



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

LORETO A. CAÑAVERAS and
OFELIA B. CAÑAVERAS,
Petitioners,

G.R. No. 241348

Present:

GESMUNDO, C.J.,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO,
 MARQUEZ,
 KHO, and
 SINGH, JJ.

- versus -

JUDGE JOCELYN P.
GAMBOA-DELOS SANTOS
and RODEL MARIANO,
Respondents.

Promulgated:

July 5, 2022

X-----X

Christina Lopez

DECISION

INTING, J.:

Before the Court is a petition for *certiorari*¹ under Rule 65 of the Rules of Court which assails the Order² dated June 6, 2018 issued in

¹ Entitled "Petition for Certiorari under Rule 65 with Prayer for the Issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction against Public Respondent from Further Proceeding in the Case and a Petition to Declare the Second Sentence of Sec. 10(B) of the Judicial Affidavit Rule Unconstitutional"; *rollo*, pp. 3-14.

² Id. at 15-16.

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Criminal Case No. 17-0597 by Presiding Judge Jocelyn P. Gamboa-Delos Santos (Judge Gamboa-Delos Santos) of Branch 4, Municipal Trial Court in Cities (MTCC), City of San Fernando, Pampanga. Incorporated in the petition is a prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) that seeks to enjoin Judge Gamboa-Delos Santos from further proceeding in Criminal Case No. 17-0597.

Furthermore, the petition seeks to declare unconstitutional the second sentence³ of Section 10(b) of A.M. No. 12-8-8-SC,⁴ or the Judicial Affidavit Rule.

The Antecedents

Loreto A. Cañaveras and Ofelia B. Cañaveras (collectively, petitioners) are the accused in a criminal case for Falsification of Public Documents by a Private Individual under Article 172 in relation to Article 171 of the Revised Penal Code docketed as Criminal Case No. 17-0597. The case was filed before the MTCC, City of San Fernando, Pampanga and assigned to Branch 4 thereof, which was presided by Judge Gamboa-Delos Santos.⁵

On May 23, 2018, the prosecution was scheduled to present its witness, Nenita G. Mariano (Nenita). Atty. Vicente Dante P. Adan (Atty. Adan), counsel for petitioners, failed to attend the scheduled hearing.⁶

In the Order⁷ dated May 23, 2018, Judge Gamboa-Delos Santos ruled that “the absence of counsel for the defense despite notice is construed as waiver on the part of the defense to cross examine witness [Nenita].”⁸

³ SECTION 10. *Effect of Non-Compliance with the Judicial Affidavit Rule.* –
x x x x

(b) x x x Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

⁴ Dated January 1, 2013.

⁵ *Rollo*, p. 4

⁶ See Order dated May 23, 2018; *id.* at 18.

⁷ *Id.*

⁸ *Id.*

On June 6, 2018, the case was scheduled for the presentation of Rodel G. Mariano (Rodel), the second witness for the prosecution. During the hearing, Atty. Adan orally moved for reconsideration of the Order dated May 23, 2018 that deemed his absence from the scheduled hearing as a waiver on the part of the defense to cross-examine Nenita. Atty. Adan explained that he consulted a doctor on the date of the hearing because of the pain he experienced in his eyes. He presented an unnotarized Medical Certificate⁹ dated May 23, 2018.¹⁰

Public Prosecutor Rowena Figueroa (Prosec. Figueroa) and Atty. Raul Macalino, who assisted prosecution witness Rodel, objected to the motion for reconsideration on the following grounds: (1) that the medical certificate of Atty. Adan was not notarized and (2) that postponement under the Revised Guidelines for Continuous Trial of Criminal Cases¹¹ shall only be allowed by reason of *force majeure* or physical inability of the witness to appear in court coupled by a proof of payment of the prescribed postponement fee.¹²

Judge Gamboa-Delos Santos denied Atty. Adan's motion for reconsideration in the Order¹³ dated June 6, 2018.

Trial proceeded.¹⁴

Atty. Adan objected to the presentation of Rodel as a witness on the ground that the latter's Complaint-Affidavit¹⁵ being presented by the prosecution did not comply with the Judicial Affidavit Rule. However, Judge Gamboa-Delos Santos ruled that under the Revised Guidelines for Continuous Trial of Criminal Cases, prosecutors are allowed to utilize the affidavit that was used before the Office of the City Prosecutor. Judge Gamboa-Delos Santos sustained her ruling despite Atty. Adan's insistence that the Revised Guidelines for Continuous Trial of Criminal

⁹ Id. at 55. It appears that the Medical Certificate dated May 23, 2018 was only notarized on June 15, 2018.

¹⁰ See Order dated June 6, 2018; id. at 15.

¹¹ A.M. No. 15-06-10-SC, approved on April 25, 2017 and took effect on September 1, 2017.

¹² *Rollo*, p. 15.

¹³ Id. at 15-16.

¹⁴ Id. at 15.

¹⁵ Id. at 52.

Cases will not apply when there is a private prosecutor handling the case.¹⁶

After the testimony of Rodel was concluded, Atty. Adan moved for the second reconsideration of the Order dated May 23, 2018. Prosec. Figueroa objected to the motion. Thereafter, Judge Gamboa-Delos Santos denied the motion on the ground that it is prohibited.¹⁷

Hence, the present petition.

The Issues

Petitioners raise the following issues before the Court:

- A. WHETHER THE SECOND SENTENCE OF SEC. 10 (b) OF THE JUDICIAL AFFIDAVIT RULE IS UNCONSTITUTIONAL.
- B. WHETHER THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER, DATED JUNE 6, 2018.
- C. WHETHER PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR ALLOWING THE PRESENTATION OF WITNESS DESPITE NON-COMPLIANCE WITH THE JUDICIAL AFFIDAVIT RULE.
- D. WHETHER THE PETITIONER[S] [ARE] ENTITLED TO AN ISSUANCE OF A TEMPORARY RESTRAINING ORDER (TRO) OR A WRIT OF PRELIMINARY INJUNCTION[.]¹⁸

With respect to the fourth issue raised, the Court had already resolved to deny the prayer for TRO or WPI in the Minute Resolution¹⁹ dated September 25, 2018. In any case, petitioners' prayer for injunctive relief is already rendered moot in view of Judge Gamboa-Delos Santos'

¹⁶ Id. at 27-28.

¹⁷ Id. at 16.

¹⁸ Id. at 6.

¹⁹ Id. at 62-63.

issuance of the Order²⁰ dated June 21, 2019, wherein she had voluntarily inhibited herself from further hearing Criminal Case No. 17-0597 because of Atty. Adan's indications of lack of faith and trust towards her.

Petitioners' Arguments

In their petition for *certiorari*, petitioners allege that on May 23, 2018, Atty. Adan, who was then in Iloilo due to a special engagement, was already on his way to attend the hearing. He was originally booked on a flight from Iloilo to Manila on May 23, 2018.²¹ To make sure that he would not be late for the scheduled hearing, he rescheduled his flight to May 22, 2018.²² However, in the morning of May 23, 2018, Atty. Adan experienced eye pain and headache which did not subside despite taking medication; and his eyes were discharging a lot of rheum that necessitated a visit to a doctor, who advised him to consult an ophthalmologist. The ophthalmologist who saw him diagnosed him with conjunctival cysts, trichiasis, and dry eye syndrome, as shown in the Medical Certificate²³ dated May 23, 2018. Because of his ailment, Atty. Adan was prevented from attending the hearing on May 23, 2018.²⁴

Aggrieved by the Order dated June 6, 2018 that deemed them to have waived their right to cross-examine Nenita, petitioners argue that the second sentence of Section 10(b) of the Judicial Affidavit Rule is unconstitutional. They aver that the waiver of the right of a lawyer's client to confront the adverse party's witnesses through cross-examination on the basis of the latter's judicial affidavits takes away from such client a right guaranteed by the Constitution. They contend that removing from an accused, by reason of the fault of his or her counsel, a personal right guaranteed by the Constitution through a mere procedural rule cannot be done even by the Court.²⁵

Moreover, petitioners argue that Judge Gamboa-Delos Santos committed grave abuse of discretion in issuing the Order dated June 6, 2018. They maintain that Atty. Adan presented a valid cause for his failure to appear at the scheduled hearing on May 23, 2018. They also

²⁰ Id. at 90-92.

²¹ Id. at 4, 53.

²² Id. at 4, 54.

²³ Id. at 55.

²⁴ Id. at 5.

²⁵ Id. at 8.

assert that the abuse of discretion was patent because Judge Gamboa-Delos Santos relied on the Revised Guidelines for Continuous Trial of Criminal Cases and construed Atty. Adan's motion as one for postponement of the scheduled hearing when it should have been treated as a motion to lift the order that deemed as waived their right to cross-examine Nenita for failure of Atty. Adan to attend the hearing on May 23, 2018. According to petitioners, the waiver of a party's right to cross-examine a witness on the ground of the failure of his or her counsel to appear without a valid cause despite due notice is contained in the second sentence of Section 10(b) of the Judicial Affidavit Rule.²⁶

Lastly, petitioners allege that there was grave abuse of discretion on the part of Judge Gamboa-Delos Santos when she allowed the taking of Rodel's testimony in open court even if there was no judicial affidavit submitted. They posit that the Revised Guidelines on Continuous Trial of Criminal Cases did not remove the requirement of submission of judicial affidavits, especially when the complainant, as in this case, is represented by a duly authorized private prosecutor.²⁷

Respondents' Arguments

In her Comment,²⁸ Judge Gamboa-Delos Santos alleges that in determining the reasonableness of the absence of Atty. Adan at the scheduled hearing for the cross-examination of Nenita, she used as reference the motion for postponement provision of the Revised Guidelines for Continuous Trial of Criminal Cases which states the only allowable reasons for postponement, namely: *(1) acts of God, (2) force majeure, and (3) physical inability of the witness to appear and testify*. Considering the absence of any of these circumstances, Judge Gamboa-Delos Santos deemed waived the right of petitioners to cross-examine Nenita.²⁹

Although Judge Gamboa-Delos Santos did not make any reference to Section 10(b) of the Judicial Affidavit Rule in resolving the pending incident,³⁰ she nonetheless alleges that such provision is applicable and

²⁶ Id.

²⁷ Id. at 10.

²⁸ Id. at 72-80.

²⁹ Id. at 76-77.

³⁰ Id. at 73.

consistent with the provisions of the Revised Guidelines for Continuous Trial of Criminal Cases; and it even strengthens the basis for her assailed order that considered as waived the right of petitioners to cross-examine Nenita.³¹ Moreover, Judge Gamboa-Delos Santos avers that she did not consider the medical certificate of Atty. Adan because apart from being unnotarized, it failed to show an indication that his condition necessitated medical intervention.³²

Additionally, in allowing the prosecution to utilize the affidavit previously executed by Rodel before the investigating prosecutor, Judge Gamboa-Delos Santos alleges that she also relied on the Revised Guidelines for Continuous Trial of Criminal Cases, which is instructive on the matter and contains the latest applicable rule promulgated by the Supreme Court.³³

For his part, Rodel also filed a Comment/Opposition³⁴ wherein he alleges that the petition should be dismissed based on the following grounds: (1) it should have been filed with the Regional Trial Court (RTC) in accordance with the Rules of Court; (2) Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in (a) issuing the Order dated June 6, 2018 and construing Atty. Adan's absence as a waiver to cross-examine Nenita, and (b) allowing the taking of Rodel's testimony even if there was no judicial affidavit submitted; and (3) the issuance of a TRO or WPI is moot in view of the voluntary inhibition of Judge Gamboa-Delos Santos.³⁵ Rodel argues that Atty. Adan is estopped from questioning the presentation of the former as witness considering that Atty. Adan was able to cross-examine him. Furthermore, Rodel submits that there was no hint of whimsicality on the part of Judge Gamboa-Delos Santos as would amount to an evasion of a positive duty enjoined by law.³⁶

The Court's Ruling

The petition is partly meritorious.

³¹ Id. at 77.

³² Id. at 78.

³³ Id. at 79.

³⁴ Id. at 98-105.

³⁵ Id. at 99-100.

³⁶ Id. at 103.



At the outset, it bears stressing that although the Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court.³⁷ The concurrent jurisdiction of courts to issue any of these extraordinary writs is not to be taken as according to the parties' absolute, unrestrained freedom of choice of the court to which application therefor will be directed. After all, there is a hierarchy of courts, which serves as a general determinant of the appropriate forum for petitions for the extraordinary writs.³⁸

The principle of hierarchy of courts dictates that direct recourse to the Court is not proper because "the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket."³⁹ Consistent with this principle, Section 4, Rule 65 of the Rules of Court provides that a petition for *certiorari*, prohibition, or *mandamus*, like the present case, which relates to the acts or omissions of a lower court, should be filed in the RTC exercising jurisdiction over the territorial area, *viz.* :

SEC. 4. *When and where petition filed.* — x x x

The petition shall be filed in the Supreme Court or, *if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court.* It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (Italics supplied.)

The present petition for *certiorari* involves Judge Gamboa-Delos Santos' issuance of the Order dated June 6, 2018 in Criminal Case No.

³⁷ *Ramos v. National Commission on Indigenous Peoples*, G.R. No. 192112, August 19, 2020, citing *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

³⁸ See *People v. Cuaresma*, 254 Phil. 418, 426-427 (1989).

³⁹ *Dy v. Bibat-Palamos*, 717 Phil. 776, 782 (2013), citing *Cabarles v. Judge Maceda*, 545 Phil. 210, 223 (2007).

17-0597 in her capacity as Presiding Judge of Branch 4, MTCC, City of San Fernando, Pampanga. Thus, direct resort to the Court, in violation of the doctrine of hierarchy of courts, is a sufficient cause for the dismissal of the petition.⁴⁰

Nevertheless, the Court has allowed the invocation of its original jurisdiction to issue writs of *certiorari* in certain instances on the ground of special and important reasons clearly stated in the petition, such as, “(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.”⁴¹

Considering that what is at stake is petitioners’ liberty as they are criminally charged with falsification of documents, the Court, in the broader interest of justice, deems it proper to relax the rule on hierarchy of courts and, consequently, permit petitioners’ direct resort to the Court.

It is improper for the Court to resolve the question of constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule because it is not the lis mota of the case.

Notably, it is only before the Court that petitioners assail the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule. Neither the prosecution nor the defense invoked the application of the challenged provision before the trial court. Furthermore, in resolving the issue of whether to consider as waived the right of petitioners to cross-examine Nenita, Judge Gamboa-Delos Santos did not make reference to the second sentence of Section 10(b) of the Judicial Affidavit Rule. Instead, she relied on the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases in order to determine the reasonableness of Atty. Adan's absence at the scheduled hearing for Nenita's cross-examination.

⁴⁰ *Ramos v. National Commission on Indigenous People*, supra note 37.

⁴¹ *Dy v. Bibat-Palamos*, supra note 39 at 783, citing *Republic v. Caguioa*, 704 Phil. 315, 328 (2013).

The courts, as a rule, will not resolve the constitutionality of a law when the controversy can be settled on other grounds.⁴² In other words, the constitutionality must be essential to the disposition of the case or its *lis mota*.⁴³

As explained in *Venus Commercial Co., Inc. v. Department of Health*:⁴⁴

Lis mota is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is “litigation moved.” Under the rubric of *lis mota*, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.⁴⁵

As correctly observed by Senior Associate Justice Marvic M.V. F. Leonen, the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule is not the *lis mota* of the present case. Here, petitioners have made it appear that Judge Gamboa-Delos Santos used the second paragraph of Section 10(b) of the Judicial Affidavit Rule as legal basis for her Orders dated May 23, 2018 and June 6, 2018 that deemed Atty. Adan’s absence as a waiver of the defense’s right to cross-examine Nenita. As Judge Gamboa-Delos Santos’ assailed Orders have no connection at all with the second paragraph of Section 10(b) of the Judicial Affidavit Rule, there is no genuine issue of constitutionality that merits the Court’s attention.

Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in deeming petitioners to have waived their right to cross-examine Nenita for failure of their counsel, Atty. Adan, to appear at the

⁴² *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020, citing *Spouses Mirasol v. Court of Appeals*, 403 Phil. 760, 774 (2001).

⁴³ See *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020.

⁴⁴ G.R. No. 240764, November 18, 2021.

⁴⁵ *Id.*, citing *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections*, G.R. No. 246816, September 15, 2020.

hearing set therefor. Nonetheless, the Court sets aside the Orders dated May 23, 2018 and June 6, 2018 as petitioners' constitutional right to cross-examine the witnesses against them is of paramount importance.

It appears that petitioners and their counsel were duly notified of the schedule of the hearings for the case. Pertinent portions of the Pre-trial Order⁴⁶ dated December 13, 2017 provide:

VI. TRIAL DATES

For the Prosecution
April 4, 2018
May 2, 2018
May 23, 2018

For the Defense
June 6, 2018
June 13, 2018
June 20, 2018
August 8, 2018
August 22, 2018

(all at 1:00 in the afternoon)

Failure on the part of either party to present evidence on any of the scheduled dates allotted to him/her/them with no prior notice of justifiable cause will be considered a waiver on his/her/their part to present evidence on such date and the same will be deemed forfeited and irreplaceable in line with Section 8, R. A. 8433 (The Speedy Trial Act).⁴⁷

Petitioners and Atty. Adan were twice notified of the hearing on May 23, 2018: first, during the conduct of the pre-trial on December 13, 2017,⁴⁸ and second, on April 4, 2018 when the parties were informed that the next hearing on May 23, 2018 was for the purpose of conducting the cross-examination of Nenita.⁴⁹ Notably, it was Atty. Adan who requested that the conduct of cross-examination be set on the next hearing date considering that he was belatedly served with a copy of Nenita's judicial affidavit.⁵⁰ However, on May 23, 2018, Atty Adan did not attend the hearing for the cross-examination of Nenita.

⁴⁶ *Rollo*, pp. 81-87.

⁴⁷ *Id.* at 86-87.

⁴⁸ See Pre-trial Order dated December 13, 2017; *id.* at 81-87.

⁴⁹ See Order dated April 4, 2018; *id.* at 88-89.

⁵⁰ *Id.* at 89.

Judge Gamboa-Delos Santos did not find meritorious Atty. Adan's motion for reconsideration of the Order dated May 23, 2018 based on the Medical Certificate⁵¹ he presented on June 6, 2018, which is also dated May 23, 2018. Notably, the medical certificate was notarized only on June 15, 2018. At the time the document was presented, Judge Gamboa-Delos Santos found it questionable as to its veracity and due execution for being unnotarized. She likewise did not find any indication in the medical certificate that Atty. Adan's condition was an emergency that required immediate medical intervention.

To reiterate, Judge Gamboa-Delos Santos' basis for considering as waived the right of petitioners to cross-examine Nenita is not the second sentence of Section 10(b) of the Judicial Affidavit Rule but the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases. She relied on the latter provision in order to determine the reasonableness of the absence of Atty. Adan at the schedule for the cross-examination of Nenita.

Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases expressly provides that a motion for postponement is *prohibited*, except if based on (1) *acts of God*, (2) *force majeure*, or (3) *physical inability of the witness to appear and testify*. "If the motion is granted based on [any of] such exceptions, the moving party shall be warned that the presentation of its evidence must still be finished on the dates previously agreed upon."⁵²

The Court finds no error in Judge Gamboa-Delos Santos' reliance on the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases to determine the reasonableness of the absence of Atty. Adan at the schedule for the cross-examination of Nenita. Worth mentioning are the objectives behind the issuance of the Revised Guidelines for Continuous Trial of Criminal Cases, *viz.*:

1. To protect and advance the constitutional right of persons to a speedy disposition of their criminal cases;

⁵¹ Id. at 55.

⁵² See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.

2. To reinforce and give teeth to the existing rules on criminal procedure and other special rules prescribing periods for court action and those which promote speedy disposition of criminal cases; and
3. To introduce innovations and best practices for the benefit of the parties.⁵³

In view of the absence of any of the three allowable reasons for postponement, namely, (1) *acts of God*, (2) *force majeure*, and (3) *physical inability of the witness to appear and testify*, the Court sees no error in Judge Gamboa-Delos Santos' order deeming petitioners to have waived their right to cross-examine Nenita.⁵⁴ Additionally, even assuming that there was a valid ground for postponement, there was a failure on the part of Atty. Adan to file a motion for such purpose and to submit proof of payment of the postponement fee, which is a requirement under the Revised Guidelines for Continuous Trial of Criminal Cases.⁵⁵

Based on the foregoing considerations, Judge Gamboa-Delos Santos cannot be deemed to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed Order dated June 6, 2018. It is clear that she only strictly enforced the appropriate rules promulgated by the Court. Needless to state, procedural rules should be treated with utmost respect and due regard as they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.⁵⁶

Nonetheless, the circumstances of the case impel the Court to afford petitioners the opportunity to cross-examine Nenita and thus set aside the following: (1) Order dated May 23, 2018, which deemed as waived petitioners' right to cross examine Nenita; and (2) Order dated June 6, 2018, which denied Atty. Adan's subsequent motion for reconsideration.

⁵³ See Part II of the Revised Guidelines for Continuous Trial of Criminal Cases.

⁵⁴ *Rollo*, pp. 76-77.

⁵⁵ See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.

⁵⁶ *CMTC International Marketing Corporation v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

While Judge Gamboa-Delos Santos cannot be faulted for strictly applying the relevant procedural rules, the Court takes occasion to remind judges to be more circumspect in the exercise of their discretion in regard to their application of the rules of procedure.

“Procedural rules were precisely conceived to aid the attainment of justice.”⁵⁷ Thus, “if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.”⁵⁸ As enjoined by Section 6, Rule 1 of the Rules of Court, procedural rules shall be liberally construed in order to promote their objective to assist the parties in obtaining a just, speedy, and inexpensive determination of every action and proceeding.

In the present case, the Court finds that the liberal construction of the rules will better promote and secure a just determination of petitioners’ culpability.

The right of petitioners to cross-examine Nenita, being a basic and fundamental right, should be seen as paramount. While the State which represents the people who may have been wronged by a crime also has the right to due process,⁵⁹ such right should not prevail over the accused’s constitutional right to confront and cross-examine opposing witnesses when it is *not* shown that the accused applied machinations to unreasonably deny the prosecution of its ability to prove its case. To stress, “[p]aramount interests of justice should not be sacrificed for the sake of speed and efficiency.”⁶⁰

Here, there is no showing that petitioners had employed means to unreasonably deny the prosecution of its ability to prove its case or delay the latter’s presentation of its evidence. While physical inability of an accused’s counsel is, admittedly, not one of the grounds allowed for the postponement of the trial under the Revised Guidelines for Continuous Trial of Criminal Cases, the Court, in the interest of fairness and due process, deems the postponement proper.

⁵⁷ *Latogan v. People*, G.R. No. 238298, January 22, 2020.

⁵⁸ *Id.*

⁵⁹ *Kim Liong v. People*, 832 Phil. 8, 26 (2018).

⁶⁰ *Dy Teban Trading, Inc. v. Dy*, 814 Phil. 564, 585 (2017), citing *Reyes v. CA*, 335 Phil. 206, 217 (1997).

For this purpose, as aptly propounded by Associate Justice Amy C. Lazaro-Javier, Atty. Adan could be called by the trial judge to swear to his medical certificate in order to address its lack of a notarial certificate. He could also be subjected to a meticulous examination by the prosecution on his claim about his eye infection on May 23, 2018. Moreover, he should be ordered to pay the postponement fee and the reasonable expenses of the prosecution witness, Nenita, who would have to be recalled for the cross-examination.

It bears noting that under the Revised Guidelines for Continuous Trial of Criminal Cases, trial dates are non-transferable and the presentation of evidence of the party moving for postponement would still be finished on the dates previously agreed upon.⁶¹ The trial judge, for reason of the postponement, should be able to devise a strategy that would make sure that the trial of the case will be completed within the prescribed period. In the present case, for instance, the trial judge could forfeit in favor of the prosecution one of the hearing dates allotted for the defense. Alternatively, in the absence of the defense counsel, the trial judge could appoint a counsel *de officio* in order to ensure the continuous trial of the case.

In sum, while finding no grave abuse of discretion on the part of Judge Gamboa-Delos Santos in deeming waived the right of the defense to cross-examine Nenita, the Court resolves to set aside the Orders dated May 23, 2018 and June 6, 2018 in order to afford petitioners the opportunity to cross-examine the prosecution witness.

Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when she allowed the taking of Rodel's testimony in open court even if there was no judicial affidavit.

Petitioners' basis for arguing that strict compliance of the Judicial Affidavit Rule is enjoined in cases where the party is represented by a

⁶¹ See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.

private prosecutor is OCA Circular No. 05-2013⁶² in relation to the Judicial Affidavit Rule.⁶³ This circular, however, finds no application in this case as it pertains to the “Modification of the Public Prosecutors’ Compliance with the Provisions on the Judicial Affidavit Rule” for the period from January 1, 2013 to December 31, 2013.

Indeed, private prosecutors are charged with the duty to prepare judicial affidavits. However, with the effectivity of the Revised Guidelines on Continuous Trial of Criminal Cases on September 1, 2017, prosecutors, public or private, are now allowed to utilize duly subscribed written statements given to law enforcement or peace officers or the affidavits or counter-affidavits submitted before the investigating prosecutor as testimonies of their witnesses, *viz.*:

11. Form of testimony

In all criminal cases, including those covered by the Rule on Summary Procedure, the testimonies of the witnesses shall consist of the duly subscribed written statements given to enforcement or peace officers or the affidavits or counter-affidavits submitted before the investigating prosecutor, and if such are not available, testimonies shall be in the form of judicial affidavits, subject to the additional direct and cross-examination question.

The trial prosecutor may dispense with the sworn written statements submitted to the law enforcement or peace officers and prepare judicial affidavits of the affiants or modify or revise the said sworn statements before presenting it as evidence.

From the foregoing, the prosecution has thus three options that may be utilized as affidavits of its witnesses: (1) written statements given to law enforcement or peace officers; (2) affidavits or counter-affidavits submitted before the investigating prosecutor; and (3) judicial affidavits, if the first two options are not available.

Accordingly, the Court finds no basis in petitioners’ allegation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge-Gamboa Delos Santos in allowing the presentation of Rodel as witness. Besides, Rodel’s presentation as witness did not in any

⁶² Re: Modification of the Public Prosecutors’ Compliance with the Provisions on the Judicial Affidavit Rule, dated January 10, 2013.

⁶³ *Rollo*, p. 10.

way result in the violation of petitioners' right to due process considering that Atty. Adan was able to cross-examine him.

As a final note, trial judges are reminded of Section 5,⁶⁴ Rule 65 of the Rules of Court which prohibits them from appearing in or filing an answer or comment to the petition or any pleading therein when the petition filed relates to their acts or omissions. The only exception is when their appearance or the filing of their answer or comment to the petition or any pleading therein is specifically directed by the court where the petition is pending.

WHEREFORE, the petition is **PARTLY GRANTED**. The Orders dated May 23, 2018 and June 6, 2018 issued in Criminal Case No. 17-0597 by Presiding Judge Jocelyn P. Gamboa-Delos Santos of Branch 4, Municipal Trial Court in Cities (MTCC), City of San Fernando, Pampanga are **SET ASIDE** insofar as they deemed petitioners Loreto A. Cañaveras and Ofelia B. Cañaveras to have waived their right to cross-examine prosecution witness Nenita G. Mariano. The trial court is **DIRECTED** to proceed with the cross-examination of Nenita G. Mariano and to continue the criminal proceedings with dispatch.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

⁶⁴ Section 5, Rule 65 of the Rules of Court provides:


SEC. 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion


MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

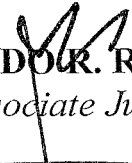
See Conurrence

AMY C. LAZARO-JAVIER
Associate Justice


RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


JAFAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

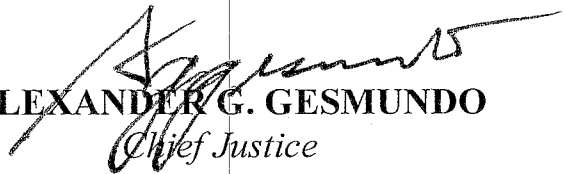

ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice




CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY


MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

