

**ROBERTO OCAMPO, PETITIONER, VS. FERNANDO BUENAVENTURA,
JOSE VASQUEZ, ADOLFO BELDEROL, POTENCIANO ADOBAS, JR.,
AND JUDGE MATEO CANONoy, COURT OF FIRST INSTANCE OF
CEBU, RESPONDENTS.**

G.R. No. L-32293. January 24, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for certiorari and prohibition seeking to annul the order dated June 1, 1970, of respondent Judge Hon. Mateo Canonoy, then of Branch III, Court of First Instance of Cebu, denying petitioner's motion to dismiss and/or suspend the trial of its Civil Case No. R-11320, entitled "Fernando Buenaventura, et al. vs. Roberto Ocampo", including the order denying his motion for reconsideration thereof. Petitioner further prays this Court to make permanent the preliminary injunction issued on October 9, 1970, restraining respondent Judge from further proceeding with Civil Case No. R-11320.

The records of this case establish the following facts:

On September 11, 1966, respondents Fernando Buenaventura, Jose Vasquez, Adolfo Belderol and Potenciano Adobes, Jr., all members of the Cebu Police Department, arrested and detained in the City Jail of Cebu, Edgar Ocampo (petitioner's son) and Paul, Jade, Cesar and Julius, all surnamed Ocampo (his nephews), together with one George Namok (a friend of the Ocampo boys), all minors, for an alleged violation of Section 1 of Ordinance No. 345 which amended Ordinance No. 228 fixing curfew hours. This Ordinance penalizes the "wandering, sauntering or loitering of minors in any street, wood or alley." Pursuant to said arrest, the City Fiscal of Cebu filed an information in the city court and the minors were convicted for violation of the said ordinance. On appeal to the Court of First Instance, however, Judge Tantuico, on March 3, 1969, noting the exception under Section 3 of Ordinance 228 which provides:

"The provisions of Section 1 hereof shall not be applicable to minors attending or participating in, or going home from, purely scholastic functions, commencement exercises, convocations, educational and religious programs or in wholesome and decent assemblage, and during yuletide masses, New Year's eve and Holy Week cults, during the hours mentioned therein."

acquitted the accused minors, ruling that since they came from a birthday party considered as a wholesome and decent assemblage, the minors fell within the exception and committed no violation of the ordinance in question.

Meanwhile, petitioner Roberto Ocampo on September 19, 1966, filed a complaint with the City Mayor's office charging the respondents policemen with serious misconduct, grave abuse of authority and commission of a felony. On August 8, 1967, the Mayor issued Administrative Order No. 157 exonerating the policemen. On March 17, 1969, a complaint was lodged with the Police Commission (POLCOM) for serious misconduct, abuse of authority and commission of an act constituting a felony, which administrative case is still pending up to the present.

On June 4, 1969, respondents herein filed a complaint for damages against petitioner. On May 22, 1970, petitioner filed a motion to dismiss and/or suspension of the trial of the case on the merits on the following grounds: (1) existence of a prejudicial question and (2) that the action is premature. This motion was denied by respondent Judge in an order dated June 1, 1970. The petitioner's motion for reconsideration thereof having been also denied, the instant petition was filed.

In the meantime respondent Fernando Buenaventura died and he was substituted herein by his widow, Guillerma Cosca Buenaventura, and his heirs, Carlos, Cora, Eva Araceli, Fernando, Jr., Rene Victor, Helen Grace, Flora Vicente, and Jose Adolfo, all surnamed "Buenaventura."

The main question to be resolved is whether or not the court a quo abused its discretion in denying petitioner's motion to dismiss and/or suspend the trial of the case on the merits. The first ground thereof (prejudicial question) is entirely inapplicable. In accordance with Article 36 of the Civil Code, a prejudicial question must be decided before any criminal prosecution based on the same facts may proceed. There is no prejudicial question here since there is no criminal prosecution involved, the petitioner's case before the POLCOM being administrative in nature and the respondents' case before the Court of First Instance of Cebu is a simple civil suit for damages not based on a crime but on alleged harassment by the petitioner in charging them administratively before the City Mayor and before the POLCOM. A careful consideration of the record discloses that the principal issue in the complaint for damages is the alleged malicious filing of the administrative cases by the petitioner against the policemen respondents. The determination of this question is primarily dependent on the outcome of the administrative case before the POLCOM. The respondents' complaint for damages is based on their claim that the administrative case filed against them before the POLCOM is malicious, unfounded and aimed to harass them. The veracity of this allegation is not for us to determine, for if we rule and allow the civil case for damages to proceed on that ground, there is the possibility that the court a quo in deciding said case might declare the respondents victims of harassment and thereby indirectly interfere with the proceedings before the POLCOM. The respondents' case for damages before the lower court is, therefore, premature as it was filed during the pendency of the administrative case against the respondents before the POLCOM. The possibility cannot be overlooked that the POLCOM may hand down a decision adverse to the respondents, in which case the damage suit will become unfounded and baseless for wanting in cause of action. Of persuasive force is the ruling in *William H. Brown vs. Bank of the Philippine Islands and Santiago Freixas*, 101 Phil. 309, 312, where this Court said:

"x x x. In effect, plaintiff herein seeks to recover damages upon the ground that the detainer case has been filed, and is being maintained, maliciously and without justification; but this pretense affects the merits of said detainer case. Should final judgment be eventually rendered in that case in favor of the plaintiffs therein, such as the one rendered in the municipal court, the validity of the cause of action of said lessors against Brown, would thereby be conclusively established, and, necessarily, his contention in the present case would have to be rejected. Similarly, we cannot sustain the theory of Brown in the case at bar, without prejudging the issue in the detainer case, which is still pending. Until final determination of said case, plaintiff herein cannot, and does not, have, therefore, a cause of action – if any, on which we do not express our opinion – against the herein defendants. In short, the lower court has correctly held that the present action is premature, and, that, consequently, the complaint herein does not set forth a cause of action against the defendants."

On the ground that the suit for damages is premature, the trial court, instead of denying petitioner's motion to dismiss and/or suspend the trial on the merits, should have held action thereon in abeyance pending determination of the case before the POLCOM.

Respondents likewise plead *res judicata* to defeat this action, contending that the administrative case before the POLCOM should have been dismissed as it is barred by a prior judgment – that embodied in the City Mayor's Administrative Order No. 157 – exonerating herein respondents policemen. The argument is devoid of merit. A

review of the essential requisites of *res judicata*,^[1] viz: (1) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (2) the former judgment must be final; (3) it must be a judgment on the merits; (4) there must be between the 1st and 2nd actions [a] identity of parties; [b] identity of subject matter; and [c] identity of cause of action, exposes the glaring weakness of respondents' contention. On the first requisite alone, that of jurisdiction, respondents miserably failed to meet the requirements of the rule invoked. The City Mayor of Cebu was without jurisdiction to try, hear and decide administrative cases either under Republic Act No. 557 (An Act Providing For the Suspension or Removal of the Members of the Provincial Guards, City Police and Municipal Police by the Provincial Governor, City Mayor Or Municipal Mayor), or under Republic Act 4864 (An Act Creating the Police Commission, Amending and Revising the Laws Relative to the Local Police System, and For Other Purposes). In *Manuel vs. De la Fuente, etc., et al.*,^[2] this Court said: "Of course, it should not be understood that the City Mayor, for the purpose of determining whether he should exercise his power of suspension conferred by Republic Act 557, may not conduct his own investigation; but this inquiry cannot replace the investigation that should be conducted under Republic Act No. 557 by the Municipal Board and which should form the basis for final administrative action or decision by said Board appealable to the Commissioner of Civil Service." The Court further said: "x x x the obvious innovations introduced by Republic Act No. 557 lie in the fact that the Municipal Board had been granted the exclusive power to investigate, with the Mayor being conferred only the power to prefer charges against a member of the city police x x x; that the Municipal Board, not the Mayor, decides the case; and that the decision may be appealed to the Commissioner of Civil Service, instead of to the Secretary of the Interior."^[3] (Italics supplied). The power to investigate and decide administrative cases involving police service and personnel has been transferred to the POLCOM.

In the motion to dismiss filed before the Board of Investigators of the Police Commission,^[4] respondents alleged that the proceedings in the city mayor's office cannot be attacked, invoking for the purpose Section 26 of the Police Commission Act, to wit:

"Section 26. Saving Clause. – All pending administrative cases involving police service and personnel shall be absorbed by the Police Commission one hundred days after the publication of the Police Manual containing rules and regulations relative to such matters."

The thrust of their argument is that the city mayor then had jurisdiction because his decision was rendered on August 8, 1967, while the Police Manual was promulgated later on December 30, 1967. But the ruling in *Police Commission vs. Hon. Judge Eloy Bello, et al.*^[5] where this Court had occasion to elucidate on the "saving clause" of the POLCOM Act, is relevant to the issue and disposes of the respondents' argument. This Court said:

"Section 26 of the Police Act is, as expressly stated therein, a mere saving clause, and refers solely to the administrative cases involving police service and personnel which were pending at the time of the effectivity of the Act.

"The Police Commission was required to absorb the said pending cases within 100 days after it shall have published a Police Manual. The said Section 26 may not be interpreted to mean that the Board of Investigators of each city or municipality and the Police Commission could not legally function to carry into effect the purposes of the Act until after the lapse of the said 100 days, because Section 28 provides that '(t)his Act shall take effect upon its approval.' Since the Act was approved on September 8, 1966, it became effective immediately on that date." (Italics supplied)

Lastly respondent Judge in his order in question dated June 1, 1970, gave the following reason for denying the motion to dismiss and/or suspension of the trial of the case on the merits: "x x x considering that the said defendant has already filed his answer, containing special defenses embodying the grounds stated in the motion to dismiss and/or suspension of the trial x x x, the said motion to dismiss and/or suspension of trial is hereby

denied." The denial is apparently predicated on the prior filing of an answer.

As a general rule a motion to dismiss is interposed before the defendant pleads (Section 1, Rule 16, Rules of Court). However, there is no rule or law prohibiting the defendant from filing a motion to dismiss after an answer had been filed. On the contrary, Section 2 of Rule 9, expressly authorizes the filing of such motion at any stage of the proceedings when it is based upon failure to state a cause of action,[6] as in the case at bar where the complaint failed to state a cause of action as alleged by petitioner in his very motion to dismiss and/or suspension of the trial. The respondent Judge therefore, erred in denying said motion. The surrounding circumstance at the time of the filing of said motion warranted suspension of the trial on the merits.

ACCORDINGLY, the order appealed from, dated June 1, 1970, denying the motion to dismiss and/or suspension of the trial of the case on the merits, including the order denying the motion for reconsideration thereof, is hereby set aside. The hearing of Civil Case R-11320 of the Court of First Instance of Cebu, Branch III, shall be held in abeyance pending determination of the administrative case against the respondents before the POLCOM.

The Court's writ of preliminary injunction dated October 9, 1970, restraining respondent court from proceeding with the damage suit against petitioner shall stand until the POLCOM decides the said administrative case; if it is decided adversely against respondents, the injunction shall become permanent, while if it is decided in their favor, then this damage suit may proceed to trial and determination on its merits by respondent court.

No special pronouncement as to costs.

Makalintal, C.J., Ruiz Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] Ipekdjian Merchandising Co., Inc. vs. Court of Tax Appeals & Commissioner of Internal Revenue, 9 SCRA 72, 75.

[2] L-5009, November 29, 1952, 92 Phil. 302, 307

[3] Ibid., 302, 306.

[4] Rollo, p. 72.

[5] L-29959-60, January 30, 1971, 37 SCRA 230, 237-238.

[6] Community Investment & Finance Corp. vs. Garcia, L-2338, February 27, 1951, 88 Phil. 215, 220.

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