

INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, DEFENDANT-APPELLANT.

G.R. No. L-27188. May 29, 1969

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On June 22, 1965 appellee Insurance Company of North America, as subrogee of Motor Service Company, Inc., sued the Republic of the Philippines to recover the sum of P3,901.30 representing the insurance value of five packages of truck replacement parts which the Customs Arrastre Service failed to deliver to said consignee, and damages caused to two cases.

Answering the complaint, the Republic relied, inter alia, upon the following affirmative defenses:

"5. That it may not be sued in this instance without its consent";

... ..

"7. That the operation by defendant Bureau of Customs of the arrastre service at the port of Manila is pursuant to the duty enjoined by Section 1213 of the Tariff and Customs Code, and was, during the time material hereto, merely to the consequence of an emergency measure principally designed to insure the prompt and continued collection of customs duties and taxes on imported goods in view of the series of strikes staged by the labor forces at the waterfront, which strikes this Honorable Court may well take judicial notice of";

"8. That in thus operating the arrastre service, defendant never intended to do so in a proprietary capacity or for profit";

... ..

"10. That this Honorable Court has no jurisdiction to hear the instant case which involves a money claim against the government, for the reason that the requisites laid down by Act No. 3083, as amended, have not been complied with by plaintiff";

After trial the lower court rendered the appealed judgment sentencing the Republic to pay appellee the sum of P3,901.30, without costs, interest and attorney's fees.

The case is now before Us on appeal timely taken by the Republic who before filing its brief filed on December 27, 1968 a motion to dismiss the case relying upon our ruling in *Mobil Philippines, etc. vs. Customs Arrastre Service, et al.*, G.R. No. L-23139 promulgated on December 17, 1966 holding that the Republic of the Philippines

is immune from suit as operator of the arrastre service of the port of Manila.

By resolution of January 10, 1969 We required appellee to comment upon the aforesaid motion, and pursuant thereto said appellee submitted on January 23, 1969 its COMMENTS AND COUNTER MOTION.

Appellee admits that the main issue raised in the case at bar is the non-suability of the State and that this Court has already ruled in the Mobil case that the Republic of the Philippines is immune from suit as operator of the arrastre service of the port of Manila but, for its part, moved that the appeal interposed by the Republic be dismissed upon the ground that its record on appeal fails to state the date when it was served with notice of the decision of the lower court, which data is necessary to show that its appeal was taken timely, this omission being a sufficient ground for the dismissal of the appeal under Section 6, Rule 41 of the Rules of Court.

Required, in turn, to answer appellee's motion to dismiss the appeal, the Republic did so on February 7, 1969 alleging therein the following as reason why its appeal should not be dismissed.

"2. That while it is true that aside from the order of the lower court approving the record on appeal, our record on appeal does not contain any specific allegation that the appeal was perfected on time, nevertheless, we respectfully submit that this technical defect cannot be resorted to for the dismissal of defendant's appeal for the reason that the case at bar is already moot and academic. Indeed, the ruling laid down by this Honorable Court in the Mobil Philippines case, *supra*, nullified the proceedings had in the lower court, as the same had not acquired jurisdiction over the case. The dismissal, therefore, of the instant case would not impair the rights of the appellee as this Honorable Court has already set forth the proper procedure in the prosecution of appellee's rights against the herein appellant (Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service, *supra*)."

Upon consideration of the foregoing, We are of the opinion that, on the strength of our ruling in Mobil Philippines etc., upholding the non-suability of the State, this case should be dismissed because said ruling necessarily means that our courts have no jurisdiction to render judgment against the Republic of the Philippines in any action of the nature of the one at bar.

WHEREFORE, as prayed for in appellant's motion mentioned at the beginning hereof, the present case is dismissed, without costs.

Reyes, J.B.L. (Acting C.J.), Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

Concepcion, C.J. and Ruiz Castro, J., are on official leave.

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