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FIRST DIVISION

[G.R. No. 188471. April 20, 2010]

FRANCISCO ALONSO, substituted by MERCEDES V. ALONSO, TOMAS V. ALONSO and ASUNCION V. ALONSO, *petitioners, vs.* **CEBU COUNTRY CLUB, INC.,** *respondent,* **REPUBLIC OF THE PHILIPPINES, represented by the OFFICE OF THE SOLICITOR GENERAL,** *public respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; PETITIONERS BREACHED THE HIERARCHY OF COURTS BY COMING DIRECTLY TO THE SUPREME COURT TO APPEAL THE ASSAILED ISSUANCES OF THE REGIONAL TRIAL COURT VIA PETITION FOR REVIEW ON *CERTIORARI*; HIERARCHY OF COURTS IS ESSENTIAL TO THE EFFICIENT FUNCTIONING OF THE COURTS AND THE ADMINISTRATION OF JUSTICE.— The Court notes that the petitioners are guilty of two violations that warrant the immediate dismissal of the petition for review on *certiorari*. The first refers to the petitioners' breach of the hierarchy of courts by coming directly to the Court to appeal the assailed issuances of the RTC *via* petition for review on *certiorari*. They should not have done so, bypassing a review by the Court of Appeals (CA), because the hierarchy of courts is essential to the efficient functioning of the courts and to the orderly administration of justice. Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.

2. ID.; ID.; THE HIERARCHY OF COURTS IS NOT TO BE LIGHTLY REGARDED BY LITIGANTS; SIGNIFICANCE OF ESTABLISHMENT OF THE COURT OF APPEALS.—

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The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights." The need to elevate the matter first to the CA is also underscored by the reality that determining whether the petitioners were real parties in interest entitled to bring this appeal against the denial by the RTC of the OSG's *motion for the issuance of a writ of execution* was a mixed question of fact and law. As such, the CA was in the better position to review and to determine. In that regard, the petitioners violate Section 1, Rule 45 of the 1997 *Rules of Civil Procedure,* which demands that an appeal by petition for review on *certiorari* be limited to questions of law.

3. ID.; FORUM SHOPPING; FAILURE OF CO-PETITIONERS TO EXECUTE SWORN CERTIFICATION AGAINST FORUM SHOPPING WARRANTS DISMISSAL OF PETITION; THE SIGNING OF THE CERTIFICATION BY ONLY ONE OF THE PETITIONERS COULD NOT BE PRESUMED TO REFLECT THE PERSONAL KNOWLEDGE OF THE OTHER PETITIONERS OF THE FILING OR NON-FILING OF ANY OR SIMILAR ACTION OR CLAIM.— The second violation concerns the omission of a sworn certification against forum shopping from the petition for review on *certiorari*. Section 4, Rule 45 of the 1997 *Rules of Civil Procedure* requires that the petition for review should contain, among others, the sworn certification on the undertakings provided in the last paragraph of Section 2, Rule 42 of the 1997 *Rules of Civil Procedure.* Only petitioner Tomas V. Alonso has executed and signed the sworn certification against forum shopping attached to the petition. Although neither

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of his co-petitioners – Mercedes V. Alonso and Asuncion V. Alonso – has joined the certification, Tomas did not present any written express authorization in his favor authorizing him to sign the certification in their behalf. The signing of the certification by only one of the petitioners could not be presumed to reflect the personal knowledge by his co-petitioners of the filing or non-filing of any similar action or claim. Hence, the failure of Mercedes and Asuncion to sign and execute the certification along with Tomas warranted the dismissal of their petition.

4. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY IN INTEREST; EXPLAINED.— Every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules. A real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The rule refers to a *real* or *present* substantial interest, as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest. One having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.

5. ID.; ID.; ID.; BEING THE LEGAL OWNER OF LOT NO. 727-D-2, THE GOVERNMENT IS THE PROPER PARTY ENTITLED TO ASSAIL THE DENIAL OF THE OFFICE OF THE SOLICITOR GENERAL'S MOTION FOR ISSUANCE OF WRIT OF EXECUTION.— An appeal, like this one, is an action to be prosecuted by a party in interest before a *higher* court. In order for the appeal to prosper, the litigant must of necessity continue to hold a *real* or *present* substantial interest that entitles him to the avails of the suit on appeal. If he does not, the appeal, as to him, is an exercise in futility. So it is with the petitioners! In contrast, the Government, being the legal owner of Lot No. 727-D-2, is the only party adversely affected by the denial, and is the proper party entitled to assail the denial. However, its manifest desistance from the execution of the decision effectively barred any challenge against the denial, for its non-appeal rendered the denial final and immutable.

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6. ID.; ID.; ID.; R.A. NO. 9443 GIVES PETITIONERS NO LEGAL INTEREST TO ASSAIL THE DENIAL OF THE MOTION FOR EXECUTION.— The law expressly declares as valid "(a)ll existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate," and recognizes the registered owners as absolute owners. To benefit from R.A. No. 9443, therefore, a person must hold as a condition precedent a duly issued Transfer Certificate of Title or a Reconstituted Certificate of Title. Although Lot 727-D-2 was earlier declared to be owned by the Government in G.R. No. 130876, R.A. No. 9443 later validated Cebu Country Club's registered ownership due to its holding of TCT No. RT-1310 (T-11351) *in its own name*. As the OSG explained in its *manifestation in lieu of comment* (filed in the RTC *vis-à-vis* the petitioners' *motion for reconsideration* against the RTC's denial of the OSG's *motion for issuance of a writ of execution*), the enactment of R.A. No. 9443 had "mooted the final and executory Decision of the Supreme Court in "*Alonso v. Cebu Country Club, Inc.*," docketed as G.R. No. 130876, which declared the Government as the owner of Lot 727-D-2 based on the absence of signature and approval of the then Secretary of Interior"; and that the decision in G.R. No. 130876 had "ceased to have any practical effect" as the result of the enactment of R.A. No. 9443, and had thereby become "academic."

7. ID.; ID.; ID.; ID.; PETITIONERS COULD NOT BENEFIT FROM R.A. NO. 9443 BECAUSE OF THEIR NON-COMPLIANCE WITH THE EXPRESS CONDITION OF HOLDING ANY TRANSFER CERTIFICATE OF TITLE OR RECONSTITUTED CERTIFICATE OF TITLE RESPECTING LOT 727-D-2 OR ANY PORTION THEREOF.— Petitioners could not benefit from R.A. No. 9443 because of their non-compliance with the express condition of holding any Transfer Certificate of Title or Reconstituted Certificate of Title respecting Lot 727-D-2 or any portion thereof. The appropriate recourse for the petitioners, if they persist in the belief that the TCT of Cebu Country Club should be nullified, is to compel the OSG through the special civil action for *mandamus* to commence the action to annul on the ground that Cebu Country Club had obtained

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its title to Lot 7217-D-2 through fraud. Yet, that recourse is no longer availing, for the decision in G.R. No. 130876 explicitly found and declared that the reconstituted title of Cebu Country Club had not been obtained through fraud.

APPEARANCES OF COUNSEL

Gavino A.C. Benitez for petitioners.
*The Solicitor Gen*eral for public respondent.
T. Almase S. Suarez & M. Almase-Martinez for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

By petition for review on *certiorari,* the petitioners appeal the order dated December 28, 2007 of the Regional Trial Court (RTC), Branch 20, in Cebu City, denying the *motion for issuance of writ of execution* of the Office of the Solicitor General (OSG) in behalf of the Government, and the order dated April 24, 2009, denying their *motion for reconsideration* filed against the first order.

Antecedents

The antecedent facts are those established in *Alonso v. Cebu Country Club,*[1] which follow.

Petitioner Francisco M. Alonso (Francisco) was the only son and sole heir of the late spouses Tomas N. Alonso and Asuncion Medalle. Francisco died during the pendency of this case, and was substituted by his legal heirs, namely: his surviving spouse, Mercedes V. Alonso, his son Tomas V. Alonso (Tomas) and his daughter Asuncion V. Alonso.[2]

In 1992, Francisco discovered documents showing that his father Tomas N. Alonso had acquired Lot No. 727 of the Banilad

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[1] G.R. No. 130876, January 31, 2002, 375 SCRA 390.

[2] *Id.*, p. 393.

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Friar Lands Estate from the Government in or about the year 1911; that the original vendee of Lot No. 727 had assigned his sales certificate to Tomas N. Alonso, who had been consequently issued Patent No. 14353; and that on March 27, 1926, the Director of Lands had executed a final deed of sale in favor of Tomas N. Alonso, but the final deed of sale had not been registered with the Register of Deeds because of lack of requirements, like the approval of the final deed of sale by the Secretary of Agriculture and Natural Resources, as required by law.[3]

Francisco subsequently found that the certificate of title covering Lot No. 727-D-2 of the Banilad Friar Lands Estate had been "administratively reconstituted from the owner's duplicate" of Transfer Certificate of Title (TCT) No. RT-1310 in the name of United Service Country Club, Inc., the predecessor of respondent Cebu Country Club, Inc. (Cebu Country Club); and that upon the order of the court that had heard the petition for reconstitution of the TCT, the name of the registered owner in TCT No. RT-1310 had been changed to that of Cebu Country Club; and that the TCT stated that the reconstituted title was a transfer from TCT No. 1021.[4]

It is relevant to mention at this point that the current TCT covering Lot 727-D-2 in the name of Cebu Country Club is TCT No. 94905, which was entered in the land records of Cebu City on August 8, 1985.[5]

With his discoveries, Francisco formally demanded upon Cebu Country Club to restore the ownership and possession of Lot 727-D-2 to him. However, Cebu Country Club denied Francisco's demand and claim of ownership, and refused to deliver the possession to him.[6]

On September 25, 1992, Francisco commenced against Cebu Country Club in the RTC in Cebu City an action for the declaration

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[3] *Id.*, pp. 393-394.

[4] *Id.*, p. 394.

[5] Annex 3, Comment on the petition for review on *certiorari*.

[6] *Rollo*, p. 394.

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of nullity and non-existence of deed/title, the cancellation of certificates of title, and the recovery of property. On November 5, 1992, Cebu Country Club filed its answer with counterclaim.[7]

On May 7, 1993, the RTC decided in favor of Cebu Country Club.

Both parties appealed to the Court of Appeals (CA), which ultimately affirmed the RTC on March 31, 1997. Thus, Francisco filed a *motion for reconsideration,* which was denied on October 2, 1997.[8]

Nothing daunted, Francisco appealed to this Court (G.R. No. 130876).

On January 31, 2002, this Court decided G.R. No. 130876, decreeing:

> WHEREFORE, we DENY the petition for review. However, we SET ASIDE the decision of the Court of Appeals and that of the Regional Trial Court, Cebu City, Branch 08.
>
> IN LIEU THEREOF, we DISMISS the complaint and counterclaim of the parties in Civil Cases No. CEB 12926 of the trial court. We declare that Lot No. 727 D-2 of the Banilad Friar Lands Estate covered by Original Certificate of Title Nos. 251, 232, and 253 legally belongs to the Government of the Philippines.[9]

The petitioners sought a reconsideration. On December 5, 2003, however, the Court denied their *motion for reconsideration*.[10] Hence, the decision in G.R. No. 130876 became final and executory.

In late 2004, the Government, through the OSG, filed in the RTC a *motion for the issuance of a writ of execution*.[11] Cebu Country Club opposed the *motion for the issuance of a writ of execution* in due course.

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[7] *Id*., p. 395.

[8] *Id.*, pp. 396-398.

[9] *Id*., p. 410.

[10] G.R. No. 130876, December 5, 2003, 417 SCRA 115.

[11] *Rollo*, p. 15.

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Later on, the proceedings on the OSG's *motion for the issuance of a writ of execution* at the instance of Cebu Country Club in deference to the on-going hearings being conducted by the Committee on Natural Resources of the House of Representatives on a proposed bill to confirm the TCTs and reconstituted titles covering the Banilad Friar Lands Estate in Cebu City.[12] The Congress ultimately enacted a law to validate the TCTs and reconstituted titles covering the Banilad Friar Lands Estate in Cebu City. This was Republic Act No. 9443,[13] effective on July 27, 2007.

Thereafter, both Cebu Country Club and the OSG brought the passage of R.A. No. 9443 to the attention of the RTC for its consideration in resolving the OSG's *motion for the issuance of a writ of execution*.[14] On December 28, 2007, therefore, the RTC denied the OSG's *motion for the issuance of a writ of execution* through the first appealed order.[15]

The petitioners filed a *motion for reconsideration* dated February 1, 2008, questioning the denial of the OSG's *motion for the issuance of a writ of execution*.[16]

Upon being directed by the RTC to comment on the petitioners' *motion for reconsideration,* the OSG manifested in writing that the Government was no longer seeking the execution of the decision in G.R. No. 130876, subject to its reservation to contest any other titles within the Banilad Friar Lands Estate should clear evidence show such titles as having been obtained through fraud.[17]

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[12] *Id*.

[13] Entitled *An Act Confirming and Declaring, Subject to Certain Exceptions, the Validity of Existing Transfer Certificate of Title Covering the Banilad Friar Lands Estate, Situated in the First District of Cebu.*

[14] *Rollo*, p. 17.

[15] *Id*., pp. 42-43.

[16] *Id*., p. 18.

[17] *Id*., p. 176.

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After the filing of the OSG's comment, the RTC issued the second appealed order, denying the petitioners' *motion for reconsideration,* giving the following reasons:

1. The party who had a direct interest in the execution of the decision and the reconsideration of the denial of the motion for execution was the Government, represented only by the OSG; hence, the petitioners had no legal standing to file the *motion for reconsideration,* especially that they were not authorized by the OSG for that purpose;

2. R.A. No. 9443 "confirms and declares as valid" all "existing" TCTs and reconstituted titles; thereby, the State in effect waived and divested itself of whatever title or ownership over the Banilad Friar Lands Estate in favor of the registered owners thereof, including Lot 727 D-2; and

3. The situation of the parties had materially changed, rendering the enforcement of the final and executory judgment unjust, inequitable, and impossible, because Cebu Country Club was now recognized by the State itself as the absolute owner of Lot 727 D-2.[18]

Hence, the petitioners appeal by petition for review on *certiorari*.

Contentions of the Petitioners

The petitioners challenge the orders dated December 28, 2007 and April 29, 2009, because:

1. R.A. No. 9443 did not improve Cebu Country Club's plight, inasmuch as R.A. No. 9443 presupposed first a sales certificate that lacked the required signature, but Cebu Country Club did not have such sales certificate. Moreover, the titleholders were in fact the owners of the lands covered by their respective titles, which was not true with Cebu Country Club due to its being already adjudged with finality to be not the owner of Lot 727-D-2. Lastly, Cebu Country Club's title was hopelessly defective, as found by the Supreme Court itself;

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[18] *Id*., pp. 44-47.

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2. The doctrine of law of the case barred the application of R.A. No. 9443 to Cebu Country Club;

3. The RTC's declaration that R.A. No. 9443 confirmed Cebu Country Club as the absolute owner of Lot 727-D-2 despite the prior and final judgment of the Supreme Court that Cebu Country Club was not the owner was unconstitutional, because it virtually allowed the legislative review of the Supreme Court's decision rendered against Cebu Country Club;

4. The use of R.A. No. 9443 as a waiver on the part of the Government *vis-à-vis* Cebu Country Club was not only misplaced but downrightly repugnant to Act 1120, the law governing the legal disposition and alienation of Friar Lands; and

5. The petitioners had the requisite standing to question the patent errors of the RTC, especially in the face of the unholy conspiracy between the OSG and Cebu Country Club, on the one hand, and, on the other hand, the passage of R.A. No. 9443 and DENR Memorandum No. 16, both of which in fact made their predecessor Tomas N. Alonso's sales certificate and patent valid.[19]

Issues

The Court confronts and resolves the following issues, to wit:

1. Whether or not the petitioners were the real parties-in-interest to question the denial by the RTC of the OSG's *motion for the issuance of a writ of execution*;

2. Whether or not R.A. No. 9443 gave the petitioners a legal interest to assail the RTC's orders; and

3. Whether or not the petitioners can appeal by petition for review on *certiorari* in behalf of the OSG.

Ruling

The petition for review is denied due course.

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[19] *Id*., pp. 22-23.

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A.

Preliminary Considerations:
Petitioners contravene the hierarchy of courts,
and the petition is fatally defective

Before delving on the stated issues, the Court notes that the petitioners are guilty of two violations that warrant the immediate dismissal of the petition for review on *certiorari*.

The first refers to the petitioners' breach of the hierarchy of courts by coming directly to the Court to appeal the assailed issuances of the RTC *via* petition for review on *certiorari*. They should not have done so, bypassing a review by the Court of Appeals (CA), because the hierarchy of courts is essential to the efficient functioning of the courts and to the orderly administration of justice. Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.

The hierarchy of courts is not to be lightly regarded by litigants. The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform its most important work, which, in the words of Dean Vicente G. Sinco,[20] "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction

[20] *Philippine Political Law*, 10th Edition, p. 323.

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of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights."[21]

The need to elevate the matter first to the CA is also underscored by the reality that determining whether the petitioners were real parties in interest entitled to bring this appeal against the denial by the RTC of the OSG's *motion for the issuance of a writ of execution* was a mixed question of fact and law. As such, the CA was in the better position to review and to determine. In that regard, the petitioners violate Section 1, Rule 45 of the 1997 *Rules of Civil Procedure,* which demands that an appeal by petition for review on *certiorari* be limited to questions of law.[22]

The second violation concerns the omission of a sworn certification against forum shopping from the petition for review on *certiorari*. Section 4, Rule 45 of the 1997 *Rules of Civil Procedure* requires that the petition for review should contain, among others, the sworn certification on the undertakings provided in the last paragraph of Section 2, Rule 42 of the 1997 *Rules of Civil Procedure, viz*:

Section 2. xxx

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar

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[21] *Conde v. Intermediate Appellate Court*, 144 SCRA 144.

[22] Section 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

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action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (n)

Only petitioner Tomas V. Alonso has executed and signed the sworn certification against forum shopping attached to the petition. Although neither of his co-petitioners – Mercedes V. Alonso and Asuncion V. Alonso – has joined the certification, Tomas did not present any written express authorization in his favor authorizing him to sign the certification in their behalf. The signing of the certification by only one of the petitioners could not be presumed to reflect the personal knowledge by his co-petitioners of the filing or non-filing of any similar action or claim.[23] Hence, the failure of Mercedes and Asuncion to sign and execute the certification along with Tomas warranted the dismissal of their petition.[24]

B.

Petitioners are not proper parties to appeal and assail the order of the RTC

The petitioners are relentless in insisting that their claim to Lot No. 727-D-2 of the Banilad Friar Lands Estate should be preferred to that of Cebu Country Club, despite the final judgment in G.R. No. 130876 being adverse to their claim. Their insistence

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[23] *Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc.*, G.R. No. 150859, March 28, 2005, 454 SCRA 111, 115.

[24] Rule 45, 1997 *Rules of Civil Procedure*, relevantly states:

> Section 5. *Dismissal or denial of petition*. — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and **the contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof**.
>
> The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (3a)

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raises the need to resolve once and for all whether or not the petitioners retained any legal right to assert over Lot No. 727-D-2 following the Government's manifest desistance from the execution of the judgment in G.R. No. 130876 against Cebu Country Club.

The above-noted defects of the petition for review notwithstanding, therefore, the Court has now to address and resolve the stated issues on the sole basis of the results the Court earlier reached in G.R. No. 130876. In this regard, whether or not the petitioners are the proper parties to bring this appeal is decisive.

After careful consideration, the Court finds that the cause of the petitioners instantly fails.

In G.R. No. 130876, the Court found that the petitioners did not validly acquire ownership of Lot No. 727-D-2, and declared that Lot No. 727 D-2 legally belonged to the Government, thus:

> The second issue is whether the Court of Appeals erred in ruling that the Cebu Country Club, Inc. is owner of Lot No. 727.
>
> Admittedly, **neither petitioners nor their predecessor had any title to the land in question.** The most that petitioners could claim was that the Director of Lands issued a sales patent in the name of Tomas N. Alonso. **The sales patent,** however, **and even the corresponding deed of sale were not registered with the Register of Deeds and no title was ever issued in the name of the latter**. This is because there were basic requirements not complied with, the most important of which was that **the deed of sale executed by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources.** Hence, **the deed of sale was void.** "Approval by the Secretary of Agriculture and Commerce is indispensable for the validity of the sale." Moreover, Cebu Country Club, Inc. was in possession of the land since 1931, and had been paying the real estate taxes thereon based on tax declarations in its name with the title number indicated thereon. Tax receipts and declarations of ownership for taxation purposes are strong evidence of ownership. This Court has ruled that although tax declarations or realty tax payments are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of

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owner for no one in his right mind will be paying taxes for a property that is not in his actual or constructive possession.

Notwithstanding this fatal defect, the Court of Appeals ruled that "there was substantial compliance with the requirement of Act No. 1120 to validly convey title to said lot to Tomas N. Alonso."

On this point, the Court of Appeals erred.

Under Act No. 1120, which governs the administration and disposition of friar lands, the purchase by an actual and bona fide settler or occupant of any portion of friar land shall be "agreed upon between the purchaser and the Director of Lands, subject to the approval of the Secretary of Agriculture and Natural Resources *(mutatis mutandis)*."

In his Memorandum filed on May 25, 2001, the Solicitor General submitted to this Court certified copies of Sale Certificate No. 734, in favor of Leoncio Alburo, and Assignment of Sale Certificate No. 734, in favor of Tomas N. Alonso. Conspicuously, both instruments do not bear the signature of the Director of Lands and the Secretary of the Interior. They also do not bear the approval of the Secretary of Agriculture and Natural Resources.

Only recently, in *Jesus P. Liao v. Court of Appeals*, the Court has ruled categorically that **approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity**, hence, the absence of such approval made the sale **null and void *ab-initio***. Necessarily, there can be no valid titles issued on the basis of such sale or assignment. **Consequently, petitioner Francisco's father did not have any registerable title to the land in question. Having none, he could not transmit anything to his sole heir, petitioner Francisco Alonso or the latter's heirs.**

In a vain attempt at showing that he had succeeded to the estate of his father, on May 4, 1991, petitioner Francisco Alonso executed an affidavit adjudicating the entire estate to himself (Exh. "Q"), duly published in a newspaper of general circulation in the province and city of Cebu (Exh. "Q-1"). Such affidavit of self-adjudication is inoperative, if not void, not only because there was nothing to adjudicate, but equally important because petitioner Francisco did not show proof of payment of the estate tax and submit a certificate of clearance from the Commissioner of Internal Revenue. Obviously, petitioner Francisco has not paid the estate taxes.

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Consequently, we rule that neither Tomas N. Alonso nor his son Francisco M. Alonso or the latter's heirs are the lawful owners of Lot No. 727 in dispute. xxx.[25]

The pronouncement in G.R. No. 130876 renders beyond dispute that the non-execution of the judgment would not adversely affect the petitioners, who now hold no right whatsoever in Lot No. 727-D-2. Otherwise put, they are not the proper parties to assail the questioned orders of the RTC, because they stand to derive nothing from the execution of the judgment against Cebu Country Club.

Every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules.[26] A real party in interest is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[27] "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The rule refers to a *real* or *present* substantial interest, as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest.[28] One having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.[29]

Thus, an appeal, like this one, is an action to be prosecuted by a party in interest before a *higher* court. In order for the appeal to prosper, the litigant must of necessity continue to hold a *real* or *present* substantial interest that entitles him to the avails of the suit on appeal. If he does not, the appeal, as to him, is an exercise in futility. So it is with the petitioners!

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[25] *Supra,* note 1, 375 SCRA 390, 403-405.

[26] Section 2. Rule 3 of the 1997 *Rules of Civil Procedure*.

[27] *Id*.

[28] *Quisumbing v. Sandiganbayan*, G.R. No. 138437, November 14, 2008, 571 SCRA 7, 15.

[29] *Ralla v. Ralla*, G.R. No. 78646, July 23, 1991, 199 SCRA 495.

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In contrast, the Government, being the legal owner of Lot No. 727-D-2, is the only party adversely affected by the denial, and is the proper party entitled to assail the denial.[30] However, its manifest desistance from the execution of the decision effectively barred any challenge against the denial, for its non-appeal rendered the denial final and immutable.

C.

R.A. No. 9443 gives petitioners no legal interest to assail the denial of the motion for execution

Section 1 of R.A. No. 9443 provides:

Section 1. **All existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate**, notwithstanding the lack of signatures and/or approval of the then Secretary of Interior (later

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[30] *Cañete v. Genuino Ice Company, Inc.,* G.R. No. 154080, January 22, 2008, 542 SCRA 206, 220-222, where the petitioners admitted not to be the owners of the land, but the Government, the Court declared: "xxx **petitioners may not be considered the real parties in interest** for the purpose of maintaining the suit for cancellation of the subject titles. The Court of Appeals is correct in declaring that **only the State, through the Solicitor General, may institute such suit.** Jurisprudence on the matter has been settled and the issue need not be belabored."); *Gabilla v. Barriga,* No. L-28917, September 30, 1971, 41 SCRA 131 (where the Court declared: "xxx **In his amended complaint the plaintiff makes no pretense at all that any part of the land covered by the defendant's title was privately owned by him or by his predecessors-in-interest. Indeed, it is admitted therein that the said land was at all times a part of the public domain until December 18, 1964, when the government issued a title thereon in favor of the defendant. Thus, if there is any person or entity [entitled] to relief, it can only be the government**."); *Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut,* G.R. No. 147379, February 27, 2002, 378 SCRA 206, 214 (where the Court held: "**Where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands**.").

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Secretary of Agriculture and Natural Resources) and/or the then Chief of the Bureau of Public Lands (later Director of Public Lands) in the copies of the duly executed Sale Certificates and Assignments of Sale Certificates, as the case may be, now on file with the Community Environment and Natural Resources Office (CENRO), Cebu City, **are hereby declared as valid titles and the registered owners recognized as absolute owners thereof.**

The law expressly declares as valid "(a)ll existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate," and recognizes the registered owners as absolute owners. To benefit from R.A. No. 9443, therefore, a person must hold as a condition precedent a duly issued Transfer Certificate of Title or a Reconstituted Certificate of Title.

Although Lot 727-D-2 was earlier declared to be owned by the Government in G.R. No. 130876, R.A. No. 9443 later validated Cebu Country Club's registered ownership due to its holding of TCT No. RT-1310 (T-11351) *in its own name*. As the OSG explained in its *manifestation in lieu of comment*[31] (filed in the RTC *vis-à-vis* the petitioners' *motion for reconsideration* against the RTC's denial of the OSG's *motion for issuance of a writ of execution*), the enactment of R.A. No. 9443 had "mooted the final and executory Decision of the Supreme Court in "*Alonso v. Cebu Country Club, Inc*.," docketed as G.R. No. 130876, which declared the Government as the owner of Lot 727-D-2 based on the absence of signature and approval of the then Secretary of Interior"; and that the decision in G.R. No. 130876 had "ceased to have any practical effect" as the result of the enactment of R.A. No. 9443, and had thereby become "academic."[32]

On the other hand, the petitioners could not benefit from R.A. No. 9443 because of their non-compliance with the express

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[31] This was submitted by the OSG to the RTC in connection with petitioners' motion for reconsideration dated January 28, 2008.

[32] *Rollo*, p. 175.

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condition of holding any Transfer Certificate of Title or Reconstituted Certificate of Title respecting Lot 727-D-2 or any portion thereof.

The appropriate recourse for the petitioners, if they persist in the belief that the TCT of Cebu Country Club should be nullified, is to compel the OSG through the special civil action for *mandamus* to commence the action to annul on the ground that Cebu Country Club had obtained its title to Lot 7217-D-2 through fraud. Yet, that recourse is no longer availing, for the decision in G.R. No. 130876 explicitly found and declared that the reconstituted title of Cebu Country Club had not been obtained through fraud. Said the Court:

> On the question that TCT No. RT-1310 (T-11351) bears the same number as another title to another land, **we agree with the Court of Appeals that there is nothing fraudulent with the fact that Cebu Country Club, Inc.'s reconstituted title bears the same number as the title of another parcel of land.** This came about because under General Land Registration Office (GLRO) Circular No. 17, dated February 19, 1947, and Republic Act No. 26 and Circular No. 6, RD 3, dated August 5, 1946, which were in force at the time the title was reconstituted on July 26, 1948, the titles issued before the inauguration of the Philippine Republic were numbered consecutively and the titles issued after the inauguration were numbered also consecutively starting with No. 1, so that eventually, the titles issued before the inauguration were duplicated by titles issued after the inauguration of the Philippine Republic. xxx.
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> **Petitioners next argue that the reconstituted title of Cebu Country Club, Inc. had no lawful source to speak of; it was reconstituted through extrinsic and intrinsic fraud in the absence of a deed of conveyance in its favor.** In truth, however, **reconstitution was based on the owner's duplicate of the title, hence, there was no need for the covering deed of sale or other modes of conveyance. Cebu Country Club, Inc. was admittedly in possession of the land since long before the Second World War, or since 1931. In fact, the original title (TCT No. 11351) was issued to the United Service Country Club, Inc. on November 19, 1931 as a transfer from Transfer Certificate of**

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Title No. 1021. More importantly, Cebu Country Club, Inc. paid the realty taxes on the land even before the war, and tax declarations covering the property showed the number of the TCT of the land. Cebu Country Club, Inc. produced receipts showing real estate tax payments since 1949. On the other hand, petitioner failed to produce a single receipt of real estate tax payment ever made by his father since the sales patent was issued to his father on March 24, 1926. Worse, admittedly petitioner could not show any [T]orrens title ever issued to Tomas N. Alonso, because, as said, the deed of sale executed on March 27, 1926 by the Director of Lands was not approved by the Secretary of Agriculture and Natural Resources and could not be registered. "Under the law, it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens system. The act of registration creates constructive notice to the whole world of the fact of such conveyance." On this point, **petitioner alleges that Cebu Country Club, Inc. obtained its title by fraud in connivance with personnel of the Register of Deeds in 1941 or in 1948, when the title was administratively reconstituted. Imputations of fraud must be proved by clear and convincing evidence. Petitioner failed to adduce evidence of fraud.** In an action for re-conveyance based on fraud, he who charges fraud must prove such fraud in obtaining a title. **"In this jurisdiction, fraud is never presumed." The strongest suspicion cannot sway judgment or overcome the presumption of regularity.** "The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." **Worse, the imputation of fraud was so tardily brought, some forty-four (44) years or sixty-one (61) years after its supposed occurrence,** that is, from the administrative reconstitution of title on July 26, 1948, or from the issuance of the original title on November 19, 1931, **that verification is rendered extremely difficult, if not impossible, especially due to the supervening event of the second world war during which practically all public records were lost or destroyed, or no longer available.**[33]

IN VIEW OF THE FOREGOING, the petition for review on *certiorari* is denied for lack of merit.

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[33] *Supra,* note 1, pp. 399-402.

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The Court declares that Cebu Country Club, Inc. is the exclusive owner of Lot No.727-D-2 of the Banilad Friar Lands Estate, as confirmed by Republic Act No. 9443.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 191002. April 20, 2010]

ARTURO M. DE CASTRO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC) and PRESIDENT GLORIA MACAPAGAL-ARROYO,** *respondents.*

[G.R. No. 191032. April 20, 2010]

JAIME N. SORIANO, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[G.R. No. 191057. April 20, 2010]

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), *petitioner, vs.* **JUDICIAL AND BAR COUNCIL (JBC),** *respondent.*

[A.M. No. 10-2-5-SC. April 20, 2010]

IN RE APPLICABILITY OF SECTION 15, ARTICLE VII OF THE CONSTITUTION TO APPOINTMENTS TO THE JUDICIARY, ESTELITO P. MENDOZA, *petitioner,*