

**DACIANO PALAMI, ET AL., PETITIONERS AND APPELLANTS, VS.
POTENCIANO LARRAZABAL, AS ACTING CITY MAYOR, RAFAEL
OMEGA, AS ACTING CITY TREASURER AND GAUDENCIO V. TABUZO,
AS CITY AUDI...**

G.R. No. L-14882. June 28, 1963

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5a4973868374/>

MAKALINTAL, J.:

This is an appeal from the order of the Court of First Instance of Leyte (5th Branch), dated June 18, 1958, as amended by the order dated June 28, 1958, dismissing the petition for mandamus to compel reinstatement and for recovery of damages filed by herein appellants and docketed as Special Civil Action No. 135-G. Petitioner Victor S. Barnaba has withdrawn the appeal insofar as he is concerned.

Appellants were employees in the city government of Ormoc, Leyte. On January 5, 1956, according to their petition, the municipal board of Ormoc city passed resolution No. 8 abolishing their positions for reasons of economy. On the following January 9, Acting City Mayor Potenciano Larrazabal issued executive order No. 7 implementing said resolution and removing appellants from their respective positions. Claiming that both the resolution and the executive order were illegal, they instituted this case on February 10, 1956. The respondents were the Acting City Mayor, the Acting City Treasurer and the City Auditor.

The case was set for trial on the merits on March 20 and 21, 1958 before Honorable Ignacio Debuque, the Judge then presiding. The transcript of the stenographic record of the proceedings on March 20 shows that counsel for appellants manifested to the court his intention to file an amended petition in order to substitute the incumbent City Mayor, Esteban C. Conejos, for former Acting Mayor Potenciano Larrazabal, and the incumbent City Treasurer for the former Acting Treasurer, as well as to include the City of Ormoc as one of the respondents, pursuant to an intimation by the court itself concerning the possible liability of the municipal government. Judge Debuque, after suggesting that the parties submit a partial stipulation of facts, with a reservation of their right to present evidence on points that were controversial, dictated an order giving appellants up to March 29, 1958 within which to file an amended petition and setting the case for new assignment on the trial calendar.

For some reason not disclosed in the record the amended petition was not filed within the prescribed period; but on June 4, 1958 Judge Debuque again issued an order giving appellants until June 21 to file the amended petition, failing which the case would be tried in July 1958 on the pleadings already submitted. Somehow the order of June 4 was misplaced and filed with the record of another case. On or about June 16, 1958 Judge Numeriano Estenzo took over the court of Judge Debuque, who in the meantime had been transferred to another judicial district. Two days later, or on June 18, the new Judge *motu proprio* ordered the dismissal of the petition on the ground of lack of interest on the part of appellants to prosecute. The dismissal was without prejudice. Appellants received copy of the order of dismissal on June 23. On June 20, however—one day before the expiration of the period granted to them by Judge Debuque in his order of June 4—they complied with it by filing their amended petition. The

amended petition was denied admission on June 25. Appellants moved to reconsider, calling attention to the fact that they had been given until June 21 to amend the petition and that they had done so within the period, attaching to their motion a copy of the order of June 4, and offering to prove the issuance thereof by the testimony of witnesses and, if necessary, by the deposition of Judge Debuque himself. On June 28, 1958, the court denied the motion for reconsideration and amended the previous order of dismissal by making it definite and with prejudice.

The present appeal has been submitted for decision on appellants' brief alone, appellees having failed to file a brief in reply. Upon the facts aforestated it is clear that the court a quo committed a reversible error in dismissing the petition and in denying appellants' motion for reconsideration. It is quite true, as stated in the last order appealed from, that there had been considerable delay in setting the case for trial after it was commenced as early as February 6, 1956. But it is wrong to presume that such delay was caused entirely by appellants. The record shows that the trial was set for the first time on March 20 and 21, 1958. The Judge who then had cognizance of the case was no doubt familiar with the reasons for its slow progress. He did not dismiss the petition, but instead gave appellants opportunity to amend the same, first on or before March 29, 1958, which they failed to do, and again up to June 21, 1958, which they did.

The court's order of June 28, 1958 states that when the trial set for March 20 was cancelled so as to permit appellants to file an amended petition, the order to that effect was issued over the objection of respondents. The record does not bear this out. No such objection was interposed; in fact the postponement became a matter of course when the court suggested, with the concurrence of both parties, that they submit a partial stipulation of facts. The issuance of the order of June 4, 1958, giving appellants another opportunity to file an amended petition, was a matter of discretion with the court. Judge Debuque must have found sufficient justification for his action and except for very weighty reasons, which we do not find here, the Judge who succeeded him should not have interfered with the exercise of such discretion.

Wherefore, except with respect to petitioner Victor S. Barnaba, pursuant to whose motion the appeal has been dismissed, the orders appealed from are hereby set aside and the case remanded to the court a quo for further proceedings.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon and Regala, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.