

MARIA C. RAMOS, PETITIONER, VS. COURT OF APPEALS, JUDGE JESUS R. DE VEGA OF THE COURT OF FIRST INSTANCE OF BULACAN, MALOLOS BRANCH II AND THE MUNICIPALITY OF HAGONOY, BULACAN, R...

G.R. No. L-53766. October 30, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the legality of a municipality's hiring of private counsel to file a suit in its behalf. The municipality of Hagonoy, Bulacan, through the law firm of Cruz Durian & Academia (now Cruz Durian Agabin Atienza & Alday), sued in the Court of First Instance of Bulacan, Marciano Domingo, Leonila Guzman, Maria C. Ramos and Consorcio Cruz for the recovery of its 74-hectare fishpond (Civil Case No. 5095-M).

In paragraph 19 of the complaint it was alleged that the municipality had obligated itself to pay Cruz Durian & Academia as attorney's fees not less than twenty percent of the amount to be recovered by the plaintiff (p. 44, Rollo).

The provincial fiscal of Bulacan and the municipal attorney of Hagonoy entered their appearance as counsel for the municipality with the manifestation that its private counsel would be under the control and supervision of those officials. Notwithstanding that appearance, Domingo and Maria C. Ramos (lessee and sublessee of the fishpond) moved to disqualify the Cruz law firm from serving as counsel of the municipality.

The trial court denied the motion. It found that Angel Cruz, the head of the law firm, volunteered to act as coun-sel for the municipality because he desired to serve his native town.

Ramos and Domingo assailed that order by means of certiorari in the Court of Appeals which in a decision dated February 15, 1979 sustained the trial court (Ramos vs. Judge Jesus R. de Vega, et al., CA-G.R. No. SP-7728-R). Ramos brought the case to this Court.

We hold that the trial court and the Court of Appeals erred in allowing the Cruz law firm to act as counsel for the municipality in collaboration with the fiscal and the munici-pal attorney.

That ruling constitutes a grave abuse of discretion because it is manifestly a transgression of section 1683 of the Revised Administrative Code which provides that "the provincial fiscal shall represent the province and any municipality or municipal district thereof in any court, except in cases whereof original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal dis-trict in question is a party adverse to the provincial govern-ment or to some other municipality or municipal district in the same province. When the interests of a provincial govern-ment and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province. When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attor-ney may be employed by its council."

The legislative intent to prohibit a municipality from employing private counsel in its lawsuits is further implemented by section 3 of the Local Autonomy Act, Republic Act No. 2264, which provides that the municipal attorney, as the head of the legal division or office of a municipality, "shall act as legal counsel of the municipality and perform such duties and exercise such powers as may be assigned to him by the council." The municipal attorney is paid out of municipal funds (Sec. 4, Republic Act No. 5185, Decentralization Act of 1967). He can represent the municipality even without the fiscal's collaboration (*Calleja vs. Court of Appeals*, L-22501, July 31, 1967, 20 SCRA 895).

The questioned ruling of the two courts also contra-venes settled jurisprudence. Applying section 1683, it was held that the municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it (*De Guia vs. Auditor General*, L-29824, March 29, 1972, 44 SCRA 169. See *Reyes vs. Cornista*, 92 Phil. 838, *Municipality of Bocaue vs. Manotok*, 93 Phil. 173; *Enriquez vs. Gimenez*, 107 Phil. 932).

Evidently, the lawmaker in requiring that the municipality should be represented in its court cases by a government lawyer like its municipal attorney and the provincial fiscal intended that the municipality should not be burdened with the expenses of hiring a private lawyer. The lawmaker also assumed that the interests of the municipality would be best protected if a government lawyer handles its litigations.

It is to be expected that the municipal attorney and the fiscal would be faithful and dedicated to the municipality's interests and that, as civil service employees, they could be held accountable for any misconduct or dereliction of duty.

The Court of Appeals perceived nothing illegal in allowing the Cruz Law Office to represent the municipality of Hagonoy because lawyer Cruz offered his legal services gratis. Petitioner Ramos in her second motion for reconsideration called the Court's attention to paragraph 19 of the complaint wherein the Cruz law firm alleged that the municipality had contracted to pay its lawyer a 20% contingent fee.

The Court of Appeals in a resolution dated December 6, 1979 said that there was no cogent reason to reconsider its decision but at the same time it gave the Cruz law firm fifteen days from notice within which "to amend the answer" (should be complaint) in the trial court by "deleting there-from the claim for attorney's fees" and to report such amendment to the Court of Appeals; otherwise, it would "motu proprio reconsider its decision".

Obviously, the Appellate Court wanted the complaint to conform to its erroneous factual finding that the Cruz law firm was serving as counsel without compensation. It did not notice that its resolution was ambivalent because while it denied the second motion for reconsideration, in the same breath it threatened to "reconsider its decision" if the complaint was not amended.

Following that directive, the Cruz law firm filed in the trial court an amended complaint dated December 31, 1979 containing the allegation in paragraph 19 thereof that the municipality was forced to retain the Cruz law firm "as additional counsel under the control and supervision of plaintiff's principal attorneys and/or the Provincial Fiscal without any obligation to pay attorney's fees". The prayer for the payment of attorney's fees in the original complaint was eliminated in the amended complaint.

Ramos contended in the trial court and in the Court of Appeals that the trial court could not admit the amended complaint because it was immobilized by the restraining order issued by the Court of Appeals. The Court of Appeals did not resolve that contention.

On May 7, 1980, Ramos filed in this Court her petition for certiorari, mandamus and prohibition wherein she prayed that the Court of Appeals be directed to resolve the issue raised in her second motion for reconsideration

and that the amended complaint should not be taken into consideration because it was improperly admitted by the trial court.

Although the Court of Appeals was furnished on May 7, 1980 with a copy of that petition, it nevertheless, issued a resolution dated May 22, 1981 requiring the Cruz law firm to inform it of "the further development on the matter" (p. 113, Rollo).

This Court treated Ramos' petition as an appeal from the Appellate Court's decision. Ramos was confused as to when she would appeal from that decision because, as noted earlier, while the Appellate Court denied her second motion for reconsideration, the denial was not final since it was accompanied by the warning that it would "reconsider its decision" if the complaint was not amended to eliminate the claim of the Cruz law firm for attorney's fees. Hence, the alleged tardiness of the petition was excusable.

The fact that the municipal attorney and the fiscal are supposed to collaborate with a private law firm does not legalize the latter's representation of the municipality of Hagonoy in Civil Case No. 5095-M. While a private prosecutor is allowed in criminal cases, an analogous arrangement is not allowed in civil cases wherein a municipality is the plaintiff.

Section 1683 of the Revised Administrative Code, as complemented by section 3 of the Local Autonomy Law, is clear in providing that only the provincial fiscal and the municipal attorney can represent a municipality in its law-suits. That provision is mandatory.

The law being clear and unmistakable, there is no room for interpretation or for engrafting upon it exceptions or qualifications not contemplated therein. As observed by Justice Moreland:

"Where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harm-ful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until law-yers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been sub-mitted to some court for its 'interpretation and construction'." (Yangco vs. Court of First Instance of Manila, 29 Phil. 183, 188).

"Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is." (Lizarraga Hermanos vs. Yap Tico, 24 Phil. 504, 513).

WHEREFORE, the decision of the Court of Appeals is reversed and set aside. We hereby declare that the appearance in the aforementioned case of Cruz Dorian Agabin Atienza & Alday as counsel for the municipality of Hagonoy is contrary to law. The municipality should be represented by its municipal attorney and by the pro-vincial fiscal of Bulacan. The restraining order is lifted. No costs.

SO ORDERED.

Concepcion, Jr., and De Castro, JJ., concur.

Barredo, J., (Chairman), concurs on the strictly technical grounds stated in the main opinion. He feels however,

that a municipality or province should be able to seek the help of competent counsel, if it feels its case is of such importance that the services of the fiscal and the municipal attorney would be inadequate and the assistance of private counsel is offered gratis. Anyway, the Cruz Law office can very well help the government lawyers without having to make any formal appearance. Withal, perhaps permission by the Minister of Justice may solve the situation of the municipality.

Abad Santos, J., in the result.

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