

## NINETEENTH DIVISION

**[ CA-G.R. SP. NO. 06575, January 15, 2015 ]**

**ROSE MARIE A. TUMULAK, CHRISTIANE STEP<sup>[1]</sup> TUMULAK  
ALEJANDRINO AND JOSE ANTONIO TUMULAK DIOSANTA,  
PETITIONERS, VS. THE HONORABLE JUDGE, RTC BRANCH 53,  
LAPU-LAPU CITY AND BANCO DE ORO UNIBANK, INC.,  
RESPONDENTS.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

This is a Petition for Certiorari<sup>[2]</sup> under Rule 65 of the Rules of Court seeking to nullify or set aside the Orders dated June 16, 2011<sup>[3]</sup> and October 3, 2011<sup>[4]</sup>, both rendered by the Regional Trial Court (RTC), Branch 53, Lapu-Lapu City in Civil Case No. R-LLP-10-05910-CV.

Stripped of the non-essentials, the facts are as follows:

On December 29, 2010, Rose Marie A. Tumulak, Christiane Step Tumulak, Alejandrino and Jose Antonio Tumulak Diosanta (petitioners) filed a Complaint<sup>[5]</sup> before the RTC for Annulment of Mortgage with Prayer for a Writ of Preliminary Injunction (WPI) and Temporary Restraining Order (TRO) against Banco De Oro Unibank, Inc.<sup>[6]</sup> (formerly Banco de Oro Universal Bank) docketed as Civil Case No. R-LLP-10-05910-CV.

On February 15, 2011, the petitioners received an incomplete Motion to Dismiss<sup>[7]</sup> from the respondent bank. The petitioners noticed that the annexes mentioned in the pleading were not appended thereto.<sup>[8]</sup>

A few days later, the petitioners received a Manifestation Re Motion to Dismiss<sup>[9]</sup> dated February 7, 2011 which submitted the missing annexes in the motion to dismiss. The respondent bank cited inadvertence due to pressure of work as the reason for its failure to attach the missing annexes.<sup>[10]</sup>

On March 3, 2011, the petitioners filed their Comment to Motion to Dismiss<sup>[11]</sup> seeking to set aside the motion with supporting laws and jurisprudence.

On June 16, 2011, the RTC rendered the assailed Order<sup>[12]</sup> granting the respondent bank's motion to dismiss, the dispositive portion whereof reads:

"WHEREFORE, the defendants' MOTION TO DISMISS is hereby GRANTED for being MERITORIOUS AND WELL-TAKEN. The plaintiffs' complaint is hereby DISMISSED FOR LACK OF CAUSE OF ACTION.

Notify the parties through counsel of this order.

SO ORDERED.”

Aggrieved, the petitioners filed a Motion for Reconsideration<sup>[13]</sup> on August 24, 2011<sup>[14]</sup> but it was denied by the court *a quo* in its assailed Order<sup>[15]</sup> dated October 3, 2011.

Thus, the petitioners are now before this Court via the instant recourse relying on the following grounds:

I.

THE RTC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT GRANTED THE RESPONDENT BANK'S MOTION TO DISMISS ON THE BASIS OF LACK OF CAUSE OF ACTION.

II.

THE RTC ERRED IN NOT GIVING CREDENCE AND NOT APPRECIATING THE RIGHTS OF THE PETITIONERS AS LEGAL BENEFICIARIES OF THE FAMILY HOME AS EXPRESSLY PROVIDED FOR UNDER ARTICLE 158 OF THE FAMILY CODE OF THE PHILIPPINES.

***The Ruling of this Court***

The petition is bereft of merit.

Section 1, Rule 65 of the Rules of Court provides when a petition for certiorari may be availed of:

SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and **there is no appeal**, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (*Emphasis supplied*)

A writ for certiorari may issue only when the following requirements are set out in the petition and established:

(1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions;

(2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and