

SECOND DIVISION

[G.R. NO. 161864, April 27, 2007]

**SPS. ROLANDO DELA CRUZ AND TERESITA DELA CRUZ,
PETITIONERS, VS. SPS. FELICIANO ANDRES AND ERLINDA
AUSTRIA, AND THE DIRECTOR OF LANDS, RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This petition for review on certiorari assails the Resolutions dated October 21, 2003^[1] and January 21, 2004^[2] of the Court of Appeals in CA-G.R. SP No. 67966, which dismissed the petition for relief from judgment instituted by petitioners and denied their motion for reconsideration, respectively.

The petition stemmed from the following factual antecedents:

Spouses Rolando Dela Cruz and Teresita Dela Cruz filed a complaint for annulment of title and/or reconveyance with damages against spouses Feliciano Andres and Erlinda Austria and the Director of Lands on July 28, 1993. The case was docketed as Civil Case No. 523 and assigned to the Municipal Circuit Trial Court (MCTC) of Laur and Gabaldon in Laur, Nueva Ecija.

The MCTC ordered the Director of Lands to cancel Original Certificate of Title No. 11859 insofar as the 410 square meters owned and occupied by petitioners were concerned. On appeal, the Regional Trial Court of Palayan City, Branch 40, reversed and set aside the decision of the MCTC.

On December 4, 2001, petitioners, assisted by Atty. Rafael E. Villarosa, filed with the Court of Appeals a petition for review docketed as CA-G.R. SP No. 67966.^[3] The appellate court dismissed the petition since the Certification of Non-Forum Shopping was signed by Atty. Villarosa instead of petitioners in violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure.^[4] Petitioners moved for reconsideration but it was denied.

Thereafter, Atty. Villarosa withdrew his appearance. On March 20, 2002, petitioners, assisted by Atty. Guillermo M. Hernandez, Jr., requested for an extension of time to file their petition before this Court. Later, they abandoned the motion and the case was declared closed and terminated.

On May 6, 2002, petitioners filed with the Court of Appeals a petition for relief from judgment praying that the dismissal of their petition for review be set aside since the gross negligence of their previous counsel did not bind them.^[5] The appellate court, however, denied their petition. It ruled that petitioners were bound by the action of their counsel as well as by his mistake or negligence. It added that petitioners could not belatedly complain on petition or appeal about their counsel's

incompetence since they could have easily dismissed him at the initial or trial stage if they were not satisfied with his performance. Since petitioners slept on their rights, they had no one to blame but themselves.

With the denial of their motion for reconsideration, petitioners came to this Court raising the following issues:

I.

WHETHER OR NOT THE FILING OF A PETITION [FOR] RELIEF FROM JUDGMENT PURSUANT TO RULE 38 OF THE 1997 RULES OF CIVIL PROCEDURE IS AVAILABLE WHEN THE CASE IS ALREADY PENDING WITH THE COURT OF APPEALS AND/OR WITH THIS HONORABLE COURT;

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT THE PETITIONERS' PREVIOUS COUNSEL'S ACTS ARE TO BE CONSIDERED AS GROSS NEGLIGENCE;

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FINDING THAT THE PETITIONERS HAVE ALLEGEDLY SLEPT ON THEIR RIGHT TO COMPLAIN ABOUT THE INCOMPETENCE OF THEIR PREVIOUS COUNSEL AND TO DISMISS SUCH COUNSEL; AND

IV.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT CONSIDERING THE CASE ON THE MERITS.^[6]

The threshold issue before us is: Can petitioners avail of a petition for relief under Rule 38 of the 1997 Rules of Civil Procedure from a judgment of the Court of Appeals due to their counsel's negligence when he signed the Certification of Non-Forum Shopping?

Petitioners plead that they be spared the consequences of their procedural lapse since it was caused by their counsel's gross negligence in ignoring a well-established rule that it is the party himself who should verify and certify the pleading.

Respondents, on the other hand, maintain that petitioners' counsel was not negligent and in fact did his best since he filed the petition for review on time.

After considering the submission of the parties, we deny the petition for lack of merit.

A petition for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy.^[7] It may be availed of only after a judgment, final order or other proceeding was taken against the petitioner in any court through fraud, accident, mistake, or excusable negligence.^[8]