

SECOND DIVISION

[G.R. No. 227457, June 22, 2020]

**HELEN L. SAY, GILDA L. SAY, HENRY L. SAY, AND DANNY L. SAY,
PETITIONERS, VS. GABRIEL DIZON, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] assailing the Decision^[2] dated May 13, 2016 and the Resolution^[3] dated August 24, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 06840, which set aside the Orders dated September 2, 2014^[4] and April 1, 2015^[5] of the Regional Trial Court of Koronadal City, South Cotabato, Branch 24 (RTC) in Civil Case No. 1973-24, declaring that the RTC gravely abused its discretion in allowing the belated submission of the Judicial Affidavits of petitioners Helen, Gilda, Henry, and Danny, all surnamed Say (petitioners), despite non-compliance with the conditions provided under Section 10 (a) of the Judicial Affidavit Rule (JAR).^[6]

The Facts

This case stemmed from a complaint for Declaration of Nullity of the Deed of Absolute Sale filed by respondent Gabriel Dizon (respondent) against one Robert Dizon and petitioners before the RTC, docketed as **Civil Case No. 1973-24**. In an Order dated November 23, 2011, the said complaint was dismissed by the RTC on the ground of forum shopping after it was shown that respondent had filed a similar complaint, docketed as **Civil Case No. 1263-25**, involving the same subject matter, issue, and relief.^[7]

After the order of dismissal in Civil Case No. 1973-24 had attained finality, petitioners filed an **Ex-Parte Motion for Leave of Court to Set Defendants' Counterclaim for Hearing**. In a Notice of Hearing dated November 25, 2013 (Notice of Hearing) signed by the Branch Clerk of Court, the parties were informed that the case was set for hearing on **March 13, 2014**. Claiming that the notice was a mere notification of the hearing, and not a formal order or resolution on their motion, petitioners filed their Judicial Affidavits on **March 12, 2014**, or one (1) day before the scheduled hearing. On the other hand, respondent opposed the same claiming that the Judicial Affidavits were filed out of time as provided under Section 2 (a)^[8] of the JAR, which requires that the same be filed **not later than five (5) days before the scheduled hearing**.^[9]

Eventually, the RTC directed the parties to file their respective position papers.^[10] Notably, petitioners argued that the March 13, 2014 hearing was for their *ex-parte* motion and not yet the hearing of the counterclaim itself. Hence, the five (5)-day period to file their Judicial Affidavits under the JAR had not yet commenced to run.

[11]

The RTC Ruling

In an Order^[12] dated September 2, 2014, the RTC admitted the Judicial Affidavits of petitioners. While the RTC held that the Notice of Hearing sent to the parties was already a confirmation that on the specified date, *i.e.*, March 13, 2014, petitioners' counterclaim will already be heard, it nonetheless allowed the late submission of the Judicial Affidavits pursuant to the rule that technicalities must give way to substantial justice.^[13]

Respondent moved for reconsideration^[14] but was denied in an Order^[15] dated April 1, 2015. The RTC reiterated the rule that technicalities must give way to substantial justice. Further, it cited Section 10 (a)^[16] of the JAR which allows the late submission of Judicial Affidavits. Thus, pursuant to the same, the RTC modified its earlier order by directing petitioners to pay a fine of P2,500.00 for their late submission.^[17]

Aggrieved, respondent elevated the matter before the CA via a petition for *certiorari* under Rule 65 of the Rules of Court.^[18]

The CA Ruling

In a Decision^[19] dated May 13, 2016, the CA gave due course to the petition and set aside the RTC's Orders, holding that the RTC gravely abused its discretion when it admitted the belatedly filed Judicial Affidavits of petitioners without proof of compliance with the conditions laid down under Section 10 (a) of the JAR, namely: (a) the delay is for a valid reason; (b) it would not unduly prejudice the opposing party; and (c) the defaulting party pays the specified fine. The CA pointed out that other than the payment of the fine, petitioners failed to show that they had complied with the remaining conditions for the allowance of the late submission of their Judicial Affidavits.^[20]

Petitioners' motion for reconsideration was denied in a Resolution^[21] dated August 24, 2016; hence, this petition.

The Issue Before the Court

The essential issue for resolution is whether or not the CA erred in finding grave abuse of discretion on the part of the RTC when the latter admitted petitioners' Judicial Affidavits that were belatedly filed.

The Court's Ruling

The petition is meritorious.

It is well-settled that in an action for *certiorari*, the primordial task of the court is to ascertain whether the court *a quo* acted with grave abuse of discretion amounting to excess or lack of jurisdiction in the exercise of its judgment. **The abuse of discretion must be so patent and gross** as to amount to an evasion of a positive

duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, **as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.**^[22]

In this case, the CA found grave abuse of discretion on the part of the RTC when it admitted the belatedly filed Judicial Affidavits of petitioners in violation of the JAR.^[23] In particular, Section 2 (a) of the JAR mandates the parties to file and serve the Judicial Affidavits of their witnesses, together with their documentary or object evidence, **not later than five (5) days before** pre-trial or preliminary conference or **the scheduled hearing with respect to motions and incidents**, to wit:

Section 2. Submission of Judicial Affidavits and Exhibits in Lieu of Direct Testimonies. - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than five days** before pre-trial or preliminary conference or **the scheduled hearing** with respect to motions and incidents, the following:

- (1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
- (2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked x x x (Emphases supplied)

Corollary thereto, Section 10 (a) of the same Rule further contains a caveat that the failure to timely submit the Judicial Affidavits and documentary evidence **shall be deemed a waiver of their submission**, thus:

Section 10. Effect of Non-Compliance with the Judicial Affidavit Rule. - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. **The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00 at the discretion of the court.** (Emphasis and underscoring supplied)

However, it bears to note that **Section 10 (a) does not contain a blanket prohibition on the submission of a belatedly filed judicial affidavit.** As also stated in the same provision, the submission of the required judicial affidavits beyond the mandated period **may be allowed once provided that the following conditions were complied**, namely: **(a)** that the delay was for a valid reason; **(b)** it would not unduly prejudice the opposing party; and **(c)** the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00 at the discretion of the court.

In this case, there is no dispute that petitioners complied with the RTC's directive to pay the fine of P2,500.00 for the late submission of their Judicial Affidavits.^[24] What remains at issue is petitioners' compliance with the first two (2) conditions under Section 10 (a) of the JAR.

With respect to the justification for the delay, petitioners consistently pointed out that they were under the belief that the Notice of Hearing they had received was a