

**ANTONIO FAVIS AND CORAZON FAVIS, DOING BUSINESS UNDER THE
TRADE NAME "UNION GROCERY & HARDWARE",
PLAINTIFFS-APPELLANTS, VS. MUNICIPALITY OF SABAÑGAN,
BONTOC, MOUNTAIN PROVINCE, ...**

G.R. No. L-26522. February 27, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An appeal on questions of law, directly elevated to this Court by plaintiffs-appellants from the adverse decision of the Court of First Instance of Baguio City.

Plaintiffs-appellants, Antonio Favis and Corazon Favis, doing business under the trade name of "Union Grocery and Hardware", originally instituted on February 4, 1965, in the City Court of Baguio City, this action for collection against defendant-appellee, the Municipality of Sabañgan, Bontoc, Mountain Province, for the recovery of the principal sum of P1,115.00, representing the charge invoice value of G.I. pipes of various sizes needed by defendant-appellee in its municipal waterworks construction, besides twelve (12%) per cent interest and twenty-five (25%) attorney's fees and costs.[1]

Defendant-appellee, through its mayor, Agustin Velasco, timely filed its Answer to the Complaint, alleging that according to its records, "the then Municipal Mayor of Sabañgan was never authorized to contract or buy on credit from the plaintiff, various and different sizes of G.I. Pipes needed in the construction of its municipal waterworks, hence, defendant municipality can not in any way, be legally bound for the acts of the then mayor...."[2]

The City Court of Baguio, after trial, rendered judgment in favor of plaintiffs-appellants, as prayed for in their complaint. Defendant-appellee interposed its appeal from said decision to the Court of First Instance of Baguio City, but did not pay or deposit the Court of First Instance docket fee nor file an appeal bond, as required by Rule 40, section 2 of the Rules of Court. Plaintiffs-appellants, therefore, moved the Court a quo to dismiss the appeal on the ground of non-perfection of the appeal, contending that only the Republic of the Philippines is exempt from the said requirements for appeal, under Section 16 of Rule 141 of the Rules of Court.[3]

The Court a quo denied plaintiffs-appellants dismissal motion, holding that:

"The Municipality of Sabañgan, being a branch of the Government of the Republic of the Philippines, is exempt from the filing of such fees in accordance with Section 16 of Rule 141, in conjunction with Section 2 of the Revised Administrative Code." (Rec. on App., 14-15)

Plaintiffs-appellants' motion for reconsideration having been denied by the Court a quo, the case proceeded to trial and the said Court thereafter rendered its decision dismissing the complaint on the ground of lack of legal liability on the part of defendant municipality.[4]

Plaintiffs-appellants have filed this "direct appeal to this Court, expressly pursuant to Section 2 of Rule 42 of the Rules of Court.[5] The only issue of law raised by them in two related assignments of error in their brief is "the correct interpretation of Section 16 of Rule 141 of the new Rules of Court"; which provides that -

"Section 16. Government Exempt. - The Republic of the Philippines is exempt from paying the legal fees provided in this rule."

They contend in their brief that "the defendant-appellee, not being the Republic of the Philippines, is not exempt from filing an Appeal Bond and in the payment of the legal fees provided for under the said Section 16 of Rule 141 of the new Rules of Court. Consequently, the decision of the City Court in Civil Case No. 3114 was not vacated because the appeal was not perfected. (Section 9 of Rule 40). It follows that the Court of First Instance of Baguio did not have jurisdiction to try the case on its merit, and hence, the decision rendered by the said Court of First Instance in Civil Case No. 1604 is null and void and has no legal effect."[6]

Plaintiffs' appeal must fail for lack of merit:

1. We sustain plaintiffs-appellants in their contention that the exemption clause in Rule 141, Sec. 16 of the new Rules of Court (formerly Rule 130) exempting the Republic of the Philippines from paying the legal fees provided therein is applicable only to the Republic of the Philippines; i.e. the National Government, and not to local governments or subdivisions, as correctly ruled by the late Secretary of Justice Pedro Tuason.[7] Section 2 of the Revised Administrative Code specifically defines "National Government" as referring "to the central government as distinguished from the different forms of local government" and differentiates it from "specially organized provinces", "regularly organized provinces", "municipalities" and "chartered cities" which constitute "the provincial or municipal branches or other form of local government." That such exemption from the payment of legal fees is available only to the State, the Republic per se, is evident from the similar construction of long usage to the analogous provision of Rule 142, Section 1 of the Rules of Court that "no costs shall be allowed against the Republic of the Philippines unless otherwise provided by law." As early as 1920, it has been held by this Court in *Palanca vs. The City of Manila and Trinidad*[8], that while no costs shall be allowed against the Government of the Philippines where it is the unsuccessful party, the general rule that costs are imposed upon the unsuccessful party applies to public corporations which sue and can be sued and municipal corporations.

2. The Court a quo, however, did not commit a fatal error of jurisdiction in erroneously holding that the defendant Municipality was exempt from payment of the appellate court docket fee provided in Rule 40, Section 2, and taking cognizance of its appeal. As far as the writer's research shows, this is the first time that the question of the applicability to local governments of the exemption from legal fees under Rule 141, Section 16, has been squarely put in issue in a case before this Court, although this Court has invariably required local governments to pay such docket fees in cases brought on appeal. The parties-litigants were properly before the Court a quo, which duly heard them in a trial de novo and rendered judgment accordingly. Plaintiffs-appellants' contention that non-payment by defendant-appellee of the legal fees and non-posting of the appeal bond renders null and void the Court a quo's decision - when the said Court, in exercise of its appellate jurisdiction had held defendant municipality to be exempt from such requirements - is legally untenable. This Court, speaking through Justice J. B. L. Reyes, in *National Waterworks & Sewerage Authority vs. Sec. of Public Works & Communication*, G.R. No. L-20928, March 31, 1966, has already ruled out such a contention, holding that in appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal, much less affect the Court's jurisdiction, the dismissal being discretionary in the appellate court, and that this rule is applicable by analogy to Courts of First Instance in the exercise of the appellate jurisdiction conferred upon them.

"In its first assignment of error, the defendant Secretary contends that, admitting that the NAWASA's complaint in appeal was sent by registered mail on the last of the 30 days allowed by the Irrigation Act for

appealing the administrative decision to the court of competent jurisdiction, still the complaint, may not be deemed to have been filed on the same day, for the reason that there is no showing that the filing fees were simultaneously paid."

"The appellant's argument, however, fails to take into account that, in appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary in the appellate court. Rule 141, Section 3, speaking of the fees of the clerk of the Court of Appeals or the Supreme Court, provides that:

'If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.'

"The rule quoted is applicable by analogy to the Court of First Instance of Manila in the instant case, since the Court was exercising appellate jurisdiction conferred upon it by law to review administrative decisions under the Irrigation Act." (Emphasis supplied)

3. The Court a quo's appealed decision[9] dismissing plaintiffs-appellants' complaint for lack of legal liability on the part of defendant municipality remains to be passed upon on its merits, although appellants did not assail the merits thereof in their brief and appellee in turn did not file any brief.

It should be noted that plaintiffs appellants having directly elevated their appeal on questions of law to this Court, pursuant to Rule 42, Section 2, they are foreclosed from disputing the Court a quo's findings of fact in its decision, as reproduced hereinafter.[10]

On the basis of the facts as found by the Court a quo, we hold its decision on the legal issues to be in accord with the law and pertinent jurisprudence.

"And Sec. 3, Rep. Act 2264 under Purchasing provides:

"Purchasing. -- Subject to Auditing rules and regulations, provinces, cities and municipalities are hereby empowered to make purchases, equipment and supplies that they respectively need either locally or elsewhere without the necessity of buying the same thru the Bureau of Supply:

Provided, however: -

"(a) xxxx

"(b) xxxx

"(c) That purchases shall be made by public bidding, and awards shall be made by the Provincial, City or Municipal Committee on Award, composed of xxx the Municipal Mayor, the Municipal Treasurer and a councilor chosen by the Municipal Council in the case of municipalities and regularly organized municipal districts.

"The record does not show that the foregoing requisites have been complied with. But the undisputed fact is that the municipality is benefited by the installation of the G.I. pipes. To this the Supreme Court in G.R. No. L-9920, *Bartolome E. San Diego vs. The Municipality of Naujan, Province of Oriental Mindoro*, promulgated on February 29, 1960, said:

'xxxx the doctrine of estoppel can not be applied as against a municipal corporation to validate a contract which it has no power to make, or which it is authorized to make only under prescribed conditions, within prescribed limitations, or in a prescribed mode or manner, although the corporation has accepted the benefits thereof and the other party has fully performed his part of the agreement, or has expended large sums in preparation for performance. A reason frequently assigned for this rule, is that to apply the doctrine of estoppel against a municipality in such case would be to enable it to do indirectly what it cannot do directly. Also,

where a contract is violative of public policy, the municipality executing it cannot be estopped to assert the invalidity on the ground; nor can it be estopped to assert the invalidity of a contract which has ceded away, controlled or embarrassed its legislative or governmental powers.' (38 Am. Jr. pp. 202-204)

"In connection with public biddings which was not complied with the same decision of the Supreme Court stated: "public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders. Thus, contracts requiring public bidding affect public interest, and to change them without complying with that requirement would indeed be against public policy.'

"One more significant point in connection with the acquisition of the assorted pipes is revealed in Exh. "C", a portion of which is also marked as Exh. "2", for the municipality. The letter indicates that the payment would come from the release to be made by former President Garcia which, unfortunately, was frozen. It also indicates that instructions were given not to install the pipes until all questions were settled. And since the pipes had already been installed they were ordered dismantled to be piled and to be returned to the owner if the freezing (sic) order was not lifted. It is, therefore, clear that the mayor, aside from want of authority to execute the contract, had not intended to bind the municipality of Sabañgan to pay for the indebtedness for the payment would not come from the funds of the municipality but from the release of funds by former President Garcia.

"Plaintiff took the risk of delivering the pipes not knowing definitely from whom the payment would be drawn. He indicated in the invoice that the articles were sold to Gov. Bado Dangwa - for Mayor Bodud of Sabañgan. Not able to collect from Gov. Dangwa or Mayor Bodud he sued the municipality of Sabañgan. Unfortunately, the requisites of municipal contracts in order to bind the municipality have not been complied with hence the same may not be enforced against the municipality of Sabañgan." (Rec. on App., 24-28)

This Court's ruling in *San Diego vs. Municipality of Naujan*, correctly relied upon by the trial court in absolving defendant-municipality, has been re-affirmed in *San Buenaventura vs. Municipality of San Jose, Camarines Sur*,^[11] and *City of Manila vs. Tarlac Development Corporation, etc.*,^[12] in which latter case, this Court further held that even a consent decree, in which the officials of a municipality assume obligations not authorized by law, is null and void. This Court thus held in said latter case that ?

"the fact that, by consent of the municipal officer, an agreement or stipulation made by them has been put in the form of a judgment, in an effort to give it the force and effect of a judgment, does not cure a lack of power in the officers to make it, and if such power is lacking, the judgment as well as the stipulation is lacking, the judgment as well as the stipulation is void....." (Emphasis reproduced)

In the present case, as pointed out by the Court *quo*, the mayor of defendant municipality, aside from not having claimed any authority to make the purchase of the materials delivered by plaintiffs-appellants, had clearly indicated that the municipality would not be bound to pay therefor and that the plaintiffs-appellants would have to look for payment to the National Government through funds yet to be released by way of assistance to the municipality.

WHEREFORE, the decision appealed from is hereby affirmed, with the modification that defendant-appellee is required to pay the legal fees due from it to the Court of First Instance of Baguio by virtue of its appeal from the original decision of the Baguio City Court in Civil Case No. 3114. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Barredo, JJ., concur.

[1] Record on Appeal, p. 1-4

[2] Rec. on Appeal, 4-5

[3] Rec. on Appeal, 12-13

[4] Idem., 5-65

[5] Appellants' Brief, p. 2

[6] Idem. p. 5-6

[7] Op. 319, S. of 1954; Rec. on App., pp. 18-21

[8] 41 Phil 125, 133; cf- Macondray Co. vs. Sarmiento, 90 Phil 709

[9] Notice of App., Rec. on App., p. 28

[10] Sotto Pahang v. Sotto, G.R. No. L-21175, July 15, 1968; Perez v. Araneta, G.R. No. L-18414, July 15, 1968; Cebu Portland Cement Co. v. Naga, G.R. No. L-24116-7, Aug. 22, 1968

[11] G.R. No. L-19309, Jan. 30, 1965

[12] G.R. Nos. L-24557, L-24469, L-24451, July 31, 1968

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