

SECOND DIVISION

[G.R. No. 148287, November 23, 2004]

**PET PLANS, INC. AND ADRIAN V. OCAMPO, PETITIONERS, VS.
COURT OF APPEALS, RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the nullification of the resolutions of the Court of Appeals dated February 28, 2001^[1] and May 22, 2001,^[2] which dismissed CA-G.R. SP. No. 62410, a special civil action for *certiorari* brought to it by petitioners, and denied petitioners' motion for reconsideration, respectively.

The factual and procedural antecedents are as follows:

Petitioner PET PLANS, Incorporated (PET PLANS for brevity) is a company engaged in the business of selling educational, pension and memorial plans while co-petitioner Adrian V. Ocampo (Ocampo for brevity) is its President.

On January 16, 1995, petitioner PET PLANS employed Jaime M. Abad (Abad for brevity) as its Sales Operations Manager/District Manager, assigning him to its branch office in Aparri, Cagayan. In a letter dated June 10, 1999, petitioners informed Abad that, effective June 16, 1999, he is being reassigned as a Trust Manager, a position which is next lower in rank than the one he was then occupying. The reasons for his demotion are his failure to comply with the sales quota for the years 1998 and 1999, to recruit manpower and to develop his agency. On August 31, 1999, Abad filed a complaint with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. 02, Tuguegarao, Cagayan for illegal dismissal/demotion, damages, non-payment of basic wages, 13th month pay and other monetary incentives against PET PLANS and Ocampo.^[3]

On December 28, 1999, Executive Labor Arbiter Ricardo N. Olarez rendered a decision, the dispositive portion of which reads:

WHEREFORE, with all the foregoing considerations, judgment is hereby rendered declaring complainant illegally dismissed and ordering respondents **jointly and severally** to reinstate him to his former position without loss of seniority rights with full backwages and other benefits computed at P26,533.00 basic pay including 13th month pay and allowances from June 16 to December 31, 1999, and P144, 910.35 unpaid basic wages including 13th month pay for 1996 to 1998 plus ten percent attorney's fees. The reinstatement aspect is immediately executory even pending appeal. In case reinstatement is no longer feasible complainant shall be paid separation pay of one month

compensation pay including allowances for every year of service. All other claims are hereby dismissed.

SO ORDERED.

Petitioners appealed the decision to the NLRC. On July 25, 2000, the NLRC promulgated its decision with the following dispositive portion:

WHEREFORE, the decision appealed from is hereby MODIFIED to the extent that the award of backwages amounting to P26,533.00 is hereby SET ASIDE. In all other aspects, the said decision is hereby AFFIRMED.

SO ORDERED.

Petitioners filed a motion for reconsideration but the same was denied.

Aggrieved by the NLRC decision, herein petitioners, on January 24, 2001, filed a special civil action for *certiorari* with the Court of Appeals.

On February 28, 2001, the Court of Appeals issued a Resolution, to wit:

The Court resolves to DISMISS the petition for defective or insufficient certification against forum-shopping in that it is not signed by the principal party or by petitioner himself as referred to by Section 5, Rule 7 of the 1997 Rules of Civil Procedure but was signed by a certain Rolando Espino without any certification or attachment that he was indeed authorized to sign for and in behalf of the petitioner corporation and to bind the same.

SO ORDERED.

Petitioners filed a motion for reconsideration but the same was denied in a Resolution issued by the Court of Appeals on May 22, 2001.

Hence, the present petition. Petitioners claim that:

The Honorable Court of Appeals has decided questions of substance in a way not in accord with law or with applicable decisions of this Honorable Supreme Court;

The Honorable Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition docketed as CA G.R. SP NO. 62410 on the ground of defective or insufficient certification against forum shopping, contending that it was not signed by the principal party or by petitioner himself as referred to by Section 5, Rule 7 of the 1997 Rules of Civil Procedure;

The Honorable Court of Appeals gravely erred or acted with grave abuse of discretion when it did not consider as substantial compliance with Section 5, Rule 7 of the 1997 Rules of Civil Procedure, paragraph 1 of the questioned certification which categorically stated that Rolando Espino is the duly authorized representative of the petitioners, which allegation was made under oath;

The Honorable Court of Appeals gravely erred or acted with grave abuse of discretion when it ignored the Secretary's Certificate and President's Certification submitted by petitioners, attesting to the fact that Rolando Espino, being the first vice-president for legal affairs and corporate secretary is authorized to represent PET PLANS INC. in all cases whether filed by or against the company.^[4]

Before going into the main issue of the case, we deem it proper to pass upon the correctness of the mode of review availed of by petitioners in filing the present petition.

Petitioners brought the present case to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. The present petition seeks to set aside the Resolutions of the Court of Appeals which outrightly dismissed the special civil action for *certiorari*. No issue as to the merits of the case was presented in the present petition. The only issue raised before us is the propriety of the dismissal by the Court of Appeals of the petition for *certiorari* filed before it, - that is, whether or not the Court of Appeals gravely abused its discretion in dismissing the said petition. In fact, the petition filed before us merely seeks to have the case remanded to the Court of Appeals for adjudication on the merits of the petition. Understandably, there is nothing to appeal under Rule 45^[5] from the questioned resolutions of the Court of Appeals as there was no judgment on the merits of the issues raised before it. Thus, the instant petition should be considered as a special civil action for *certiorari* under Rule 65 of the Rules of Court.

We now come to the main issue in the present case.

Whether the Court of Appeals acted with grave abuse of discretion when it dismissed petitioners' special civil action for *certiorari* (CA-G.R. SP No. 62410) on the ground that petitioners failed to comply with the provisions of the Rules of Court on verification and certificate of non-forum shopping?

The applicable provision is Section 1, Rule 65 of the Rules of Court, to wit:

Section 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Pertinent portions of Section 3, Rule 46 provides: