

**NATIONAL WATERWORKS AND SEWERAGE AUTHORITY,
PETITIONER, VS. HON. GREGORIO D. MONTEJO, JUDGE OF THE
COURT OF FIRST INSTANCE OF ZAMBOANGA CITY AND CITY OF
ZAMBOANGA, RESPONDENTS.**

G.R. No. L-18043. May 31, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition under Rule 41, section 15, of the Rules of Court, to compel allowance of a record on appeal which was disallowed because a memorandum and a motion for extension of time to file it had not been incorporated therein.

On 12 March 1956, in the Court of First Instance of Zamboanga City, the City of Zamboanga filed a complaint alleging and claiming that it owns and operates the Zamboanga Waterworks and Sewerage System; that on or about 29 February 1956, pursuant to Republic Act No. 1383, its treasurer and auditor, without authority of law, as provided for in its charter (Commonwealth Act No. 39), transferred to the National Waterworks and Sewerage Authority, hereafter referred to as NAWASA, all its properties in the system amounting to P532,860.43; that Republic Act No. 1383 which provides for the transfer to the NAWASA of its waterworks and sewerage system without payment of just compensation is unconstitutional; and praying for a declaration that Republic Act No. 1383 is unconstitutional; for the return of its properties and assets in the system taken by the NAWASA or, if such return could not be made, for payment of their value; for a writ of preliminary injunction to restrain the defendant from taking possession, control and ownership of a cash balance amounting to P15,536.20 of the Zamboanga Waterworks and Sewerage System while the action was pending; for costs; and for other just and equitable remedies (civil case No. 607; Annex A). The defendant NAWASA filed a motion to dismiss dated 12 April 1956 (Annex B), but the day before, or 11 April, it answered the complaint sustaining the constitutionality of Republic Act No. 1383 (Annex A to the Answer of the respondent City). By a motion dated 2 December 1959 (Annex C), invoking a ruling, then just laid down by this Court,^[1] to the effect that Republic Act No. 1383 is unconstitutional in so far as it provides for expropriation of waterworks without payment of just compensation, the plaintiff prayed that judgment be rendered, as prayed for in its complaint. The defendant objected to the motion for judgment (Annex D). On 30 July 1960 the trial court ordered the defendant to surrender and return to the plaintiff all the properties and assets referred to in its complaint and render to the latter an accounting from the time it (the defendant) had taken possession thereof until their return to the plaintiff (Annex E). On 22 August, the defendant was served with a copy of the order. On 16 September, it filed a notice of appeal (Annex F), an appeal bond in the sum of P60.30 (PNB check No. 22993) and a record on appeal. On 8 October, the court entered an order withholding allowance of the record on appeal until after the defendant shall have incorporated in it the urgent motion dated 1 October 1956 for extension of time to file memorandum and the defendant's memorandum dated 18 October 1956 (Annex G). On 2 November, the defendant moved for reconsideration of the order, claiming that the two pleadings required by the court to be incorporated in the record on appeal were not

pleadings relating to the appealed order, as contemplated in Rule 41, section 6, of the Rules of Court (Annex H). On 22 November, the plaintiff filed a reply to the motion for reconsideration (Annex I) and on 6 January 1961 the defendant, rejoinder to the reply (Annex J). On 14 January, the court denied the motion for reconsideration and directed the defendant to incorporate in the record on appeal the motion for extension of time and the memorandum, as required in its order of 8 October 1960 (Annex K).

The defendant has appealed.

The sole issue is whether a motion for extension of time to file memorandum and the memorandum filed thereafter should be incorporated in the record on appeal before it may be allowed; or, stated otherwise, whether failure to incorporate them is a lawful ground for disallowing a record on appeal.

Section 6 of Rule 41, Rules of Court, provides that a record on appeal-

* * * shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment. (Italic supplied)

In the case of *Alino vs. Villamor*, 2 Phil. 234, this Court succinctly states the purpose of the foregoing rule, as follows:

* * * The object of a bill of exceptions (record on appeal) is simply to present in an intelligible form the facts necessary to enable the appellate court to review the rulings, orders, or judgments excepted to, and to this purpose what was said by counsel at the trial by way of argument is obviously wholly foreign and irrelevant . *

* * (Italic supplied)

The rule quoted above requires that a record on appeal must contain and present only facts, not arguments advanced by counsel. A memorandum, which is nothing but a formal or written summary of arguments of counsel on issues involved in a litigation, cannot be considered as facts necessary or essential to be incorporated in a record on appeal.

The order appealed from is set aside and the respondent court directed to allow the record on appeal, without pronouncement as to costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

[1] *City of Baguio vs. National Waterworks and Sewerage Authority*, 57 Off. Gaz. 1579.

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