

[G.R. No. L-6606. September 29, 1954]

JOSE M. LEZAMA, PETITIONER, VS. EDMUNDO PICCIO, ET AL., RESPONDENTS.

D E C I S I O N

MONTEMAYOR, J.:

From the record we gather the following facts. Perfecto Guillen and eleven others were employed by petitioner Jose M. Lezama in his fishing business. Claiming that they had not been paid their wages to May 28, 1952, they filed Civil Case No. R-1916 in the Court of First Instance of Cebu to collect said pay, and for other relief. At that time Lezama would appear to be residing in the City of Iloilo, although his Manager Juan B. Cesar lived in the City of Cebu. Because Cesar could not be found in Cebu at the time that the complaint was filed the corresponding summons together with a copy of the complaint were sent to the Provincial Sheriff of Iloilo for service on Lezama and were received by said Sheriff on May 31, 1952. On petition of plaintiffs Guillen et al., a writ of attachment was issued against the fishing boat M/L CATALINA belonging to Lezama. Manager Cesar then already in Cebu was notified of this writ of attachment and he must have notified his employer Lezama because the latter for the purpose of lifting the writ, from Iloilo on June 5, 1952, sent a telegram to Judge Piccio who was hearing the case asking him to telegraph to him collect if he was agreeable to his filing of a P5,000.00 counter-bond and also asking that the clerk of court send to him a copy of the complaint via airmail (Appendix A). Judge Piccio answered by telegram on the same date to the effect that a P5,000.00 counter-bond would be approved. On June 13, 1952, Lezama filed the corresponding counter-bond in the amount of P5,000.00 which was approved by the judge.

On October 11, 1952, Judge Piccio issued the following order:

“Defendant not having filed his answer to the complaint within the statutory period, as prayed for, this court hereby declares the defendant in default.

“Plaintiffs may, therefore, introduce their evidence at any convenient date.

“So ordered.”

It would seem however that the Provincial Sheriff of Iloilo had not in the meantime served the summons and the copy of the complaint on Lezama in Iloilo, despite the fact that he (Sheriff) received said summons as early as May 31, 1952. On November 28, 1952, the Cebu clerk of court wired said sheriff requesting him to inform the court of the date a copy of the complaint in Civil Case No. R-1916 was served on the defendant. No answer was received. On December 8, 1952, Judge Piccio himself telegraphed the Iloilo Provincial Sheriff to answer by telegram collect and inform him if he had summoned defendant in said case. Still, no answer. But two days after, that is, on December 10th, said sheriff served the summons on Lezama,

On December 22, 1952, Judge Piccio rendered judgment in favor of Guillen and his eleven co-plaintiffs in civil case No. R-1916 and against defendant Lezama. On December 23, 1952, Lezama filed a motion for reconsideration asking that the order of default be reconsidered, and that he be allowed to answer the complaint, at the same time enclosing a copy of his answer, alleging that it was only on December 10, 1952, that he received the summons and a copy of the complaint. According to respondents, Guillen et al., this motion was denied by the court on January 3, 1953; and the answer attached to the motion was dismissed on the same date. Then, in an undated petition for relief but bearing the month of January and the year 1953, defendant Lezama claiming that he had a “good and strong evidence to counteract plaintiffs’ claim, if the former is given a chance to be heard,” asked that the judgment rendered against him be set aside and that a new

trial be ordered, at the same time contending that his filing of a counter-bond to dissolve the writ of attachment did not constitute a voluntary appearance nor did it confer upon the court jurisdiction over his person because he was not regularly served with summons.

According to Lezama this petition for relief was never acted upon by the court, and according to respondents, copy of said petition for relief was never served on them or upon their attorney. Lezama has now come to this tribunal with a petition for certiorari, prohibition and mandamus, asking that the decision of Judge Piccio as well as the proceedings had in his court be declared null and void, and that the case be remanded to that court for trial on the merits.

One question involved in the present case is whether the action taken by Lezama in asking the trial court by means of a telegram to fix the amount of a counter-bond to dissolve the writ of attachment and his subsequent filing of the counter-bond fixed by the court constituted a voluntary appearance which according to rule 7, section 23 of the Rules of Court is equivalent to service of summons. If it is, then the fifteen (15) days period provided by rule 9, section 1, of the Rules of Court within which a defendant shall file his answer should be computed not from December 10, 1952, when Lezama was actually and formally served with summons by the Iloilo Sheriff but from June 5, 1952, when Lezama sent the telegram to Judge Piccio or at the latest from June 13, 1952, when he filed his counterbond. And if this be the case, then Lezama was properly and correctly declared in default for his failure to file an answer on time.

In the case of Flores vs. Zurbito, 37 Phil., 746, 750, this court said the following:

“* * *. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit

himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his asset to the jurisdiction of the court over his person.”

In the case of *Monteverde vs. Jaranilla*, 60 Phil., 306, this court said that a special appearance in which the jurisdiction of the court over the person of the defendant is not expressly impugned and in which the *dissolution of an attachment is asked upon the filing of a counter-bond*, is equivalent to a general appearance.

And in the case of *Marquez Lim Cay vs. Del Rosario*, 55 Phil., 962, this court also held that “the filing of a motion praying for the dissolution of an attachment without objecting to the jurisdiction of the court over the place where the property is situated, by means of a special appearance;” and “the giving of a bond for the dissolution of said attachment, imply a submission to the jurisdiction of the court * *.”

On the strength of the authorities above cited we could hold that petitioner Lezama was properly declared in default because he should have filed his answer within fifteen days, not from December 10, 1952, when he was actually served with summons in Iloilo, but from June 5, 1952, or at the latest, from June 13, 1952, when he filed with the Cebu court the corresponding counter-bond in the amount fixed by said court at his request and instance, all of which could be regarded as a voluntary appearance, equivalent to service of summons, an appearance in which the jurisdiction of the trial court was not impugned. But there is one aspect of the case, by no means unimportant, which must be considered, namely, the delay in the service of summons on Lezama. The Iloilo Sheriff served the summons on him only on December 10, that is, about two months after the order of default. It will be remembered that in Lezama’s telegram to Judge Piccio on June 5, he asked that the Cebu Clerk of Court send him a copy of the complaint by airmail. That shows that Lezama was anxious to see a copy of the complaint, apprise himself of the court action against him and put up a defense. But apparently,

said copy of the complaint was never sent to him. Besides, according to him, and judging from a copy of his answer, he had a good defense, provided of course that he can prove his allegations in it. We believe and hold that under the circumstances, Lezama should be given his day in court.

In view of the foregoing, the petition is granted, the order of default and the decision are hereby set aside, and the trial court is directed to reopen the case, admit Lezama's answer and hear and decide the case anew. No costs.

We cannot overlook the long delay in the service of the summons by the Provincial Sheriff of Iloilo. Said Sheriff received said summons from Cebu on May 31, 1952. On November 28, 1952, the Cebu Clerk of Court wired him asking for information about the date the summons was served on the defendant in said civil case No. R-1916. The Sheriff apparently did not deign to answer the telegram. On December 8, 1952, Judge Piccio himself telegraphed said Sheriff of Iloilo asking if he had already served summons on the defendant. The Sheriff again failed to answer; but apparently spurred by said two telegrams and realizing the necessity of some action, on December 10, 1952, he actually served the summons on the defendant. According to the answer of respondents, said sheriff actually cashed the money order covering his fees as sheriff, as early as June 1952, meaning that he collected his fees long before he rendered services on December 10, 1952 when he served the summons. The attention of the Department of Justice and the Presiding Judge of the court of Iloilo are invited to this incident for purposes of investigation if they deem one necessary, so that a similar case of long, unexplained, and obnoxious delay in the service of summons will not be repeated.

Paras, C.J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J.B.L., JJ., concur.

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