

THIRD DIVISION

[G.R. No. 154464, September 11, 2008]

**FERDINAND A. CRUZ, 332 EDANG ST., PASAY CITY, PETITIONER,
VS. JUDGE PRISCILLA MIJARES, PRESIDING JUDGE, REGIONAL
TRIAL COURT, BRANCH 108, PASAY CITY, METRO MANILA,
PUBLIC RESPONDENT.**

**BENJAMIN MINA, JR., 332 EDANG ST., PASAY CITY, PRIVATE
RESPONDENT.**

DECISION

NACHURA, J.:

This is a Petition for *Certiorari*, Prohibition and Mandamus, with prayer for the issuance of a writ of preliminary injunction under Rule 65 of the Rules of Court. It was directly filed with this Court assailing the Resolutions dated May 10, 2002^[1] and July 31, 2002^[2] of the Regional Trial Court (RTC), Branch 108, Pasay City, which denied the appearance of the plaintiff Ferdinand A. Cruz, herein petitioner, as party litigant, and the refusal of the public respondent, Judge Priscilla Mijares, to voluntarily inhibit herself from trying the case. No writ of preliminary injunction was issued by this Court.

The antecedents:

On March 5, 2002, Ferdinand A. Cruz (petitioner) sought permission to enter his appearance for and on his behalf, before the RTC, Branch 108, Pasay City, as the plaintiff in Civil Case No. 01-0410, for Abatement of Nuisance. Petitioner, a fourth year law student, anchors his claim on Section 34 of Rule 138 of the Rules of Court^[3] that a non-lawyer may appear before any court and conduct his litigation personally.

During the pre-trial, Judge Priscilla Mijares required the petitioner to secure a written permission from the Court Administrator before he could be allowed to appear as counsel for himself, a party-litigant. Atty. Stanley Cabrera, counsel for Benjamin Mina, Jr., filed a Motion to Dismiss instead of a pre-trial brief to which petitioner Cruz vehemently objected alleging that a Motion to Dismiss is not allowed after the Answer had been filed. Judge Mijares then remarked, "*Hay naku, masama 'yung marunong pa sa Huwes. Ok?*" and proceeded to hear the pending Motion to Dismiss and calendared the next hearing on May 2, 2002.

On March 6, 2002, petitioner Cruz filed a Manifestation and Motion to Inhibit,^[4] praying for the voluntary inhibition of Judge Mijares. The Motion alleged that expected partiality on the part of the respondent judge in the conduct of the trial could be inferred from the contumacious remarks of Judge Mijares during the pre-trial. It asserts that the judge, in uttering an uncalled for remark, reflects a negative

frame of mind, which engenders the belief that justice will not be served.^[5]

In an Order^[6] dated April 19, 2002, Judge Mijares denied the motion for inhibition stating that throwing tenuous allegations of partiality based on the said remark is not enough to warrant her voluntary inhibition, considering that it was said even prior to the start of pre-trial. Petitioner filed a motion for reconsideration^[7] of the said order.

On May 10, 2002, Judge Mijares denied the motion with finality.^[8] In the same Order, the trial court held that for the failure of petitioner Cruz to submit the promised document and jurisprudence, and for his failure to satisfy the requirements or conditions under Rule 138-A of the Rules of Court, his appearance was denied.

In a motion for reconsideration,^[9] petitioner reiterated that the basis of his appearance was not Rule 138-A, but Section 34 of Rule 138. He contended that the two Rules were distinct and are applicable to different circumstances, but the respondent judge denied the same, still invoking Rule 138-A, in an Order^[10] dated July 31, 2002.

On August 16, 2002, the petitioner directly filed with this Court, the instant petition and assigns the following errors:

I.

THE RESPONDENT REGIONAL TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED THE APPEARANCE OF THE PETITIONER, FOR AND IN THE LATTER'S BEHALF, IN CIVIL CASE NO. 01-0401 [sic] CONTRARY TO RULE 138, SECTION 34 OF THE RULES OF COURT, PROVIDING FOR THE APPEARANCE OF NON-LAWYERS AS A PARTY LITIGANT;

II.

THE RESPONDENT COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT VOLUNTARILY INHIBIT DESPITE THE ADVENT OF JURISPRUDENCE [sic] THAT SUCH AN INHIBITION IS PROPER TO PRESERVE THE PEOPLE'S FAITH AND CONFIDENCE TO THE COURTS.

The core issues raised before the Court are: (1) whether the extraordinary writs of *certiorari*, prohibition and mandamus under Rule 65 of the 1997 Rules of Court may issue; and (2) whether the respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the appearance of the petitioner as party litigant and when the judge refused to inhibit herself from trying the case.

This Court's jurisdiction to issue writs of *certiorari*, prohibition, mandamus and injunction is not exclusive; it has concurrent jurisdiction with the RTCs and the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as an absolute, unrestrained freedom to choose the court where the application therefor

will be directed.^[11] A becoming regard of the judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against the RTCs should be filed with the Court of Appeals.^[12] The hierarchy of courts is determinative of the appropriate forum for petitions for the extraordinary writs; and only in exceptional cases and for compelling reasons, or if warranted by the nature of the issues reviewed, may this Court take cognizance of petitions filed directly before it.^[13]

Considering, however, that this case involves the interpretation of Section 34, Rule 138 and Rule 138-A of the Rules of Court, the Court takes cognizance of herein petition. Nonetheless, the petitioner is cautioned not to continue his practice of filing directly before this Court petitions under Rule 65 when the issue raised can be resolved with dispatch by the Court of Appeals. We will not tolerate litigants who make a mockery of the judicial hierarchy as it necessarily delays more important concerns before us.

In resolving the second issue, a comparative reading of Rule 138, Section 34 and Rule 138-A is necessary.

Rule 138-A, or the Law Student Practice Rule, provides:

RULE 138-A

LAW STUDENT PRACTICE RULE

Section 1. *Conditions for Student Practice.* - A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is **enrolled in a recognized law school's clinical legal education program** approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

Sec. 2. *Appearance.* - The appearance of the law student authorized by this rule, shall be **under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school.** Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

The respondent court held that the petitioner could not appear for himself and on his behalf because of his failure to comply with Rule 138-A. In denying petitioner's appearance, the court *a quo* tersely finds refuge in the fact that, on December 18, 1986, this Court issued Circular No. 19, which eventually became Rule 138-A, and the failure of Cruz to prove on record that he is enrolled in a recognized school's clinical legal education program and is under supervision of an attorney duly accredited by the law school.

However, the petitioner insisted that the basis of his appearance was Section 34 of Rule 138, which provides: