station, for the court to issue the writ of mandamus.^[5]

The RTC, at first, denied the demurrer to evidence.^[6] In its February 4, 2005 Order,^[7] however, it granted the same on petitioner's motion for reconsideration. Respondent's motion for reconsideration of this latter order was denied on September 20, 2005.^[8] Hence, the petition was dismissed.

Aggrieved, respondent sought review from the appellate court. On April 26, 2006, the CA initially denied the appeal for lack of merit. It ruled that the writ of mandamus would issue only in instances when no other remedy would be available and sufficient to afford redress. Under Rule 76, in an action for the settlement of the estate of his deceased father, respondent could ask for the presentation or production and for the approval or probate of the holographic will. The CA further ruled that respondent, in the proceedings before the trial court, failed to present sufficient evidence to prove that his mother had in her custody the original copy of the will.^[9]

Respondent moved for reconsideration. The appellate court, in the assailed August 23, 2006 Amended Decision,^[10] granted the motion, set aside its earlier ruling, issued the writ, and ordered the production of the will and the payment of attorney's fees. It ruled this time that respondent was able to show by testimonial evidence that his mother had in her possession the holographic will.

Dissatisfied with this turn of events, petitioner filed a motion for reconsideration. The appellate court denied this motion in the further assailed February 23, 2007 Resolution.^[11]

Left with no other recourse, petitioner brought the matter before this Court, contending in the main that the petition for mandamus is not the proper remedy and that the testimonial evidence used by the appellate court as basis for its ruling is inadmissible.^[12]

The Court cannot sustain the CA's issuance of the writ.

The first paragraph of Section 3 of Rule 65 of the Rules of Court pertinently provides that--

SEC. 3. Petition for mandamus.--When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.^[13]

Mandamus is a command issuing from a court of law of competent jurisdiction, in

the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.^[14] This definition recognizes the public character of the remedy, and clearly excludes the idea that it may be resorted to for the purpose of enforcing the performance of duties in which the public has no interest.^[15] The writ is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution.^[16] As the quoted provision instructs, mandamus will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station.^[17]

The writ of mandamus, however, will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law.^[18] Nor will mandamus issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious.^[19] As a rule, *mandamus* will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled.^[20] On the part of the relator, it is essential to the issuance of a writ of mandamus that he should have a clear legal right to the thing demanded and it must be the imperative duty of respondent to perform the act required.^[21]

Recognized further in this jurisdiction is the principle that mandamus cannot be used to enforce contractual obligations.^[22] Generally, mandamus will not lie to enforce purely private contract rights, and will not lie against an individual unless some obligation in the nature of a public or quasi-public duty is imposed.^[23] The writ is not appropriate to enforce a private right against an individual.^[24] The writ of mandamus lies to enforce the execution of an act, when, otherwise, justice would be obstructed; and, regularly, issues only in cases relating to the public and to the government; hence, it is called a prerogative writ.^[25] To preserve its prerogative character, mandamus is not used for the redress of private wrongs, but only in matters relating to the public.^[26]

Moreover, an important principle followed in the issuance of the writ is that there should be no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of mandamus being invoked.^[27] In other words, mandamus can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to afford relief.^[28] Although classified as a legal remedy, mandamus is equitable in its nature and its issuance is generally controlled by equitable principles.^[29] Indeed, the grant of the writ of mandamus lies in the sound discretion of the court.

In the instant case, the Court, without unnecessarily ascertaining whether the