



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

IMELDA G. RODRIGUEZ,
 Petitioner,

G.R. No. 251830

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 CARANDANG,*
 INTING, and
 DELOS SANTOS, JJ.

GOVERNMENT OF THE
 UNITED STATES OF AMERICA,
 represented by the PHILIPPINE
 DEPARTMENT OF JUSTICE,
 Respondent.

Promulgated:

June 28, 2021

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DECISION

DELOS SANTOS, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision² dated September 13, 2019 and the Resolution³ dated February 20, 2020 of the Court of Appeals (CA) in the consolidated cases of CA-G.R. SP No. 155299 and CA-G.R. CV No. 111132. In the assailed Decision and Resolution, the CA dismissed the petition for *certiorari* filed by Imelda G. Rodriguez (petitioner) which sought to nullify the orders of the Regional Trial Court (RTC) of Manila, Branch 19, which declared her in default and which denied her motion to set aside the order of default in the extradition case, Civil Case No. 01-190375. In the same Decision and Resolution, the CA denied

* Designated as additional member in lieu of Associate Justice Jhosep Y. Lopez per Raffle dated June 9, 2021.

¹ *Rollo*, pp. 50-204.

² *Id.* at 208-247; penned by Associate Justice Stephen C. Cruz, with Associate Justices Jhosep Y. Lopez (now a Member of the Court) and Geraldine C. Fiel-Macaraig, concurring.

³ *Id.* at 249-251.



petitioner's appeal of the decision of the RTC subsequently rendered in the same extradition case, which granted the petition for extradition filed against petitioner by the Government of the United States of America (respondent), represented by the Department of Justice (DOJ) of the Philippine Government.

The Antecedents

In 2001, respondent, represented by the DOJ, filed before the RTC a Petition for Extradition⁴ against spouses Eduardo Tolentino Rodriguez (Eduardo) and petitioner (collectively, spouses Rodriguez). The petition sought for the extradition of spouses Rodriguez from the Philippines to the United States of America (US) after they allegedly fled from US jurisdiction where they are wanted to stand trial in the Municipal Court of Los Angeles Judicial District, Los Angeles, California for the following offenses:

- (i) Presenting Fraudulent Claim (five counts), in violation of Section 556 (a) (1) of the California Insurance Code with Special Allegations of Penal Code Sections 12022(6)(a), 12022(6)(b) and 1203.045(a);
- (ii) Grand Theft of Personal Property (two counts) in violation of Section 487(1) of the California Penal Code with Special Allegations of the same Penal Code Sections; and
- (iii) Attempted Grand Theft of Personal Property (three counts) in violation of Section 664/487(1) of the California Penal Code.⁵

In addition, petitioner was also alleged to have been charged with Bribery (two counts) in violation of Section 67 of the California Penal Code.⁶

In the extradition petition, respondent stated that spouses Rodriguez were charged, on or between November 4, 1984 and September 18, 1985, when they fraudulently collected \$51,134.65 on a life insurance policy taken out on Gloria Gener (Gloria), petitioner's mother. They claimed that Gloria died from stroke when, in fact, she was alive and living with them in Los Angeles County. Eduardo also filed false claims with four (4) life insurance companies and collected \$100,000.00 from one life insurance policy, indicating that petitioner had been killed while in the Philippines, when, in fact, she was still alive and living in Los Angeles County. Further, after being arrested on November 6, 1985, petitioner allegedly offered a bribe of

⁴ Id. at 641-652.

⁵ Id. at 644.

⁶ Id.

\$5,000.00 to each of the law enforcers who were transporting her to jail if they would release her. Respondent further averred that the offenses for which spouses Rodriguez were charged are extraditable offenses pursuant to Article 2 of the RP-US Extradition Treaty.⁷

Spouses Rodriguez did not file an Answer to the petition for extradition. Instead, they filed several motions on various dates from 2001 to 2009 touching matters they alleged as necessary for them to file an answer, will warrant the dismissal of the petition for extradition, for inhibitions of the presiding judges, and in matter of bail.⁸

On June 4, 2003, Eduardo went to the US on voluntary extradition. Accordingly, Eduardo's case for extradition was declared closed. Petitioner, on the other hand, opted to stay in the Philippines.⁹

Meanwhile, the RTC repeatedly ordered petitioner to file her answer. On June 2, 2009, the RTC issued an Order¹⁰ requiring petitioner to file her Answer and warned that failure to file the same within 15 days from receipt of the Order shall constitute a waiver thereof. Still, petitioner did not file her answer and, instead, filed motions on various dates from 2009 to 2013 on the matters of procedural rules to be observed in the extradition proceedings, deferments or postponements, clarifications, and declaration of respondent in default.¹¹

On August 13, 2013, respondent filed a motion to declare petitioner in default for her continuous and deliberate refusal to file an answer to the petition for extradition.¹²

On January 5, 2015, the RTC denied respondent's motion dated August 13, 2013 but gave petitioner 15 days to file her answer, otherwise, she will be declared in default.¹³ As events turned out, however, petitioner did not file her answer to the petition for extradition and, instead, filed various motions.

On November 3, 2016, the RTC issued an Order reiterating its directive for petitioner to submit her responsive pleading and that, with or without said pleading, presentation of evidence shall proceed on November 18, 2016.¹⁴

⁷ Id. at 645-647.

⁸ Id. at 210-213.

⁹ Id. at 213.

¹⁰ Id. at 993-995.

¹¹ Id. at 214.

¹² Id. at 11.

¹³ Id.

¹⁴ Id. at 805.

On November 18, 2016, the RTC issued an Order,¹⁵ stating that with no more incidents left for resolution, the trial court directed the counsel for respondent to proceed with the presentation of evidence in support of the petition for extradition without the need of a motion to declare petitioner in default. Nevertheless, counsel for respondent was found to be unprepared. Accordingly, petitioner's counsel moved for the dismissal of the subject petition which was granted by the RTC.¹⁶

Subsequently, however, the RTC issued a Resolution¹⁷ on April 25, 2017, granting respondent's motion for reconsideration of the previous dismissal order. The dispositive portion of the order reads:

WHEREFORE, in view of the foregoing, [respondent's] Motion for Reconsideration of the Order of 18 November 2016 is hereby GRANTED. Let Case No. 01-190375 be reinstated into the docket of this court.

The reception of [respondent's] evidence is scheduled on 15 June 2017, or in the alternative (in the event of the unavailability of either counsel), on 29 June 2017, at 9:00 in the morning.

SO ORDERED.¹⁸

On June 13, 2017, petitioner filed a Motion for Reconsideration (Re: Resolution dated April 25, 2017 with Prayer to Defer Further Proceedings and Manifestation of Unavailability of Respondent's Counsel in the June 15, 2017 Hearing Set by the Honorable Court.¹⁹ Petitioner also filed on the same date her Humble Motion for Inhibition²⁰ through another counsel on special appearance for the purpose of the said inhibitory motion.

On June 15, 2017, the RTC conducted a hearing, the events of which were chronicled in an Order²¹ of the same date, which reads in part:

During today's setting, the [respondent's] counsel was directed to proceed to the Branch Clerk of Court for the marking of their exhibits.

Earlier, counsel for the [respondent] prayed that the [petitioner] be declared in default for failure to file her responsive pleading despite repeated Orders from the Court. However, the Court calls the attention of the parties that the previous Orders directing the [respondent] to present evidence despite the non-filing of any responsive pleading for the [petitioner]. This is, to the mind of the Court, in effect a declaration of

¹⁵ Id. at 801-806.

¹⁶ Id. at 805.

¹⁷ Id. at 820-851.

¹⁸ Id. at 851.

¹⁹ Id. at 852-859.

²⁰ Id. at 860-868.

²¹ Id. at 751.

default. Notably, no Motion for Reconsideration has been filed by the [petitioner] on this point.²²

On June 20, 2017, petitioner filed a Motion for Reconsideration or to Set Aside the Order in the Transcript of Hearing Last June 15, 2017.²³ On the same date, petitioner filed an Urgent Motion to Amend or Update, or to Direct the Amendment or Updating of the Present Petition for Extradition (With Prayer to Defer Further Proceedings)²⁴ and a Motion to be Furnished With Latest or Updated Mutually Agreed Upon Procedures for the Implementation of the Treaty With Prayer to Defer Further Proceedings.²⁵ These motions were denied by the RTC in the Resolution²⁶ dated June 28, 2017 on the ground that petitioner has already been declared in default. It ruled that it will not give due course to the then pending four (4) motions filed by petitioner and that all future pleadings filed by her would not be acted upon. Petitioner filed a Motion for Reconsideration of the Resolution dated June 28, 2017 for the Granting of Pending Motions but it was later denied in a Resolution²⁷ dated July 27, 2017. Likewise denied was the pending humble motion for inhibition.

On July 4, 2017, petitioner received the signed copy of the Order dated June 15, 2017 of the RTC, and on August 8, 2017, she filed a verified Motion to Set Aside the Order of Default.²⁸

On November 22, 2017, the RTC issued a Resolution²⁹ denying petitioner's motion to set aside the order of default. It held, among others, that, as discussed in its Order dated June 28, 2017, the order of default was upon an oral motion by respondent made in open court, which is not prohibited by the rules. Likewise, the motion was made in the presence of the counsels for petitioner who did not make any objection, hence, it cannot be said that petitioner was denied due process. Be that as it may, the RTC explained that the oral motion made by respondent's counsel in open court was but a reiteration of an earlier written motion praying that petitioner be considered in default, which was filed as early as August 13, 2013. The RTC further held that the factual circumstances enumerated by petitioner in her motion to set aside order of default do not comprise fraud or mistake, much less do they constitute a justifiable excuse for her not to file any responsive pleading. Instead, petitioner's failure to file any responsive pleading was brought by her obstinate refusal to heed the court's repeated directive. The RTC also refused to accept petitioner's prayer that the

²² Id.

²³ Id. at 875-883.

²⁴ Id. at 884-887.

²⁵ Id. at 888-890.

²⁶ Id. at 752-755.

²⁷ Id. at 896-897.

²⁸ Id. at 726-750.

²⁹ Id. at 713-720.

pleadings she had filed in the course of the 16-year period that the petition for extradition has been pending to be her responsive pleading. Also, the RTC ruled that petitioner has no meritorious defense to support her motion to lift the order of default.

On December 19, 2017, petitioner filed a Motion for Reconsideration (Re: Resolution dated November 22, 2017) With Motion to Dismiss,³⁰ and appended therein was her Answer *Ad Cautelam*.³¹ The same, however, was denied in a Resolution³² dated March 14, 2018.

Thereafter, after presenting its evidence *ex-parte*, respondent filed its Formal Offer of Exhibits³³ dated March 26, 2018 which were admitted by the RTC.³⁴

On April 13, 2018, petitioner filed a Petition for *Certiorari*³⁵ assailing the Orders dated June 15, 2017 and June 28, 2017, as well as the Resolutions dated November 22, 2017 and March 14, 2018 of the RTC.

Shortly after the petition for *certiorari* was filed, the RTC rendered a Decision³⁶ dated April 19, 2018, granting the petition for extradition. Petitioner appealed the decision to the CA, which appeal, in Resolutions dated August 20, 2018 and October 10, 2018, was consolidated with the petition for *certiorari*.³⁷

Ruling of the CA

On September 13, 2019, the CA rendered the assailed Decision.³⁸ The CA dismissed the petition for *certiorari*, ratiocinating that the RTC did not commit grave abuse of discretion in declaring petitioner in default. Be that as it may, the CA opined that petitioner's *certiorari* petition has already been rendered moot and academic after she appealed the RTC decision, citing the case of *Villamar-Sandoval v. Cailipan (Cailipan)*.³⁹ Relying on the said jurisprudence, the CA held that the petition for *certiorari* is bereft of any justiciable controversy that needs to be resolved by virtue of the pending appeal, and stressed that any judgment therein will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

³⁰ Id. at 756-800.

³¹ Id. at 653-669.

³² Id. at 721-725.

³³ Id. at 695-711.

³⁴ Id. at 712.

³⁵ Id. at 552-623.

³⁶ Id. at 676-692.

³⁷ Id. at 1066.

³⁸ Id. at 208-247.

³⁹ 705 Phil. 312 (2013).

In the same assailed Decision, the CA denied petitioner's appeal. Citing the case of *Government of Hongkong Special Administrative Region v. Muñoz (Muñoz)*,⁴⁰ the CA explained that there are two stages in extradition proceedings: (1) the preliminary evaluation stage, whereby the executive authority of the requested state ascertains whether the extradition request is supported by the documents and information required under the Extradition Treaty; and (2) the extradition hearing, whereby the petitioner for extradition is heard before a court of justice, which determines whether the accused should be extradited. In this case, the CA ruled that since the petition has been filed by the Secretary of Justice, it is safe to conclude that all the essential requirements prior to the filing of the petition for extradition were met and were found satisfactory to warrant the institution of the petition for extradition. This supposedly includes the duly-authenticated documents. The CA also ruled that the RTC did not err in granting the petition for extradition and ordering petitioner to be deported to the US. Guided by the provisions in Presidential Decree (PD) No. 1069 and the RP-US Extradition Treaty, the CA affirmed the findings of the RTC and held that the documentary evidence presented during trial showed that the requisition paper is in proper form and all the jurisdictional facts essential to the extradition appear on the fact of the papers. Further, the CA opined that the six (6) elements for the determination of the extradition court were established by respondent during the trial on the merits, namely: (1) there must be an extradition treaty in force between the requesting state and the Philippines; (2) criminal charges that are pending in the requesting state against the person to be extradited; (3) the crimes for which the person to be extradited is charged are extraditable within the terms of the treaty; (4) the individual before the court is the same person charged in the requesting state; (5) the evidence submitted established probable cause to believe that the person to be extradited committed the offense/s charged; and (6) the offenses are criminal in both the requesting state and the Philippines (double criminality rule).

Petitioner moved for reconsideration of the CA decision but the same was denied in the assailed Resolution⁴¹ dated February 20, 2020. Hence, the instant appeal.

The Issues

Essentially, the following issues are presented for the Court's resolution: (1) whether the CA erred in disregarding the issue on the validity of the RTC's order declaring petitioner in default when it rendered the assailed decision; (2) whether the RTC wrongfully declared petitioner in default; and (3) whether the CA erred in affirming the ruling of the RTC which granted the petition for extradition.⁴²

⁴⁰ 793 Phil. 167 (2016).

⁴¹ *Rollo*, pp. 249-251.

⁴² *Id.* at 61-65.

Ruling of the Court

The Court disposes the present petition for review on *certiorari* by resolving only the first two issues aforementioned, and hereby finds the present appeal partly meritorious.

I.

The issues raised in the *certiorari* petition assailing the RTC orders declaring petitioner in default, denying her motion to set aside order of default, and the related orders, had not been rendered moot by the Decision rendered in the extradition case nor by the filing of the appeal. Furthermore, said issues should have been resolved by the CA in its decision in the consolidated cases.

The Court explains.

The effect of a defendant's failure to file an answer within the time allowed therefor was then governed by Section 3, Rule 9 of the 1997 Rules of Court, *viz.*:

Sec. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) *Relief from order of default.* — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

(c) *Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

(d) *Extent of relief to be awarded.* — A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

(e) *Where no defaults allowed.* — If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.

The above provision was essentially retained in the 2019 Amendments to the 1997 Rules of Civil Procedure.⁴³

Indeed, a defendant who fails to file an answer may, upon motion, be declared by the court in default. As explained by the Court in *Otero v. Tan (Otero)*:⁴⁴

Loss of standing in court, the forfeiture of one's right as a party litigant, contestant or legal adversary, is the consequence of an order of default. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may be object to or refute evidence or motions filed against him.⁴⁵


⁴³ Effective May 1, 2020.

Section 3. *Default; Declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his or her pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

- (a) *Effect of order of default.* — A party in default shall be entitled to notices of subsequent proceedings but shall not take part in the trial.
- (b) *Relief from order of default.* — A party declared in default may at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his or her failure to answer was due to fraud, accident, mistake or excusable negligence and that he or she has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.
- (c) *Effect of partial default.* — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.
- (d) *Extent of relief to be awarded.* — A judgment rendered against a party in default shall neither exceed the amount or be different in kind from that prayed for nor award unliquidated damages.
- (e) *Where no defaults allowed.* — If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the Solicitor General or his or her deputized public prosecutor, to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.

⁴⁴ 692 Phil. 714 (2012).

⁴⁵ *Id.* at 724.



Nonetheless, the fact that a defendant has lost his standing in court for having been declared in default does not mean that he is left *sans* any recourse whatsoever.⁴⁶ In *Otero*, reiterating *Lina v. CA*,⁴⁷ the Court enumerated the remedies under the 1997 Rules of Court available to party who has been declared in default, to wit:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec 3, Rule 18)

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him.⁴⁸ (Sec. 2, Rule 41)

Moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.⁴⁹ A party declared in default may thus alternatively file a petition for *certiorari* assailing both the order of default and the judgment of default.⁵⁰

With regard to the remedy of appeal, it must be noted, that while the defending party declared in default retains the right to appeal from the judgment by default, the grounds that may be raised in such an appeal are restricted to any of the following: first, the failure of the plaintiff to prove the material allegations of the complaint; second, the decision is contrary to law; and third, the amount of judgment is excessive or different in kind from that prayed for.⁵¹ In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the *ex parte* presentation of his evidence.⁵² A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce

⁴⁶ Id.

⁴⁷ 220 Phil. 311 (1985).

⁴⁸ *Otero*, supra note 44, at 724-725.

⁴⁹ *David v. Judge Gutierrez-Fruelda*, 597 Phil. 354, 361 (2009).

⁵⁰ *Kilosbayan Foundation v. Janolo, Jr.*, 640 Phil. 33, 45 (2010).

⁵¹ *Otero*, supra note 44, at 725.

⁵² Id.

evidence in his defense, which right he had lost after he was declared in default. He is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff's claim.⁵³ Thus, in *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*,⁵⁴ the Court explained that:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.⁵⁵

The foregoing considered and as what happened in the resolution of petitioner's appeal before the CA, the appellate court, practically, only considered the pieces of evidence that were presented by respondent during the *ex parte* presentation of its evidence and the issues of law in extradition cases. Corollary, the CA decision on the propriety or validity of the extradition case was rendered *sans* consideration of the evidence for petitioner on the apparent reason that none were presented during the proceedings in the trial court in view of petitioner's declaration in default.

Meanwhile, in the petition for *certiorari* filed by petitioner, the issues therein pertain to the validity of the RTC orders declaring petitioner in default, denying her motion to set aside order of default, and the related orders, which in effect deprived her of the opportunity to file answer, present evidence, object to the evidence offered by plaintiff or petitioner, examine or cross-examine witnesses among other acts of participation in the proceedings, which petitioner lost when she was declared in default. If the *certiorari* petition is granted in petitioner's favor, she would have been allowed, among others, to file her answer and present evidence in the trial court. Such eventuality bears an overriding effect to the resolution of the main case. That is because, if all events are put in proper order, the decision of the trial court would have already included therein its appreciation and consideration of the evidence of petitioner, which, if appealed, would have become part of the review and decision of the appellate court.

⁵³ Id.

⁵⁴ 479 Phil. 43 (2004).

⁵⁵ Id. at 52.

Relatedly, if petitioner is found to have been wrongfully declared in default, the *ex parte* reception of evidence and the decision rendered thereon, predicated on a void order of default rendered, are themselves a nullity.⁵⁶ At this juncture, it must be underscored that due process consists of notice and hearing. Notice means that the persons with interests in the litigation be informed of the facts and law on which the action is based for them to adequately defend their respective interests. Hearing, on the other hand, means that the parties be given an opportunity to be heard or a chance to defend their respective interests.⁵⁷ Certainly, the trial court's issuance of an invalid order of default and effectively disallowing a defendant to file, answer and present evidence, and to participate in the proceedings – to defend his or her case – is tantamount to a violation of one's right to due process, a violation of the right to be heard. Such order of default is null and void and any decision rendered in relation thereto should perforce be likewise nullified.⁵⁸ Accordingly, the rendition of the RTC decision alone does not render moot and academic the issue on the validity of the default order which was raised in petitioner's *certiorari* petition.

In this case, the CA dismissed petitioner's *certiorari* petition and effectively swept aside all the issues raised therein, including the very important issue on the validity of the order of default and its legal consequences. It held that the petition for *certiorari* had been rendered moot by the *filing* of the appeal of the RTC decision.

Notably, the CA cited *Cailipan* to support its ruling. Said appellate court, however, failed to consider that the attendant circumstances in this case have essentially aligned with the suggestions mentioned by the Court in *Cailipan* which are aimed at avoiding a procedural *impasse* in a situation where the pendency of petition for *certiorari* has been supervened by a subsequent appeal in the main case.

In *Cailipan*, the Court explained:

Although respondents did not err in filing the *certiorari* petition with the CA on January 11, 2011 – as they only received the RTC's Decision three days after the said date and therefore could not have availed of the remedy of an appeal at that time – the Court observes that respondents should have (a) withdrawn their *certiorari* petition and instead raised the jurisdictional errors stated therein in their appeal or (b) **at the very least, informed the CA's Twenty-First Division of the Decision rendered on the main case and the filing of their Notice of Appeal on January 22, 2011.** Prudence should have guided them to pursue either course of action considering the well-entrenched conflict between the remedies of an appeal and a petition for *certiorari*, of which

⁵⁶ See *Viacrucis v. Estenzo*, 115 Phil. 556 (1962).

⁵⁷ *Belo v. Marcantonio*, G.R. No. 243366, September 8, 2020.

⁵⁸ See *Viacrucis*, *supra*.

they should have been well aware of. Unfortunately, their omission resulted in the CA's issuance of the September 30, 2011 Decision and February 1, 2012 Resolution in the *certiorari* case which set aside the assailed interlocutory orders, notwithstanding the supervening rendition of a decision on the main case, thus creating an evident procedural impasse.⁵⁹ (Emphasis supplied)

Here, the CA was already notified and was well-aware of the RTC Decision rendered subsequent to the filing of the *certiorari* petition and of the filing of petitioner's appeal, hence, the consolidation of said cases. To the mind of the Court, since the petition for *certiorari* and the appeal were consolidated, the issue pertaining to the validity of the order of default, as raised in the *certiorari* petition, should have been appropriately resolved, at least as part of the appeal of the RTC Decision, by the handling CA Division which rendered the assailed decision in the consolidated cases. This course of action even finds support in *Cailipan* which decreed, among others, that the CA Division where the appeal of the main case is pending should appropriately pass upon the merits of the appealed decision *including all assailed irregularities in the proceedings such as the validity of the default orders*.⁶⁰

Moreover, it is worthy to note that petitioner raised in her appeal the issue on the propriety of having her declared in default, *i.e.*, "*the trial court committed fatal or serious reversible error (aside from grave abuse of discretion) when it whimsically and capriciously denied Appellant's Motion to Set Aside the Order of Default in the Resolution dated November 22, 2017 despite its full compliance with Section 3(b), Rule 9 of the Rules of Court*."⁶¹ Such assignment of error should have been considered and ruled upon by the CA when it rendered the decision, even if it supposedly took cognizance only of the issues raised in petitioner's appeal.

Proceeding from the foregoing discussion, the CA clearly erred when it put aside the issue or its ruling on the validity of the order declaring petitioner in default. In fact, the ruling on that said issue is essential before delving into the propriety of the RTC's decision to extradite petitioner. This is only logical as the resolution of the issue on the validity of the order of default would determine if it is still proper and necessary to review the ruling of the RTC in extraditing petitioner. That is, in the event that the order of default is found to be wrongfully issued, the RTC's decision to extradite petitioner, *sans* the presentation and consideration of her evidence, would become a nullity. By then, there would be no more existing decision extraditing petitioner to be reviewed, so to speak. To simply set aside the aforesaid issue raised in petitioner's petition for *certiorari*, which was consolidated with the appeal, and solely rule on the propriety of petitioner's

⁵⁹ Supra note 39, at 318-319.

⁶⁰ Id. at 319-320.

⁶¹ *Rollo*, pp. 258-259.

extradition would blindly and effectively ratify a possibly null and void decision. This is contrary to the well-established rule that a void judgment or order has no legal and binding effect or efficacy for any purpose, and which, in contemplation of the law, is non-existent.⁶²

II.

The RTC erred when it declared petitioner in default and denied the subsequent motion to lift order of default.

Section 3, Rule 9 of the 1997 Rules of Court provides:

Sec. 3. Default; declaration of— If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

As can be observed from the above provision, there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default, to wit: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare them in default; and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule.⁶³

By filing, it presupposes a written a motion since filing, under Section 2, Rule 13 of the 1997 Rules of Court, means the act of presenting the pleading or other paper to the clerk of court. Likewise, notice of the motion is indispensable. The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments pursuant to the general rule that the notice of a motion is required when the party has the right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard.⁶⁴

To stress, the rule on default requires the filing of a motion and notice of such motion to the defending party. It is not enough that the defendant

⁶² *Land Bank of the Philippines v. Sps. Orilla*, 703 Phil. 565, 574-575 (2013).

⁶³ *Commissioner of Internal Revenue v. Third Division of The Court of Tax Appeals*, G.R. No. 238093, January 26, 2021 (Resolution).

⁶⁴ *Delos Santos v. Carpio*, 533 Phil. 42, 52 (2006).

fails to answer the complaint within the reglementary period.⁶⁵ Concomitantly, since the rules require filing of a motion and notice of such motion, it is thus clear that the trial court cannot *motu proprio* declare a defendant in default as the rules leave it up to the claiming party to protect his or its interests. The trial court should not under any circumstances act as counsel of the claiming party.⁶⁶

In this case, the RTC, at first, ruled in response to the oral motion of the counsel of respondent during the June 15, 2017 hearing that it has already declared petitioner in default even before the said hearing. This can be deducted from its Order when it said that it has already issued “previous Orders directing the [respondent] to present evidence despite the non-filing of any responsive pleading for the [petitioner]” and that it is, in its mind, a declaration of default.⁶⁷ In other words, the RTC has already *motu proprio* declared petitioner in default even before the motion was made, which clearly violated the established rules on declaration of default. Such order cannot be countenanced. On this point, the Court rejects the contention of respondent that the RTC had the authority and discretion to *motu proprio* declare petitioner in default and that the motion and notice requirement should not be strictly applied in extradition cases on the justification that the Rules of Court applies in the said petition insofar as practicable and not inconsistent with the summary nature of extradition proceedings. Such suggestion would be clearly violative of a person’s right to due process – the right to be heard – for which the Court cannot agree. It is likewise repugnant to the policy of the law which is to have every litigant’s case tried on the merits as much as possible and that judgments by default are frowned upon.⁶⁸

Later in its Resolution dated November 22, 2017 denying petitioner’s motion to set aside the order of default, the RTC explained that the order of default against petitioner was upon an oral motion by respondent made in open court during the June 15, 2017 hearing. It opined that the same is not prohibited by the rules, more so that the same was made in the presence of the counsels for petitioner who did not make any objection, hence, it cannot be said that petitioner was denied due process. The RTC added that the oral motion made by respondent’s counsel in open court was but a reiteration of an earlier written motion praying that petitioner be considered in default, which was filed as early as August 13, 2013.

The ruling of the RTC is erroneous.

⁶⁵ Id.


⁶⁶ *Sablas v. Sablas*, 553 Phil. 271, 276 (2007).

⁶⁷ *Rollo*, p. 751.

⁶⁸ *Sablas*, supra at 277.

The rule on default is clear in that it requires the *filing* of a motion and notice of such motion to the defending party. In this case, there was no existing motion filed which could be validly acted upon by the RTC when it declared petitioner in default. To recall, while respondent previously filed a motion to declare petitioner in default back on August 13, 2013, the same, however, was already denied by the RTC in its Order dated January 15, 2015. What is clear, on the other hand, is that during the hearing on June 15, 2017, respondent's counsel again sought to declare petitioner in default by making an impromptu and oral motion that petitioner be declared in default for failure to file her responsive pleading despite repeated orders. This oral motion, however, falls short of the requirements under the rules on declaring a defendant in default. To stress, a motion filed for the declaration of default is expressly required by the rules. Said motion cannot be made verbally during a hearing such as what respondent's counsel did in this case. In addition, the oral motion to declare petitioner in default violated the requirement of notice of such motion to the defending party prior to the hearing thereof. The fact that a counsel for petitioner was present during the June 15, 2017 hearing cannot justify the oral motion to declare petitioner in default nor the order of the RTC during the aforesaid hearing which formally and categorically declared petitioner in default. It is worthy to note that petitioner's counsel who appeared on that day was only making a special appearance for the purpose of petitioner's motion for inhibition and not for the main case to which the default order is related, which is handled by the main counsel of petitioner who previously manifested that he is not available to attend the scheduled hearing. As such, the motion to declare petitioner in default is beyond the scope of the limited representation of the counsel present during the June 15, 2017 hearing so as to effectively represent petitioner in opposing the oral motion and the corresponding order of default. More importantly, as emphasized earlier, notice of the motion to declare a defendant in default is indispensable to avoid surprises on the opposite party and to give him time to study and meet the arguments. In this case, without prior motion filed and the corresponding notice thereof, petitioner and her counsel were precisely taken by surprise and stripped of the opportunity to prepare to oppose the subject verbal motion made during June 15, 2017 hearing. This is precisely the evil sought to be avoided by the notice requirement. Accordingly, the RTC erred when it formally and categorically declared petitioner in default during the June 15, 2017 hearing supposedly upon the oral motion of the counsel for respondent.

Further, the RTC also committed an error when it held in its Resolution dated November 22, 2017 that the oral motion of respondent's counsel during the June 15, 2017 hearing was a mere reiteration of a previously filed written motion. For one, such justification is not stated in its Order dated June 15, 2017. It is clearly an afterthought, which is made apparent by a scrutiny of its Resolution dated June 28, 2017 which held that the third condition for a valid declaration of default is attendant in the extradition case as "there was a motion to declare the defendant in default,



made in open court and in the presence of no less than two counsels for the respondent.” Clearly, the RTC relied on the oral motion of respondent’s counsel in open court when it allowed it to present *ex parte* its evidence *sans* the answer of petitioner. Second, as explained earlier, there is no written motion (to declare petitioner in default) existing and filed as of the June 15, 2017 hearing since the previously filed motion was already denied in the RTC order dated January 15, 2015. Neither is the RTC’s Order dated January 15, 2015 or its other orders directing petitioner to file answer a sufficient reason to allow respondent to present *ex parte* evidence and effectively declare petitioner in default. Said orders merely extended the period for petitioner to file her answer but the failure to do so does not warrant an immediate declaration of default without any filed motion on the part of respondent. To reiterate the rule, the trial court cannot *motu proprio* declare a defendant in default as the rules leave it up to the claiming party to protect his or its interests.

Moreover, the Court cannot help but point out two (2) additional reasons that should have cautioned the RTC from immediately allowing respondent to present evidence on June 15, 2017 *sans* petitioner’s answer.

First. It may be remembered that the petition for extradition was dismissed on November 18, 2016. The RTC, however, reconsidered the dismissal in its Order dated April 25, 2017 and reinstated the case into the court docket, and at the same immediately directed and scheduled the reception of respondent’s evidence on June 15, 2017 *sans* petitioner’s answer. It must be noted, however, that before June 15, 2017, petitioner filed a motion for reconsideration of the order reinstating the case. Accordingly, the RTC should have taken note of the fact that petitioner filed the motion for reconsideration in the hope that the dismissal of the case would stand, hence, any answer to the petition for extradition would be rendered moot. Thus, prudence dictates that the RTC should have forewarned itself from proceeding with the reception of respondent’s evidence on June 15, 2017, which effectively declared petitioner in default, and resolved first the pending motion for reconsideration of the Order dated April 25, 2017.

Second. In its Order dated April 25, 2017, the RTC specifically stated that “in the event of the unavailability of either counsel”⁶⁹ on the scheduled June 15, 2017, hearing, the reception of evidence is to be moved in the morning of June 29, 2017. Before the said date, the main counsel of petitioner, in his manifestation filed together with the motion for reconsideration of the Order dated April 25, 2017, informed the RTC that he is not available to attend the hearing on June 15, 2017 due to conflict of

⁶⁹ *Rollo*, p. 851.

schedule in other court hearings.⁷⁰ As such, the RTC should have not proceeded to hear the case on June 15, 2017, much less, issued the order of default or the order which effectively declared petitioner in default. As correctly observed by petitioner, in proceeding to hear the case on June 15, 2017 despite the unavailability of petitioner's counsel, the RTC grossly violated its own Order dated April 25, 2017. Worse, by declaring petitioner in default during said hearing without the presence of her main counsel, the RTC violated her right to be heard – to be present or represented during the hearing and to be given the opportunity to meet the arguments and allegations in the motion seeking her declaration in default.

The foregoing considered, the RTC likewise erroneously denied the verified motion to set aside the order of default and the subsequent motion for reconsideration thereto filed by petitioner. True, the aforementioned grounds or circumstances do not constitute fraud, accident mistake or excusable negligence, which are the grounds in filing a motion to set aside order of default under Sec. 3, Rule 9 of the Rules of Court. Nevertheless, the RTC should have granted the same or, on its own, set aside and vacated the order of default as the same was issued in patent violation of the rules on default and of the right of petitioner to be heard – particularly, the opportunity to study and meet the arguments in the motion to declare in default and the failure to attend the supposed-to-be-moved or rescheduled hearing where the order was issued. Let it be stressed that since the order of default issued by the RTC is a patent nullity for being issued in violation of the Rules and of petitioner's right to due process, the order is itself inherently defective and void. Petitioner, therefore, was never legally in default. Also, the fact that no affidavit of merit was attached to the verified motion to set aside order of default filed by petitioner would not warrant its denial. There is jurisprudence to the effect that an affidavit of merit is not necessary where a motion to lift an order of default is grounded on the very root of the proceedings. Similarly, there is jurisprudence stating that when a motion to lift an order of default contains the reasons for the failure to answer as well as the facts constituting the prospective defense of the defendant and it is sworn to by said defendant, neither a formal verification nor a separate affidavit of merit is necessary.⁷¹ The petitioner's motion already contained the reasons for the failure to answer as well as the facts constituting the prospective defense of the defendant. It is likewise verified. Moreover, the grounds mentioned in petitioner's motion pertain to patent violation of the rules on default, on motion and notice, and the conduct of a supposedly moved hearing – which is clearly assailing the very root of the proceedings conducted on June 15, 2017 on the issuance of the default order or in effectively declaring petitioner in default. Accordingly, the RTC gravely erred in denying and not giving cognizance the motion to set aside order of default filed by petitioner. *Apropos* thereto, the RTC should have

⁷⁰ Id. at 858.

⁷¹ *Delos Santos*, supra note 64.

vacated its order of default and admitted the Answer of petitioner which was appended in her motion for reconsideration dated December 19, 2017 pursuant to the policy of the law which is to have every litigant's case tried on the merits as much as possible. Hence, judgments by default are frowned upon.⁷² A case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. The parties are thus given the chance to be heard fully and the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts.⁷³ Instead, the RTC, brushed aside petitioner's answer on the erroneous premise that it could no longer take cognizance of the same as petitioner was already declared in default.

III.

In view of the nullity of the default order and the related issuances of the RTC, the Court refrains itself from ruling on the merit of the parties' arguments and issues anent the issue on whether the CA erred in affirming the Decision of the RTC which granted the petition for extradition based exclusively on respondent's evidence. As explained earlier, the *ex parte* reception of evidence and the Decision rendered thereon, predicated on a void order of default rendered, are themselves a nullity.⁷⁴ Thus, it would be improper for the Court to exercise its appellate jurisdiction and resolve the merits of the CA decision with respect to the propriety of the RTC's ruling in extraditing petitioner when, in the first place, the proceedings subsequent to the RTC's order of default, particularly the Decision rendered therein, are without any binding legal effects.

WHEREFORE, premises considered, the Decision dated September 13, 2019 and the Resolution dated February 20, 2020 of the Court of Appeals in the consolidated cases of CA-G.R. SP No. 155299 and CA-G.R. CV No. 111132 are hereby **REVERSED** and **SET ASIDE**. The Orders and Resolutions dated June 15, 2017, June 28, 2017, November 22, 2017, and March 14, 2018, as well as the Decision dated April 19, 2018 of the Regional Trial Court of Manila, Branch 19, granting the petition for extradition in Civil Case No. 01-190375 are **ANNULLED** and **SET ASIDE**. Petitioner's Answer to the petition for extradition is **DEEMED ADMITTED**. The case is hereby ordered **REMANDED** to the trial court for further proceedings, and thereafter, to resolve the case with utmost dispatch.

⁷² See *Sablas*, supra note 66.

⁷³ *Id.*

⁷⁴ See *Viacrucis v. Estenzo*, supra note 56.

SO ORDERED.

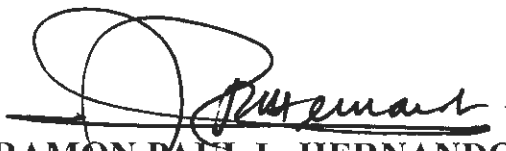


EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:




MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



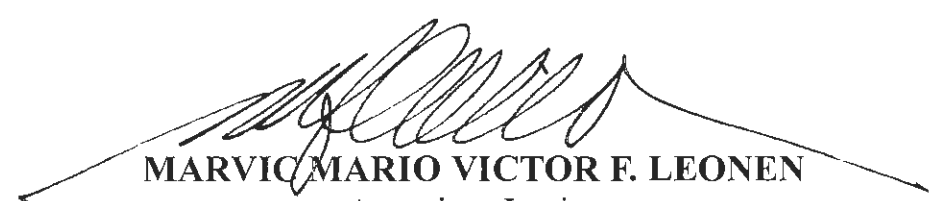
ROSMARID. CARANDANG
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

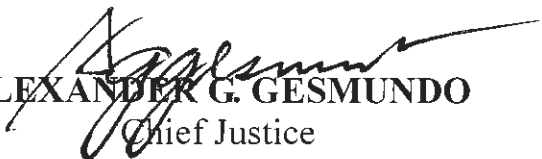
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.



ALEXANDER G. GESMUNDO
Chief Justice