

FIRST DIVISION

[G.R. No. 183788, April 05, 2010]

**KRIZIA KATRINA TY-DE ZUZUARREGUI, PETITIONER, VS. THE
HON. JOSELITO C. VILLAROSA, IN HIS CAPACITY AS PRESIDING
JUDGE OF BRANCH 66 OF THE RTC OF MAKATI CITY, AND
FANNIE TORRES-TY, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

This is a petition for review on certiorari ^[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions dated August 23, 2007 ^[2] and July 14, 2008 ^[3] of the Court of Appeals in CA-G.R. SP No. 98978. The Court of Appeals dismissed the petition for certiorari and prohibition filed by petitioner seeking the reversal of the November 16, 2006 and March 9, 2007 Orders ^[4] of the Regional Trial Court (RTC) of Makati City, Branch 66, which found that there was no prejudicial question to warrant the suspension of the criminal actions against petitioner.

The following facts are established:

Sometime in August 2000, Rosemary Torres Ty-Rasekhi (Rosemary), the sister of petitioner's late father Alexander Torres Ty, filed a petition for the issuance of letters of administration of the estate of her mother, Bella Torres (Bella), before the RTC of Pasig City. ^[5] Petitioner initially opposed ^[6] Rosemary's petition, but they eventually reached an amicable settlement and entered into a compromise agreement which they submitted to the RTC for approval. ^[7] In a Decision ^[8] dated November 19, 2002, the RTC approved the compromise agreement.

Subsequently, two (2) of Rosemary's alleged siblings, Peter Torres Ty (Peter) and Catherine Torres Ty-Chavez (Catherine), filed with the Court of Appeals a Petition to Annul Judgment Approving Compromise Agreement, docketed as CA-G.R. SP No. 87222. ^[9] Peter and Catherine claimed that they are also biological children of the late Bella, and are entitled to participate in the settlement of the latter's estate. Later, private respondent Fannie Torres-Ty (Fannie), who likewise claimed to be a biological child of the late Bella and therefore also entitled to inherit from her, filed a petition-in-intervention in the action for annulment of judgment. ^[10]

Peter, Catherine, and Fannie alleged that upon the death of Bella, they held a number of discussions pertaining to the settlement of the latter's estate. Rosemary, their elder sister, promised to take care of the processing of papers so that the estate may be divided among them in the manner provided by law. However, in subsequent discussions, Rosemary made known to them her intention to get a disproportionately larger share of the estate, but they did not agree. No agreement

was reached and as far as they know, no progress was made towards the settlement of Bella's estate. They were not aware that Rosemary had filed a petition for the issuance of letters of administration and that a judgment by compromise agreement was rendered by the RTC of Pasig City. Rosemary had falsely averred that aside from herself, petitioner, who was her niece, was the only other heir of Bella. In petitioner's opposition, it was likewise averred that petitioner and Rosemary were the only heirs of Bella. The subsequent compromise agreement contained similar averments, and it was not disclosed that Peter, Catherine, and Fannie were also Bella's heirs. It was only sometime in June 2004 that they came to know of the decision by compromise agreement of the Pasig City RTC.

Petitioner and Rosemary filed their answers ^[11] to the petition for annulment of judgment and the petition-in-intervention. They raised similar defenses. They denied that Peter, Catherine, and Fannie were heirs of Bella for, as far as they knew, the three (3) were literally purchased from third persons who represented to Bella and the latter's common-law husband, Alejandro Ty, that they were abandoned children. Bella and Alejandro took pity on the three (3) and brought them up as their own. This was known within the family circle, but was not disclosed to Peter, Catherine, and Fannie in order to protect them from the stigma of knowing they were unwanted children. However, Alejandro and Bella did not legally adopt them; hence, they were never conferred the rights of legitimate children.

While the action for annulment of judgment was pending before the Court of Appeals, Fannie filed a complaint ^[12] for falsification and perjury against petitioner and Rosemary. Fannie alleged that petitioner and Rosemary falsely and maliciously stated in the pertinent pleadings filed before the RTC of Pasig City that the late Bella had only two (2) heirs, namely the two (2) of them. Petitioner and Rosemary forthwith filed a joint motion to suspend the preliminary investigation on the ground of a pending prejudicial question before the Court of Appeals. ^[13] They argued that the issue of whether Peter, Catherine, and Fannie are related to Bella and therefore legal heirs of the latter was pending before the Court of Appeals. The investigating prosecutor denied the joint motion and found probable cause against petitioner and Rosemary for two (2) counts each of falsification of public documents. ^[14] The prosecutor held that the issue before the Court of Appeals is the validity of the compromise agreement which is not determinative of the criminal case which involves the liability of petitioner and Rosemary for falsification, allegedly for willfully making the false statements in the opposition to the petition for letters of administration and in the subsequent compromise agreement filed before the RTC of Pasig City.

On December 20, 2005, three (3) informations ^[15] against petitioner and Rosemary were thus filed with the Metropolitan Trial Court (MeTC) of Makati City, Branch 61.

Petitioner filed a petition for review ^[16] with the Department of Justice (DOJ) and a motion to defer proceedings ^[17] before the MeTC on the ground of the pending appeal before the DOJ. Also, petitioner and Rosemary filed with the MeTC separate motions to suspend proceedings on the ground of prejudicial question. ^[18] However, petitioner's appeal was dismissed by the DOJ, ^[19] while her motions before the MeTC were denied by the said court. ^[20] The MeTC agreed with the prosecutor that the issue before the Court of Appeals in the action for annulment of judgment is the

validity of the compromise agreement while the criminal case involves their liability for falsification of public documents. The MeTC also denied petitioner's motion for reconsideration. [21]

Aggrieved, petitioner filed a petition for certiorari and prohibition [22] with the RTC of Makati City, Branch 66. In an Order [23] dated November 16, 2006, the RTC denied the petition on the ground that there was no prejudicial question; hence, the MeTC did not act with grave abuse of discretion in denying petitioner's motion to suspend proceedings. The RTC held that there was no prejudicial question as the quantum of evidence in the civil action for annulment of judgment differs from the quantum of evidence required in the criminal action for falsification of public documents. Petitioner's motion for reconsideration [24] was also denied by the RTC in its Order [25] dated March 9, 2007.

Undaunted, petitioner filed a petition for certiorari and prohibition before the Court of Appeals assailing the RTC's orders. In its August 23, 2007 Resolution, [26] the appellate court dismissed the petition on the ground that the certification of non-forum shopping was signed only by petitioner's counsel and not by petitioner herself. Petitioner's motion for reconsideration was also denied in the July 14, 2008 Resolution [27] of the Court of Appeals.

Hence, the present recourse.

Petitioner alleges that:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR CERTIORARI ON THE GROUND THAT THE CERTIFICATION OF NON-FORUM SHOPPING WAS SIGNED BY COUNSEL ALLEGEDLY IN VIOLATION OF SEC. 3, RULE 46, IN RELATION TO SEC. 1 RULE 65, 1997 RULES OF CIVIL PROCEDURE.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT NULLIFYING THE ASSAILED ORDERS OF PUBLIC RESPONDENT JOSELITO VILLAROSA ON THE GROUND THAT THE SAME WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION. [28]

The petition is meritorious.

Under Rule 46, Section 3, paragraph 3 of the 1997 Rules of Civil Procedure, as amended, petitions for certiorari must be verified and accompanied by a sworn certification of non-forum shopping. [29] The primary question that has to be resolved in this case is whether the verification and certification of non-forum shopping, erroneously signed by counsel, may be cured by subsequent compliance.

[30]

Generally, subsequent compliance with the requirement of a certification of non-forum shopping does not excuse a party from failure to comply in the first instance.

[31] A certification of the plaintiff's counsel will not suffice for the reason that it is the petitioner, and not the counsel, who is in the best position to know whether he actually filed or caused the filing of a petition. [32] A certification against forum shopping signed by counsel is a defective certification that is equivalent to non-compliance with the requirement and constitutes a valid cause for the dismissal of the petition. [33]

However, there are instances when we treated compliance with the rule with relative liberality, especially when there are circumstances or compelling reasons making the strict application of the rule clearly unjustified. [34]

In the case of *Far Eastern Shipping Company v. Court of Appeals*, [35] while we said that, strictly, a certification against forum shopping by counsel is a defective certification, the verification, signed by petitioner's counsel in said case, is substantial compliance inasmuch as it served the purpose of the Rules of informing the Court of the pendency of another action or proceeding involving the same issues. We then explained that procedural rules are instruments in the speedy and efficient administration of justice which should be used to achieve such end and not to derail it. [36]

In *Sy Chin v. Court of Appeals*, [37] we categorically stated that while the petition was flawed as the certification of non-forum shopping was signed only by counsel and not by the party, such procedural lapse may be overlooked in the interest of substantial justice. [38] Finally, the Court has also on occasion held that the party need not sign the verification; a party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification. [39]

Here, the verification and certification of non-forum shopping was signed by petitioner's counsel. Upon receipt of the resolution of the Court of Appeals dismissing her petition for non-compliance with the rules, petitioner submitted, together with her motion for reconsideration, a verification and certification signed by her in compliance with the said rule. [40] We deem this to be sufficient compliance especially in view of the merits of the case, which may be considered as a special circumstance or a compelling reason that would justify tempering the hard consequence of the procedural requirement on non-forum shopping. [41]

On the second assignment of error that the Court of Appeals erred in denying petitioner's prayer for a writ of certiorari and prohibition, we likewise find for petitioner.

Under Rule 111 of the Revised Rules of Criminal Procedure, as amended, a criminal action may be suspended upon the pendency of a prejudicial question in a civil action, to wit: