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**SUPREME COURT  
THIRD DIVISION**

**DENNIS T. GABIONZA,**  
*Petitioner,*

*-versus-*

**G.R. No. 112547  
July 18, 1994**

**THE COURT OF APPEALS and  
ACHIEVERS SALES CORPORATIONS,**  
*Respondents.*

X-----X

**RESOLUTION**

**FELICIANO, J.:**

Petitioner Dennis T. Gabionza asks us to reverse and set aside the Decision of the Court of Appeals which dismissed a Petition for Certiorari and Prohibition for failure to comply with the requirements of Circular No. 28-91 of the Supreme Court (dated 3 September 1991). This Circular is entitled: "Additional Requisites for Petitions Filed

with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.”

Gabionza was a defendant in a civil case entitled “Achievers Sales Corporation vs. Pasvil Liner, Inc., et al.” filed before the Regional Trial Court, Branch 155, of Pasig. Contending that there was no basis for impleading him as a party-defendant in that case, Gabionza filed a motion to dismiss the complaint as against himself. The motion was denied by the trial court.

Gabionza then filed a Petition for Certiorari and Prohibition with the Court of Appeals, assailing the denial of his motion to dismiss. In a one paragraph Resolution,<sup>[1]</sup> the Court of Appeals disposed of the Petition in the following manner:

“The Court resolved to dismiss the instant petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction having failed to indicate in the caption thereof the docket number of the case in the trial court whose orders are sought to be reviewed (Supreme Court Circular No 28-91).” (Emphasis supplied)

In the present Petition for Review, Gabionza admits that the docket number of the case before the trial court whose order was sought to be set aside, had not been set forth in the caption of his Petition for Certiorari and Prohibition with the Court of Appeals. Gabionza, however, maintains that his Petition should nevertheless not have been dismissed by the Court of Appeals, but rather should have been deemed in substantial compliance with Circular No. 28-91, for the reason that the docket number of the case pending before the trial court was in fact set out in the body of his Petition for Certiorari and Prohibition. Page 2 of his Petition before the appellate court stated, among other things:

“Respondent Honorable Fernando Gerona (hereinafter referred to as the respondent Judge) is the presiding Judge of Branch 155 of the Regional Trial Court of Pasig to whom Civil Case No 54984 entitled ‘Achievers Sales Corporation vs. Pasvil Liner, Inc., et al.,’ is assigned. He may be served with notice at his

office at the Regional Trial Court, Branch 155, Pasig, Metro Manila.”<sup>[2]</sup> (Emphasis supplied)

Deliberating on the instant Petition for Review, the Comment thereon by private respondent and petitioner’s Reply, the Court considers that Gabionza’s Petition for Certiorari and Prohibition dismissed by the Court of Appeals was indeed in substantial compliance with the requirements of the Circular on forum shopping and that that Petition should not have been dismissed.

Forum shopping has been characterized as an act of malpractice that is prohibited and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts.<sup>[3]</sup>

Circular No. 28-91 has its roots in the rule that a party-litigant shall not be allowed to pursue simultaneous remedies in two (2) different forums, for such practice works havoc upon orderly judicial procedure.<sup>[4]</sup> That rule was formalized in Section 17 of the Interim Rules and Guidelines issued by the Supreme Court on 11 January 1983 in connection with the implementation of Batas Pambansa Blg. 129, Section 17 read as follows:

“17. Petitions for writs of certiorari, etc. — No petition for certiorari, mandamus, prohibition, habeas corpus or quo warranto may be filed in the Intermediate Appellate Court if another similar petition has been filed or is still pending in the Supreme Court. Nor may a petition be filed in the Supreme Court if a similar petition has been filed or is still pending in the Intermediate Appellate Court, unless it be to review the action taken by the Intermediate Appellate Court on the petition filed with it. A violation of this rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions without prejudice to the taking of appropriate actions against the counsel or party concerned.”

Circular No. 28-91, in its original form, established two (2) requirements which are to be complied with by every petition filed

with the Supreme Court or the Court of Appeals. The first requirement related to the caption of a petition complaint filed with the Supreme Court or the Court of Appeals;<sup>[5]</sup> the second requirement related to the certification which must accompany that petition or complaint.

The first requirement was set out in the following terms:

“The attention of this court has been called to the filing of multiple petitions and complaints involving the same issues in the Supreme Court, the Court of Appeals and the different divisions thereof, or any other tribunal or agency with the result that said tribunal or agency have to resolve the same issues.

To avoid the foregoing, every petition or complaint filed with the Supreme Court, Court of Appeals, or different divisions thereof, or any other tribunal or agency shall comply with the following requirements, aside from pertinent provisions of the Rules of Court and existing circulars:

1. Caption of petition or complaint. — The caption of the petition or complaint must include the docket number of the case in the lower court or quasi-judicial agency whose order or judgment is sought to be reviewed.

x x x” (Emphases supplied)

The first requirement had two (2) components: first, the docket number of the case before the lower court whose order is sought to be reviewed, should be in the petition; and second, that docket number should be in the caption of the petition. In the instance case, there is no dispute that the docket number of the case before the trial court had been set out in the caption of the petition for Certiorari and Prohibition filed with the Court of Appeals. However, that docket number, as well as the title of the case, before the trial court had in fact been set out in the second page of the Petition for Certiorari and Prohibition.

There is also no dispute what petitioner Gabionza had complied with the second requirement of Circular no. 28-91, i.e., that the required

sworn certification (to the effect that “there is no similar petition [with] the same subject matter previously filed, pending, withdrawn or dismissed in the Supreme Court, in this Honorable Court [Court of Appeals] of different divisions thereof, or any other tribunal or agency”)[<sup>6</sup>] was attached to the Petition for Certiorari and Prohibition filed with the Court of Appeals. There has been no allegation that the sworn certification filed by petitioner was false or untrue in a material respect or that petitioner Gabionza had sought to deceive the Court of Appeals.

We, therefore, believe and so hold that the Petition for Certiorari and Prohibition filed by Gabionza with the Court of Appeals was in substantial compliance with the original requirements of Circular No. 28-91 and that the objectives of that Circular were not being subverted by Gabionza’s Petition. It is scarcely necessary to add that Circular No. 28-91 must be so interpreted and applied as to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objection or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible. The Court of Appeals could and should have required petitioner Gabionza simply to comply with Circular No. 28-91 by amending the caption of his petition, instead of dismissing that petition altogether.

**ACCORDINGLY**, the Court Resolved to **GRANT DUE COURSE** to the Petition for Review on Certiorari, to **TREAT** private respondent’s Comment as its Answer to the Petition, and to **REVERSE** and **SET ASIDE** the Resolutions of the Court of Appeals dated 4 August 1993 and 10 November 1993 rendered in C.A.-G.R. SP No. 31549. This case is hereby **REMANDED** to the Court of Appeals, and the Petition for Certiorari and Proceedings consistent with this Resolution. No costs.

**Bidin, Romero, Melo and Vitug, JJ., concur.**

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[1] Gabionza vs. Gerona, C.A.-G.R. SP No. 31549, 4 August 1993, Rollo, p. 22.

[2] Petition, p. 4; Rollo, p. 12.

[3] Ruiz vs. Drilon, 209 SCRA 701 (1992).

[4] People vs. Court of Appeals, 101 SCRA 450 (1980).

[5] Circular No. 28-91 was revised by the Supreme Court on 8 February 1994. The revised Circular No. 28-91, which took effect on 1 April 1994, has deleted the requirement that the docket number of the case in the lower court, whose order or judgment is sought to be reviewed, must be set out in the caption of the petition filed with the Supreme Court or the Court of Appeals.

[6] Records, p. 12.

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