

SECOND DIVISION

[G.R. No. 234812, November 25, 2019]

**MASAKAZU UEMATSU,* PETITIONER, VS. ALMA N. BALINON,
RESPONDENT.**

DECISION

INTING, J.:

Before the Court is a Petition Review on *Certiorari*^[1] assailing the Decision^[2] dated May 23, 2017 of the of Appeals (CA) in CA-G.R. SP No. 07775-MIN, which granted the petition for *certiorari* filed therewith and concomitantly, annulled and set aside Resolution^[3] dated August 15, 2016 as well as the Orders dated September 6, 2016^[4] and September 28, 2016^[5] of Branch 2, Regional Trial Court of Tagum City, (RTC-Tagum) in Civil Case No. 4233.

Likewise being challenged is the CA Resolution^[6] of August 25, 2017, which denied Masakazu Uematsu's (petitioner) motion for reconsideration.

The Antecedents

This case emanated from a Petition^[7] for the issuance of a permanent protection order (PPO) and plea for issuance of temporary protection order under Republic Act No. (RA) 9262 (PPO case) filed by Alma N. Balinon (respondent) against petitioner. Respondent asserted that she filed the case due to the physical, emotional, mental, and sexual abuses committed against her by petitioner, her common-law spouse who was a drug dependent.

In the Decision^[8] dated October 7, 2011 of the RTC-Tagum, the petition for the PPO case filed by the respondent was granted and a PPO against petitioner was issued. RTC-Tagum gave credence to respondent's claim that she and her children would be in constant threat or harm unless a PPO be issued against petitioner. The Decision in the PPO case became final and executory, and a corresponding Entry of Judgment^[9] was issued on November 29, 2011.

On July 23, 2014, or almost three years after the finality of the PPO case, petitioner filed a Complaint^[10] with the Regional Trial Court of Lapu-Lapu City, Cebu (RTC-Lapu-Lapu) for the dissolution of co-ownership, partnership, liquidation, and accounting (Dissolution case) against respondent. In the complaint, petitioner prayed, among others, for the winding up and accounting of his co-ownership with respondent, that the latter be ordered to turnover all papers and effects pertaining to their co-ownership,

and the settlement of their properties be made.

On June 30, 2015, while the Dissolution case was pending, petitioner filed with the RTC-Tagum a Motion (To Order Defendant Alma N. Balinon to Account)^[11] (Motion to Account) praying that respondent be ordered to account all the proceeds of their closed businesses and sold properties. The RTC-Tagum directed respondent to file a comment on the motion. However, despite the 15-day extension period granted her, respondent failed to file her comment.

Subsequently, petitioner filed Motion to Direct [Respondent] to Comply with the Order of the Court^[12] stating that respondent's failure to file a comment and to make an account was an act of disobedience to the lawful order of the court. Thus, he prayed that respondent be given a final warning to render an accounting on their common properties under pain of contempt should she defy the court's order.

In its Order^[13] dated December 2, 2015, the RTC-Tagum directed respondent to explain why she should not be sanctioned for her failure to comply with the directive of the court within a period of five days. In the same order, it granted respondent a period of 15 days to make an accounting and declared that her failure to do so shall constrain the court to admit the allegations in petitioner's Motion to Account and to dispose of the properties therein enumerated.^[14]

On June 8, 2016, petitioner led a Motion for Resolution.^[15] He declared that respondent was still unable to submit for accounting their common properties. Consequently, he prayed for the RTC-Tagum to issue an order citing her in contempt of court and to resolve his Motion to Account.

Ruling of the RTC-Tagum

In the Resolution^[16] dated August 15, 2016, the RTC-Tagum found respondent guilty of indirect contempt. It imposed against her the penalty of imprisonment for a period of 15 days and ordered her to pay a fine in the amount of P30,000.00.^[17] The RTC-Tagum likewise ordered, among other matters, that the properties enumerated in petitioner's Motion to Account be forfeited in his favor.

Respondent moved for a reconsideration, but her motion was denied in the RTC-Tagum's Order^[18] dated September 6, 2016.

Undeterred, respondent filed a notice of appeal.^[19]

In an Order^[20] dated September 28, 2016, the RTC-Tagum denied due course respondent's notice of appeal. It held that its Resolution dated August 15, 2016 was an interlocutory order and as such, could not be subject of an appeal. Hence, respondent filed a petition for *certiorari*^[21] with the CA.

Ruling of the CA

In the Decision^[22] dated May 23, 2017, the CA granted the petition. Accordingly, it annulled and set aside the RTC-Tagum Resolution dated August 15, 2016 as well as its Orders dated September 6, 2016 and September 28, 2016.^[23]

The CA decreed that the Decision of the RTC-Tagum in the PPO case had become final and executory and could no longer be altered except for clerical errors or mistakes. According to the CA, petitioner's Motion to Account was not in the nature of a motion for execution of a final and executory judgment, but pertained to a different subject matter; thus, it must be subject of a separate case.

The CA also elucidated that petitioner's Motion to Account must be dismissed because petitioner committed forum shopping when he filed it despite the pendency of the Dissolution case before the RTC-Lapu-Lapu. It noted that: (1) there was forum shopping considering that these two actions pertained to the same parties, the rights asserted, and reliefs prayed for arose from the same facts; (2) and any ruling in them would amount to *res judicata*.

The CA further noted that the action filed with the RTC-Tagum was a PPO case relating to acts of violence against women and their children defined under RA 9262. It stressed that settlement and distribution of properties were not among the objectives and reliefs specified under RA 9262. Hence, it ruled that the RTC-Tagum had no jurisdiction over petitioner's Motion to Account, since the PPO case was ruled against petitioner. It likewise explained that petitioner could not pray for the distribution of his and respondent's properties because, as respondent therein, petitioner was not allowed to include any counterclaim in the PPO case.

Furthermore, the CA ruled that the RTC-Tagum committed grave abuse of its discretion when it cited respondent in indirect contempt even if its basis was a mere motion filed by petitioner, without observance of the required procedure in indirect contempt cases.

Finally, the CA ratiocinated that the subject notice of appeal involved the disposition of the RTC-Tagum: (1) convicting respondent for indirect contempt; and (2) ordering the forfeiture of the co-owned properties in favor of petitioner. These matters, according to the CA, were appealable and the RTC-Tagum was unjustified in denying the notice of appeal.

With the denial of his motion for reconsideration, petitioner filed this Petition raising the sole issue, to wit:

Whether the [CA] erred in granting the petition for *certiorari* filed by respondent.^[24]

Petitioner's Arguments

In the Petition for Review on *Certiorari*,^[25] petitioner insists that he did not commit forum shopping when he led the Motion to Account before the RTC-Tagum even if he pursued it during the pendency of his Dissolution case with the RTC-Lapu-Lapu.^[26] He

asserts at the respective reliefs prayed for in those cases were different. He alleges that the Motion to Account involved the prayer for accounting of his and respondent's moneylending and car dealership businesses; while, the Dissolution case prayed for the dissolution of their community property and its distribution to them.^[27]

Petitioner also insists that the RTC-Tagum did not commit grave abuse of discretion in holding respondent guilty of indirect contempt of court. He claims that the indirect contempt charge was initiated *motu proprio* by the RTC-Tagum such that he did not have to file a verified petition on the matter.^[28]

Finally, petitioner maintains that the denial of respondent's notice of appeal by the RTC-Tagum was proper.^[29] The Resolution dated August 15, 2016 of the RTC-Tagum, relative to the Decision finding respondent guilty of indirect contempt and also ordering the forfeiture of the subject properties in favor of petitioner, was an interlocutory order, which was not appealable.^[30]

Respondents Arguments

Respondent counters that the RTC-Tagum had no more jurisdiction over the final and executory judgment in the PPO case such that the eventual filing of the Motion to Account in the same case should have been dismissed outright.^[31] She contends that by the filing of petitioner of his subsequent motions in the PPO case, after the decision therein had already been final and executory, had erroneously converted it into a case of distribution of properties, which was absurd and beyond the authority of the RTC-Tagum.^[32]

At the same time, respondent stresses that petitioner committed forum shopping when he filed the Motion to Account even when he had already filed a separate Dissolution case praying for the same remedies for accounting and distribution of properties.^[33] She adds that after the RTC-Tagum ruled in favor of petitioner and forfeited in his favor the subject properties, petitioner then withdrew the Dissolution case. The act of withdrawal by the petitioner showed that after having secured one remedy from the RTC-Tagum, he sought the withdrawal of the other case.^[34]

Our Ruling

The Petition lacks merit.

Application of the principle of immutability of judgment in this case.

At the outset, it is primordial to stress that the decision in the PPO case had long been final and executory before petitioner filed his Dissolution case on July 23, 2014. Such being the case, by virtue of the doctrine of immutability of judgment, this final and executory judgment of the RTC-Tagum can no longer be altered in any way by any court. While there are recognized exceptions to the rule on immutability of judgment,

such as: (1) correction of any clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable^[35] none of which was alleged and proved here.

Forum shopping; when committed.

Moreover, not only did petitioner endeavor to alter an already final and executory judgment, he committed forum shopping when he filed his Motion to Account in the PPO case; thus, the RTC-Tagum should have dismissed it outright.

A party is guilty of forum shopping when he or she institutes, either simultaneously or successively, two or more actions before different courts asking the latter to rule the same or related issues and grant the same or substantially the same reliefs. Such institution of actions is on the notion that one or the other court would render a favorable ruling or increase the chance of the party of obtaining a favorable decision.

^[36] More particularly, forum shopping is evident in these situations:

(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).^[37]

In fine, there is forum shopping when a party files two or more cases involving the *same parties, causes of action and reliefs*. Notably forum shopping is one of the grounds for the dismissal of a case. The rule against it aims to avoid the rendition of two competent courts of separate and opposing rulings which may arise because a party-litigant, takes advantage and tries his or her luck into seeking relief until a result in one's favor is attained.^[38]

In this case, the identity of parties in the Dissolution case and in the Motion to Account (filed in the PPO case) cannot be denied. Both of these cases involved herein petitioner and respondent. Moreover, the rights and reliefs asserted by petitioner in the Dissolution case pertained to the same ones that he declared in the Motion to Account.

To stress, in the Dissolution case, petitioner prayed that: (1) an order be issued against respondent in order for their co-ownership be wound up and accounted, and for respondent to turnover papers and effects affecting the co-ownership; and (2) for the affairs be settled and distribution be made to them. In said case, petitioner listed real properties located in Tagum City, which, he claimed to have been purchased because of his and respondent's lending business and which were subject of their supposed co-ownership. Specifically, these real properties were registered under Transfer Certificates of Title Nos. T-239652, T-239653, T-239654, T-241966, T-241746, T-234235, T-234600

and T-263601.^[39]

On the other hand, in his Motion to Account filed in the PPO case, petitioner prayed for the court to order respondent to account all the proceeds of his and respondent's closed businesses and sold properties. Interestingly, petitioner listed the same properties^[40] in the Motion to Account as those he listed in the Dissolution case. He also similarly stated in the Motion to Account that these properties were acquired by his and respondent's joint efforts or in other words, were co-owned by them.

Added to these, after obtaining a favorable action with the RTC-Tagum granting the petitioner's Motion to Account, petitioner filed a notice to withdraw his Dissolution case with the RTC-Lapu-Lapu. As pointed out by the CA, such withdrawal of action, after obtaining a favorable ruling in another court, shows petitioner's "reprehensible act of trifling with court processes,"^[41] and of his scheme into seeking the same or similar reliefs from different courts to increase his chance of getting a favorable decision.

In sum, it cannot be mistaken that the Dissolution case and the Motion to Account (in the PPO case) were practically pursuant to the same facts and reliefs asked for, that is, for an accounting of the co-owned properties of the parties. They are so interrelated that any disposition made in any of them, regardless of which party is successful, would amount to *res judicata*.^[42] Evidently, the subsequent filing of the Motion to Account despite the pendency of the Dissolution case was unnecessary and vexatious; thus, it should have been dismissed on the ground of forum shopping.

*Indirect contempt;
procedure,
requirements.*

In addition, petitioner posits that the RTC-Tagum properly found respondent guilty of indirect contempt. He adds that since the court initiated *motu proprio* such charge, then he did not have to file a verified petition on the matter.

The Court is not convinced.

A person may be punished for indirect contempt when he or she disobeys or resists a lawful court order, among other acts enumerated in Section 3, Rule 71 of the Rules of Court. The proceedings thereto may be commenced by the court initiating it *motu proprio* or by a verified petition with supporting particulars as well as certified true copies of relevant documents and upon full compliance with the requirements for filing of initiatory pleadings for civil actions.^[43]

As the CA observed, the RTC-Tagum found respondent guilty of indirect contempt, *not* on account of it having initiated the proceedings *motu proprio*, but on the basis of the motion filed by petitioner. Let it be recalled that in his Motion to Direct [Respondent] to Comply with the Order of this Court and Motion for Resolution, petitioner claimed that respondent disobeyed the lawful order of the court and prayed that she be cited in indirect contempt. Such being the case, petitioner should have had filed first a verified petition in pursuing the contempt charge against respondent.

In *Arriola, et al. v. Arriola (Arriola)*,^[44] the Court emphasized that the indirect contempt, not initiated by the court *motu proprio*, must be commenced by a verified petition. It ratiocinated that even if the contempt proceedings emanated from a principal case, still, the governing rules require that a petition be filed and treated independently of the main action. It stressed that it is beyond doubt that the requirement of a verified petition in initiating an indirect contempt proceeding is a **mandatory** requirement quoting the Court's earlier pronouncement in *Regalado v. Go*,^[45] viz.:

x x x x

Henceforth, except for indirect contempt proceedings initiated *motu proprio* by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the requirements therefore and shall be disposed in accordance with the second paragraph of this section.

x x x x

Even if the contempt proceedings stemmed from the main case over which the court already acquired jurisdiction, the rules direct that the petition for contempt be treated independently of the principal action. Consequently, the necessary prerequisites for the filing of initiatory pleadings, such as the filing of a verified petition, attachment of a certification on non-forum shopping, and the payment of the necessary docket fees, must be faithfully observed.

^[46] (Emphasis in the original.)

Like in *Arriola*, the indirect contempt charge against respondent was initiated by petitioner's mere motion; thus, without compliance with the mandatory requirements under Section 4, Rule 71 of the Rules of Court. Specifically, not only did petitioner fail to file a verified petition, he, likewise, did not comply with the requirements for the filing of initiatory pleadings. This being so, the RTC-Tagum had improperly taken cognizance of the charge and conversely, it should have dismissed the motion.

*Interlocutory order,
final judgment;
distinguished.*

Petitioner also faults the CA in finding that the RTC-Tagum committed grave abuse of discretion in denying respondent's notice of appeal. He argues that the denial of the notice of appeal was proper because the Resolution relative to the court's pronouncement which (a) found respondent guilty of indirect contempt, and (b) ordered the forfeiture of the subject properties in favor of the petitioner was an interlocutory order; hence, not appealable.

We disagree.

Let it be underscored that a final judgment is one that finally disposes of a case and leaves nothing more to be done by the court to it. Once rendered, the task of the court to decide the controversy or determine the rights and liabilities of the parties comes to an end. On the other hand, an interlocutory order is one that does not finally dispose of an action as there are other matters that need to be done by the court. A final judgment is appealable while a interlocutory order is not.^[47]

Here, the RTC-Tagum adjudged respondent guilty of indirect contempt imposing against her the penalty of imprisonment of 15 days and ordering her to pay a fine in the amount of P30,000.00. By such ruling, the RTC-Tagum had finally disposed of the matters surrounding the charge of contempt. Pursuant to Section 11, Rule 71 of the Rules of Court, to contest the ruling in the contempt charge, the proper remedy for respondent was to file an appeal under Rule 41 of the Rules of Court.^[48]

Finally, the Court agrees with the CA that the RTC-Tagum's disposition on the forfeiture of the subject properties in favor of petitioner as also embodied in its Resolution dated August 15, 2016 was a final judgment leaving nothing more to be done by the Court. The pronouncement carried with it a determination of the rights as well as the liabilities of the parties. This being so, the proper recourse that should have been taken by the aggrieved party was to appeal the ruling against her. Hence, there is no merit in fact and in law for the RTC-Tagum to deny respondent's notice of appeal.

In view of all the foregoing disquisitions, the Court finds that the CA properly granted the petition for *certiorari*. *First*, the RTC-Tagum gravely abused its discretion in granting the Motion to Account in violation of the principles governing the immutability of judgment as well as forum shopping. *Second*, the RTC-Tagum committed grave abuse of discretion in finding respondent guilty of indirect contempt despite non-compliance with the procedure for filing the same. *Third*, the RTC-Tagum also gravely abused its discretion when it denied due course to respondent's notice of appeal when it involved a final judgment, which is appealable.

WHEREFORE, the Petition is **DENIED**. The Decision dated May 23, 2017 and Resolution dated August 25, 2017 of the Court of Appeals in CA-G.R. SP No. 07775-MIN are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, Senior Associate Justice, (Chairperson), Hernando, and Zalameda,^{**}
JJ., concur.

A. Reyes, Jr., J., on leave.

* Eumatsu in some parts of the *rollo*.

** Designated additional member per Special Order No. 2724 dated October 25, 2019.

[1] *Rollo*, pp. 19-47.

[2] *Id.* at 52-79; penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas, concurring.

[3] *Id.* at 85-88; penned by Presiding Judge Ma. Susana T. Baua.

[4] *Id.* at 90.

[5] *Id.* at 92-93.

[6] *Id.* at 81-83.

[7] *Id.* at 95-102.

[8] *Id.* at 121-125.

[9] *Id.* at 263-264.

[10] *Id.* at 174-178.

[11] *Id.* at 126-129.

[12] *Id.* at 276-279.

[13] *Id.* at 130.

[14] *Id.*

[15] *Rollo*, pp. 283-284.

[16] *Id.* at 85-88.

[17] *Id.* at 88.

[18] *Id.* at 90.

[19] *Id.* at 289-290.

[20] *Id.* at 227-228.

[21] *Id.* at 203-220.

[22] *Id.* at 52-79.

[23] *Id.* at 78.

[24] *Id.* at 30.

[25] *Id.* at 19-47.

[26] *Id.* at 43-44.

[27] *Id.* at 44.

[28] *Id.* at 36-37.

[29] *Id.* at 41.

[30] *Id.* at 42-43.

[31] *Id.* at 198.

[32] *Id.* at 199.

[33] *Id.*

[34] *Rollo*, p. 200.

[35] *Gomeco Metal Corp. v. Court of Appeals, et al.*, 793 Phil. 355, 379 (2016).

[36] *Pavlow v. Mendenilla*, 809 Phil. 24, 50 (2017).

[37] *Id.*

[38] *Brown-Araneta v. Araneta*, 719 Phil. 293, 316-317 (2013).

[39] *Rollo*, p. 175.

[40] *Id.* at 277.

[41] *Id.* at 72.

[42] *See Pavlow v. Mendenilla, supra* note 36 at 51.

[43] RULES OF COURT, Rule 71, Section 4 provide;

Sec. 4. *How proceedings commenced.* - Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt as committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (n)

[44] 566 Phil. 654 (2008).

[45] 543 Phil. 578 (2007).

[46] Supra note 44 at 663

[47] *Heirs of Timbang Daromimbang Dimaampao v. Atty. Alug, et al.*, 754 Phil. 236, 244-245 (2015).

[48] *Capitol Hills Golf & Country Club, Inc. et al. v. Sanchez*, 728 Phil. 58, 73-74 (2014).



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