

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**LORETA TORRES, MARILYN
TANGTANG, ARMELA FIGURACION,
RAQUEL BERNARTE, ESTRELLA TITO,
RHEA ELLORDA, ROSITA FUENTES,
ANITA LAPORRE, JOCELYN RIN,
MATODIA DEREPA, FELICISIMA
ALEGRE, LEA MARTILLANA,
EVANGELINE RAFON, ALICIA
EMPILLO, AMY TORRES, EDNA
JIMENEZ, EVELYN DOLOM, HAMILI
UYVICO, CRISELINA ANQUILO, NILDA
ALCAIDE, ROSARIO MABANA, ESTELA
MANGUBAT, ROSIE BALDOVE,
CARMELITA RUIZ and LUCILA
JUSTARES,**

Petitioners,

-versus-

**G.R. No. 149634
July 6, 2004**

**SPECIALIZED PACKAGING
DEVELOPMENT CORPORATION
and/or ALFREDO GAO (*President*) and
PETER CHUA (*General Manager*);
EUSEBIO CAMACHO GENERAL
SERVICES and/or EUSEBIO CAMACHO
(*President/General Manager*); MPL
SERVICES and/or MIGUELITO**

LAURIANO
Manager),

(President/General
Respondents.

X-----X

DECISION

PANGANIBAN, J.:

The Court may give due course to a Petition, even if the accompanying Certificate Against Forum Shopping has not been signed by all the petitioners, provided it is shown that, as in this case, there is a justifiable cause for such failure; and the outright dismissal of the petition would seriously impair the orderly administration of justice. In the interest of substantial justice, strict observance of procedural rules may be dispensed with for compelling reasons.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to nullify the January 15, 2001^[2] and the August 28, 2001^[3] Resolutions of the Court of Appeals (CA) in CA-GR SP No. 62530. The first Resolution disposed as follows:

“ACCORDINGLY, and to strictly enforce the aforesaid circulars to attain their objectives (Carrara Marble Phil., Inc. vs. Court of Appeals, G.R. No. 127059, January 22, 1997; Far Eastern Shipping Co. vs. Court of Appeals, 297 SCRA 30), the Court resolved to DISMISS the petition for a defective or insufficient verification and certification thereof.”^[4]

The second assailed Resolution, on the other hand, denied petitioners’ Motion for Reconsideration.

The Antecedents

Petitioners claim to be employees of the Specialized Packaging Development Corporation (SPDC), a business entity engaged in the repackaging of cosmetic products. In three separate Complaints, they charged SPDC and alleged labor recruiters Eusebio Camacho General Services (ECGS) and MPL Services with illegal dismissal; and with nonpayment of overtime, premium and 13th month pays, and night differential.

The cases were later consolidated and assigned to Labor Arbiter (LA) Salimathar Nambi. On June 30, 1995, the LA issued his Decision in favor of petitioners, because SPDC and MPL Services had failed to submit their position papers on or before the deadline. SPDC was ordered to reinstate all petitioners to their former positions and to pay them back wages, premium pay for holidays and rest days, service incentive leave pay and 13th month pay.

The LA's Decision was appealed by SPDC to the National Labor Relations Commission (NLRC), which set aside the ruling and ordered the case remanded to LA Nambi for further proceedings.

The case was then set again for hearings. Respondents SPDC and ECGS submitted their position papers five months after the case had been considered submitted for decision.

On December 14, 1999, LA Nambi issued a second Decision finding petitioners' employment to have been illegally terminated by SPDC. The NLRC, however, again reversed and set aside this new Decision on June 9, 2000.

On January 29, 2001, petitioners appealed to the CA.

Ruling of the CA

The Petition was dismissed by the CA, which found the verification and the certification against forum shopping to be either defective or insufficient. It justified its ruling thus:

“x x x It appears that there are twenty-five (25) principal parties-petitioners who were former workers of private respondent Corporation and complainants in NLRC NCR Case Nos. 00-04-03325-94, 00-05-03727-94 and 00-05-03971-94 as a result of their being laid-off from employment. Perusing the verification and certification[,] however, it also appears that it was executed and signed by only two (2) petitioners, namely, Evelyn Dolom and Criselina Anquilo, among the said twenty-five (25) principal petitioners. The duty to verify and certify under oath is strictly addressed to all the twenty-five (25) principal petitioners. To allow only two (2) of them to execute the required verification and certification, without the proper authorization of the others, would render Revised Circular No. 28-91 and Administrative Circular No. 04-94 (now Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure) inutile in avoiding the practice of non-forum shopping because the other principal petitioners, who did not execute and sign the same, much less execute the proper power of attorney, would not be bound by the certification executed by only two (2) of them. Any one of the twenty-three (23) remaining principal petitioners may just obtain the services of another lawyer to institute practically the same case in a different forum.”^[5]

Denying petitioners’ Motion for Reconsideration, the appellate court pointed out that disregarding the rules could not be rationalized by invoking a liberal construction thereof. Furthermore, it found no satisfactory explanation why the 25 principal petitioners, who resided in different provinces, had not executed a special power of attorney in favor of either of the two petitioners or their counsel.

Hence, this Petition.^[6]

Issues

Petitioners submit the following issues for our consideration:

“A.

Whether or not petitioners are employees of the Respondent Specialized Packaging Development Corporation (SPDC).

“B.

Whether or not petitioners were illegally dismissed by Respondent SPDC.

“C.

Whether or not petitioners are entitled to their money claims.”^[7]

The Court’s Ruling

The Petition is meritorious.

Preliminary Issue:

Propriety of the Petition

At the outset we note that the present Petition is anchored on Rule 45, and that it assails the two CA Resolutions dismissing petitioners’ earlier Petition for Certiorari. In accordance with Section 1 of Rule 45,^[8] the herein Petition alleges reversible errors based on the supposedly defective verification and certification against forum shopping.

The above-quoted issues raised in the Memorandum of petitioners, however, were not the same ones raised in the Petition. Because these three substantive issues were sprung by the former only in their own Memorandum, respondents were not able to traverse these directly in their Comment^[9] or Memorandum.^[10] Hence, save for perfunctory references to the NLRC Decision, the latter were not given the opportunity to defend themselves on these questions.

Elementary due process -- which means giving the opposite party the opportunity to be heard, and the assailed court to consider every argument presented^[11] -- bars this Court from taking up these three issues in this Decision, even if doing so would speed up the final resolution of the case. Basic is the rule that issues not presented below cannot for the first time be taken up on appeal.^[12]

Review of NLRC Decisions

The proper procedure for seeking a review of the final dispositions of the NLRC was laid down in 1998 in *St. Martin Funeral Homes vs. NLRC*.^[13] That case heralded two very important rules: 1) decisions and final resolutions of the NLRC may be reviewed only via a special civil action for certiorari under Rule 65 of the Rules of Court; and 2) such petition must be filed with the CA in strict observance of the doctrine of the hierarchy of courts.

Thus, after *St. Martin* became final, special civil actions challenging NLRC rulings have been referred by this Court to the CA for proper disposition. Exceptions to this rule were those instances when -- prior to the finality of *St. Martin* -- both parties had already filed their respective memoranda with this Court, and it then opted to take final cognizance of the case.^[14] Under AM No. 99-2-01-SC, however, all new cases erroneously filed with this Court after June 1, 1999, were dismissed forthwith.

Main Issue:

Propriety of the CA's Dismissal of the Petition

In their present Petition, petitioners plead a liberal construction of the rules. They argue that the verification and the certification against forum shopping executed by only two of the 25 petitioners have already satisfied the requirements under Sections 4^[15] and 5^[16] of Rule 7. On the other hand, the CA ruled that all 25 petitioners should have signed the verification and the certification of non-forum shopping. We clarify.

Actually, two separate rules are involved in the present controversy -- one, on verification; and the other, on the certification against forum shopping.

Two Signatures Sufficient for Verification

The verification requirement is provided under Section 4 of Rule 7 of the Rules of Court, as follows:

“SEC. 4. Verification. – Except when otherwise specifically required by law or rule,^[17] pleadings need not be under oath, verified or accompanied by affidavit.

“A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

“A pleading required to be verified which contains a verification based on ‘information and belief,’ or upon ‘knowledge, information and belief,’ or lacks a proper verification, shall be treated as an unsigned pleading.” (Italics supplied)

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith; or are true and correct, not merely speculative.^[18] This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective.^[19] Indeed, verification is only a formal, not a jurisdictional, requirement.^[20]

In the present case, the problem is not the lack of a verification, but the adequacy of one executed by only two of the 25 petitioners. These two signatories are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the Petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. The requirement of verification has thus been substantially complied with.

Certification Against Forum Shopping Substantially Complied With

For petitions for certiorari, on the other hand, a certification against forum shopping is required under Section 3 of Rule 46^[21] of the Rules of Court, as follows:

“SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - x x x

X X X

“The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and 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 different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

X X X

“The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.”

The certification requirement is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure.^[22] The lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition.^[23]

The submission of a certificate against forum shopping is thus deemed obligatory, though not jurisdictional.^[24] (Jurisdiction over the subject or nature of the action is conferred by law.) Not being jurisdictional, the requirement has been relaxed under justifiable circumstances^[25] under the rule of substantial compliance.

In fact, the Court has allowed the belated filing of the certification against forum shopping because of compelling reasons.^[26] In *Uy vs. Land Bank*,^[27] it even reinstated a petition it had already dismissed for lack of verification and certification against forum shopping, after petitioner had justified the reinstatement. Similarly, in *Roadway*

Express vs. CA,^[28] the Court considered as substantial compliance the filing of the certification 14 days prior to the dismissal of the petition.

The rule of substantial compliance has likewise been availed of with respect to the contents of the certification.^[29] Gabionza vs. Court of Appeals accepted, as sufficient compliance therewith, petitioner's 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 of Appeals or different divisions thereof, or any other tribunal or agency."^[30] It stressed that while Circular 28-91^[31] required strict compliance, it did not thereby prevent substantial compliance under justifiable circumstances.^[32]

In the present case, petitioners aver that the signatures of only two of them suffice as substantial compliance with the attestation requirement for a certificate against forum shopping. In effect, they are asking this Court to disregard a defect^[33] in their Petition.

In previous rulings, we have held that a certificate against forum shopping should be signed by all the petitioners, because a lone signatory cannot be presumed to have personal knowledge of the matters required to be stated in the attestation.^[34] The ruling is not without exception, however. In Spouses Ortiz vs. Court of Appeals^[35] and similar rulings, the following has always been pointed out:

"x x x. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. To merit the Court's consideration, petitioners here must show reasonable cause for failure to personally sign the certification. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice. x x x" (Italics supplied)

Petitioners need only show, therefore, that there was reasonable cause for the failure of some of them to sign the certification against forum shopping, and that the outright dismissal of the Petition would defeat the administration of justice.

We find their reasons meritorious. First, as pointed out in the Motion for Reconsideration filed with the CA, the case dragged for an undeniably long time, because its remand to the labor arbiter forced many of the petitioners to go back to the provinces to await the final outcome, while those who remained in Metro Manila were forced out of temporary quarters every so often.^[36] Under these circumstances, it was extremely difficult to secure all the required signatures.

Second, it is safe to assume that the matters alleged in the certificate against forum shopping have been complied with by the non-signing petitioners. Twenty-one of the petitioners executed in favor of their counsel, a “Natatanging Gawad ng Kapangyarihan,”^[37] which gives him authority to represent them in all matters connected with the case. As it has not been revoked or superseded, the possibility of any of them filing another action or claim through another counsel is effectively foreclosed.

Third, the apparent merits of the substantive aspects of the case, as in *Uy*, should be deemed as a “special circumstance” or “compelling reason” for allowing the Petition. Pertinent thereto, the Court notes that the conflicting findings of the NLRC and of the labor arbiter -- who ruled twice in favor of petitioners -- provide ample justification for the CA’s review of the merits. The outright dismissal of the Petition was therefore prejudicial to the substantial rights of the parties.

Indeed, rules of procedure are established to secure substantial justice.^[38] Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it.^[39] Technical requirements may thus be dispensed with in meritorious appeals.^[40]

It has been our consistent holding that the ends of justice are better served when cases are determined on the merits -- after all parties are given full opportunity to ventilate their causes and defenses -- rather than on technicality or some procedural imperfections.^[41]

Consequently, the case should be remanded to the CA for a proper determination of the substantive issues. Time-honored is the principle that when the law entrusts the review of factual and

substantive issues to a lower court or to a quasi-judicial tribunal, that court or agency must be given the opportunity to pass upon those issues.^[42] Only thereafter may the parties resort to this Court.^[43]

WHEREFORE, this Petition is **GRANTED**. The assailed Resolutions of the Court of Appeals are **SET ASIDE**, and the case is remanded to the CA for a proper determination of the substantive issues. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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- [1] Rollo, pp. 13-49.
- [2] Id., pp. 52-53. Eleventh Division. Penned by Justice Teodoro P. Regino, with the concurrence of Justices Delilah Vidallon-Magtolis (Division chair) and Josefina Guevara-Salonga (member).
- [3] Id., pp. 50-51. Penned also by Justice Regino, with the concurrence of Justices Jose L. Sabio Jr. and Bienvenido L. Reyes.
- [4] CA Resolution dated January 15, 2001, p. 2; rollo, p. 53.
- [5] Id., pp. 1-2 & 52-53.
- [6] The Petition was deemed submitted for decision on November 25, 2002, upon the Court's receipt of respondents' Memorandum, signed by Atty. Teodorico P. Fernandez. Petitioners' Memorandum, signed by Atty. Reynaldo M. Maraan, was received by the Court on October 10, 2002.
- [7] Petitioners' Memorandum, p. 17; rollo, p. 151. Original in upper case.
- [8] Under §1 of Rule 45, only questions of law, distinctly set forth, may be raised.
- [9] Rollo, pp. 73-78.
- [10] Id., pp. 298-311.
- [11] Concepcion vs. CA, 415 Phil. 43, 55, August 10, 2001; Co vs. Judge Calimag Jr., 389 Phil. 389, 395, June 20, 2000; Ginete vs. CA, 357 Phil. 36, 56, September 24, 1998.
- [12] Lim vs. Queensland Tokyo Commodities, Inc., 424 Phil. 35, 47, January 4, 2002; Sañado vs. CA, 356 SCRA 546, 560, April 17, 2001; Magellan Capital Management Corporation vs. Zosa, 355 SCRA 157, 170, March 26, 2001.
- [13] 356 Phil. 811, September 16, 1998.
- [14] Rural Bank of Alaminos Employees Union vs. NLRC, 376 Phil. 18, 27, October 29, 1999.
- [15] §4 of Rule 7 of the Rules of Court provides:

“SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

“A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

“A pleading required to be verified which contains a verification based on ‘information and belief,’ or upon ‘knowledge, information and belief,’ or lacks a proper verification, shall be treated as an unsigned pleading.”

[16] §5 of Rule 7 of the Rules of Court provides:

“SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

“Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.”

[17] Under §1 of Rule 65 of the Rules of Court, a petition for certiorari must be verified.

[18] *Robern Development Corporation vs. Judge Quitain*, 373 Phil. 773, 786, September 23, 1999.

[19] *Uy vs. Land Bank of the Philippines*, 391 Phil. 303, 312, July 24, 2000.

[20] *Shipside Incorporated vs. CA*, 352 SCRA 334, 345, February 20, 2001; *Joson vs. Executive Secretary Torres*, 290 SCRA 279, May 20, 1998; *PASUDECO vs. NLRC*, 339 Phil. 120, 127, May 29, 1997.

[21] The requirement was previously contained in Administrative Circular 04-94 which, in turn, adopted and incorporated the provisions of Revised Circular No. 28-91 in Rules 7, 42, 43, 45, 46, 47, 64 and 65 of the Rules of Court. §3 of Rule 46, by specific reference, provides the requirement for Rule 65 petitions for certiorari. See also *Spouses Melo vs. CA*, 376 Phil. 204, 214, November 16, 1999.

[22] *Robern Development Corporation vs. Judge Quitain*, supra, p. 787.

- [23] Uy vs. Land Bank of the Philippines, supra.
- [24] Robern Development Corporation vs. Judge Quitain, supra.
- [25] Ibid.
- [26] Spouses Melo vs. CA, supra, p. 125.
- [27] Supra, p. 313.
- [28] 332 Phil. 733, 738, November 21, 1996. See also Loyola vs. CA, 315 Phil. 529, 538, June 29, 1995.
- [29] MC Engineering Inc. vs. NLRC, 412 Phil. 614, 622-623, June 28, 2001; Gabionza vs. CA, 234 SCRA 192, 197, July 18, 1994.
- [30] Supra.
- [31] The Circular was the precursor of Administrative Circular 04-94, which has been incorporated in the Rules of Court with regard to the requirement of a certification against forum shopping.
- [32] Gabionza vs. CA, supra, p. 198.
- [33] Loquias vs. Office of Ombudsman, 392 Phil. 596, 603, August 15, 2000. In the said case, it was ruled that the signing of the certificate against forum shopping by only one of the petitioners constituted a defect.
- [34] Ibid.; Docena vs. Lapesura, 355 SCRA 658, 667, March 29, 2001; Spouses Ortiz vs. CA, 360 Phil. 95, 99, December 4, 1998; Far Eastern Shipping Co. vs. CA, 357 Phil. 703, 720, October 1, 1998.
- [35] Supra, p. 99, per Quisumbing, J. This pronouncement was reiterated in Docena vs. Lapesura, supra; Digital Microwave Corporation vs. CA, 384 Phil. 842, 847, March 16, 2000; Five Star Bus Company Inc. vs. CA, 372 Phil. 249, 257, August 31, 1999; Loquias vs. Office of the Ombudsman, supra, p. 604.
- [36] Petitioners' Motion for Reconsideration, pp. 6-7; CA rollo, pp. 101-102.
- [37] Annex "C" of the Petition; rollo, pp. 54-56.
- [38] Ibid.
- [39] Far Eastern Shipping Co. vs. CA, supra.
- [40] Ibid.
- [41] Paras vs. Baldado, 354 SCRA 141, 146, March 8, 2001.
- [42] In original cases for certiorari, the CA has the power to resolve factual issues under §6 of Rule 46, which provides:
"SEC. 6. Determination of factual issues. – Whenever necessary to resolve factual issues, the court itself may conduct hearings thereon or delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office."
- [43] Premiere Development Bank vs. NLRC, 354 Phil. 851, 862, July 23, 1998.