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**SUPREME COURT
FIRST DIVISION**

**HERMINIGILDO TOMARONG,
VENANCIO SUMAGANG, FRANCISCO
MAGSAYO and FEDERICO CUEVAS,
*Petitioners,***

-versus-

**G.R. Nos. 117955-58
March 13, 1997**

**HON. ANTONIO C. LUBGUBAN in his
capacity as Presiding Judge, 2nd MCTC
of Lazi, Siquijor, and ANTONIO
BANGQUIAO, DEMETRIO LUMACAD,
RICO TUMAPON and FELIX TAMIAT,
*Respondents.***

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DECISION

BELLOSILLO, J.:

Is Administrative Circular No. 04-94 of the Supreme Court requiring a certification on non-forum shopping applicable to election contests before municipal trial courts?

Herminigildo Tomarong, Venancio Sumagang, Francisco Magsayo and Federico Cuevas were candidates for Punong Barangay of Lazi, Siquijor, who were defeated in the 11 May 1994 Barangay Elections.

Each of them timely filed an Election Protest^[1] before the 2nd Municipal Circuit Trial Court of Lazi, Siquijor, presided over by Judge Antonio C. Lubguban.

The winning candidates filed individual answers praying for the dismissal of the protests respectively filed against them based on the affirmative defense that the protestants failed to attach to their petitions the required certification on non-forum shopping pursuant to Supreme Court Administrative Circular No. 04-94 which provides:

X X X

1. The plaintiff, petitioner, applicant or principal party seeking relief in the complaint, petition, application or other initiatory pleading shall certify under oath in such original pleading, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (c) if there is any such action or proceeding which is either pending or may have been terminated, he must state the status thereof; and, (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, he undertakes to report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification contemplated herein have been filed.

X X X

2. Any violation of this Circular shall be a cause for the dismissal of the complaint, petition, application or other initiatory pleading, upon motion and after hearing. However, any clearly willful and deliberate forum shopping by any party and his counsel through the filing of multiple

complaints or other initiatory pleadings to obtain favorable action shall be a ground for summary dismissal thereof and shall constitute direct contempt of court. Furthermore, the submission of a false certification or non-compliance with the undertakings therein, as provided in Paragraph 1 hereof, shall constitute indirect contempt of court, without prejudice to disciplinary proceedings against the counsel and the filing of a criminal action against the guilty party.

X X X

The protestants vehemently argued that compliance with the Circular was not required in election contests. Nonetheless, on 6 June 1994, eighteen (18) days after the election cases were filed, protestants submitted the required certification with prayer that the same be admitted as integral part of their protests.^[2]

During the preliminary hearings, the court a quo rejected protestees' affirmative defense and gave due course to the protests, holding that election cases are not covered by Administrative Circular No. 04-94.^[3] Later, however, the municipal trial court agreed with the joint suggestion of counsel for the protestants and the protestees to seek a clarification from higher authorities as to the applicability of the Circular to this case. A query was then addressed to the Secretary of Justice requesting for an opinion on the matter. The Secretary however declined to render an opinion but advised the trial court to refer the issue to the Court Administrator. The query was thus sent to the Court Administrator^[4] who opined that the certification on non-forum shopping should be required in election contests before the Municipal Trial Courts.^[5]

On 6 October 1994 the court a quo issued an order dismissing the protests on the basis of the opinion of the Court Administrator. On 25 October 1994 the protestants sought a reconsideration of the dismissal but the same was denied.

The protestants then instituted the present petition for certiorari under Rule 65 of the Rules of Court alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the lower

court when it reversed its initial ruling and dismissed their protests. They maintain that Administrative Circular No. 04-94 itself explicitly limits its application to civil complaints and whatever cross-claims, first, second, third, fourth, et seq. — party complaints that may spring in consequence thereof. According to them, an election contest is distinct from a civil complaint; it is a special summary proceeding the object of which is to expedite the settlement of the controversy between candidates as to who received the majority of the legal ballots in an election for a specified office.

In addition, protestants who are now petitioners herein assert that the jurisdiction of the MTC over election protests is exclusive and intransferable to any other court hence the “judicial plague” called forum shopping that is sought to be curbed by the subject Circular could not occur in the proceedings before it as the filing of protests before any other court, tribunal or agency would have fatally vitiated them and merited their instantaneous dismissal.

We do not agree with petitioners. In *Loyola vs. Court of Appeals*,^[6] which involves substantially a similar set of facts and issue, this Court held —

We do not agree that Administrative Circular No. 04-94 is not applicable to election cases. There is nothing in the Circular that indicates that it does not apply to election cases. On the contrary, it expressly provides that the requirements therein, which are in addition to those in pertinent provisions of the Rules of Court and existing circulars, “shall be strictly complied with in the filing of complaints, petitions, applications or other initiatory pleadings in all courts and agencies other than Supreme Court and the Court of Appeals.” *Ubi lex non distinguit nec nos distinguere debemus.*

Nor are we persuaded that considering that the MCTC has after all the original and exclusive jurisdiction over the election protest, the certification was unnecessary since the private respondent could not have filed the case anywhere else. The argument fails to consider the possibility of a party availing, rightly or wrongly, of other legal remedies; or of filing the same election protest in more than one MTC, despite the erroneous

venues; or of even being unaware of the original exclusive jurisdiction of the MTC over such election protests and filing one of the protests in the RTC by mistake.

In the aforesaid case, however, the election protest was allowed because the filing of the required certification a day after the filing of the protest was held to be a substantial compliance with Administrative Circular No. 04-94. This Court observed —

In this case, it is a fact that the certification of non-forum shopping was filed by the private respondent on 19 May 1994, a day after he filed the election protest. Since the proclamation of the results of the election was made by the barangay board of canvassers on 10 May 1994, the private respondent, pursuant to Section 9 of R.A. 6679, had ten (10) days therefrom or until 20 May 1994 within which to file an election protest. The filing of the certification was therefore still within the period for filing an election protest. Accordingly, although the certification was not filed simultaneously with the initiatory pleading, its filing within the reglementary period was a substantial compliance with Administrative Circular No. 04-94.

The fact that the Circular requires that it be strictly complied with merely its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.^[7]

In the instant case, we cannot consider the subsequent filing of the required certification a substantial compliance with the requirements of the Circular, the same having been submitted only after the lapse of eighteen (18) days from the date of filing of the protests. Quite obviously, the reglementary period for filing the protest had, by then, already expired.

It should be emphasized that the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not necessarily operate as a substantial compliance; otherwise, the Circular would lose its value or efficacy.^[8]

WHEREFORE, the instant petition is **DISMISSED**. Costs against petitioners.

SO ORDERED.

Padilla, Vitug, Kapunan and Hermosisima, Jr., JJ., concur.

[1] Election Case No. 366, Herminigildo Tomarong vs. Felix L. Tamiat; Election Case No. 367, Venancio Sumagang vs. Antonio Bangquiao; Election Case No. 368, Francisco Magsayao vs. Demetrio Lumacad; Election Case No. 369, Federico Cuevas vs. Rico Tumapon, all filed 19 May 1994.

[2] Records, pp. 6-7, 10-11, 13-16.

[3] Rollo, p. 18.

[4] Rollo, pp. 37-38.

[5] Rollo, p. 39.

[6] G.R. No. 117186, 29 June 1995, 245 SCRA 477, 484.

[7] Id., pp. 483-484.

[8] Kavinta vs. Castillo Jr., G.R. No. 117083, 27 October 1995, 249 SCRA 604, 609.