

**PORFIRIO COMIA AND CHIEF OF POLICE ANTONIO S. GABA, SR.,
PETITIONERS, VS. HON. JUDGE NICANOR P. NICOLAS, IN HIS
CAPACITY AS JUDGE CFI OF ORIENTAL MIN-DORO, (CALAPAN
BRANCH); THE...**

G.R. No. L-26079. September 30, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an original petition for certiorari and/or prohibition with mandatory preliminary injunction.

On December 8, 1960 Estanislao Garachico (private respondent in the instant case) and fourteen other former members of the police force of the municipality of Naujan, Oriental Mindoro, filed in the Court of First Instance of said province a petition for mandamus, quo warranto, prohibition, and damages, with preliminary injunction (Civil Case No. R-979) against Porfirio Comia, who was then the incumbent municipal mayor of Naujan, and the policemen who had replaced them. They prayed inter alia that judgment be rendered com-manding respondent Porfirio Comia to reinstate them as members of the police department of Naujan and ordering all the respondents to pay, jointly and severally, the unpaid salaries due them since January 1, 1960.

While the case was pending, the court became vacant with the retirement of the presiding Judge. By virtue of Administrative Order No. 184, dated August 4, 1961, of the Secretary of Justice, Hon. Juan de Borja was authorized to hold court in Oriental and Occidental Mindoro for a period of not more than three (3) months be-ginning September 3, 1961. Judge de Borja terminated the hearing of the case but before he could decide it the period of his temporary assignment expired, and he had to return to his permanent judicial station in San Jose, Antique.

Honorable Andres Sta. Maria took over as presiding Judge of the Court of First Instance of Oriental Mindoro. On June 25, 1963 a motion to submit the case for decision was filed by Atty. Nestor M. Andrada, one of the counsel of record for the petitioners. When the motion was heard on June 27, 1963, Atty. Jose Rodrigo, one of the lawyers for the respondents, who happened to be in court in connection with another case, manifested that Judge de Borja had al-ready rendered a decision, of which a copy had been received by them. He also verbally opposed the motion on the ground that he had not been furnished a copy thereof, but he was required by the court to present his opposition in writing and to submit evidence later to show that the case had in-deed been decided. On July 12, 1963 the motion was again heard. Atty. Rodrigo failed to bring a copy of the supposed decision of Judge de Borja. However, Atty. Manuel Gaba, another lawyer of record for the respondents, assured the court that he had a copy of the decision, but that it was in Naujan, Oriental Mindoro. In its desire to be enlightened on the matter, the court reset the hearing of the motion for the next day and ordered Atty. Gaba to produce the copy of the decision referred to.

When the petitioners' motion was again heard on January 9, 1964, Atty. Andrada called the attention of the court to the fact that a copy of an unsigned decision of Judge de Borja appeared to have been attached to the records of

the case but that there was nothing to indicate how it was forwarded to the court. He added that when the counsel for the respondents tried to submit the unsigned copy he suggested that the submission be held in abeyance until a signed copy was produced in court. He therefore asked the court that the unsigned copy "be either stricken out or taken from the records as having been without any basis." Upon the court's inquiry as to how it came to be attached to the records, the Clerk of Court explained that he was verbally instructed by the presiding Judge to so attach it when it was shown to the latter by the Chief of Police (evidently of Naujan, Oriental Mindoro). There-upon the presiding Judge asked the Clerk for proof that he had given such instruction, and forthwith ordered that the copy of the decision be detached.

During the same hearing of January 9, 1964, Atty. Rodrigo was allowed by the court to withdraw as counsel for the respondents upon his representation that he was no longer on speaking terms with his clients by reason of his change of party affiliation during the local elections of 1963. The principal counsel for the respondents, Atty. Gaba, also asked the court that he be substituted by another lawyer in view of his appointment as Assistant Director of the Patent Office. At first the court tried to dissuade him from withdrawing his appearance, stating "that the case has dragged to a point where the appearance of other counsel would prejudice the early disposition of this case considering that it is a special remedy filed in 1960 and until now it has remained un-decided." However, Atty. Gaba assured the court that he would look for a substitute, and there and then recommended Atty. Alfredo Nieva, who was then present. When Atty. Nieva expressed his willingness to handle the case, the court granted Atty. Gaba's verbal petition and ordered that "the appearance of Atty. Nieva be entered as counsel for the respondents in substitution of all the lawyers who have heretofore appeared for the respondents." The substitution of counsel having been effected, Atty. Andrada immediately presented a verbal motion that he be allowed to file a memorandum. The court granted the motion and ordered that:

x x x. The counsel for the petitioner, Atty. Nestor Andrada, is hereby given fifteen days within which to file a supplemental memorandum, and Atty. Alfredo Nieva, counsel for the respondent, is likewise given the same period of time after the receipt of said supplemental memorandum to file any responsive pleading if he so desire, after which this case shall be considered submitted for decision."

The foregoing proceedings took place before Judge Sta. Maria. But before he could render a decision, he was transferred to another judicial station. In July 1964 Hon. Nicanor P. Nicolas assumed office as presiding Judge of the same court. Finding that the case was still undecided although already submitted, he rendered a decision on September 8, 1964, the dispositive portion of which he amended in an order dated September 9, 1964, to read as follows:

"WHEREFORE, judgment is hereby rendered in favor of the respondents and against the petitioners except Estanislao Garachico declaring valid and lawful the termination of the services and removal of the petitioners Ben de los Reyes, Paulino Conte, Francisco Villegas, Honorio Hernandez, Ludovico Gupit, Jose Alvarez, Hugo Fajardo, Alfonso de la Torre, Romulo Gozar, Pacifico de los Reyes, Jose Mendoza, Lauro Gutierrez, Felicisimo Labaguiz and Robinson Robles from the positions of lieutenant, sergeant, corporals and patrolmen of the Police Department of Naujan, this province, and consequently, their claim for salaries and damages is hereby denied. The court hereby declares invalid and illegal the termination of services and removal of the petitioner Estanislao Garachico who is a civil service eligible from the position of patrolman of the police department of Naujan. The Court hereby orders the respondent Municipal Mayor of Naujan or any one acting in his place as Municipal Mayor of said municipality to reinstate immediately said petitioner Estanislao Garachico and, correspondingly, it is hereby ordered that the salary of the said petitioner Estanislao Garachico at the rate of P130.00 a month to be paid to him from January 1, 1960 up to the time of his actual reinstatement; his claim for the damages is hereby denied. (Underscoring supplied)

"The counterclaim for damages filed by the respondents is also hereby dismissed."

Evidently the amendment, which consists of the insertion of the phrase "or any one acting in his place as Municipal Mayor of said municipality" in the last sentence, first paragraph, of the dispositive portion, was made in order to bind anyone acting as Municipal Mayor in place of respondent Porfirio Comia, who resigned in January 1962. Atty. Nieva, who had been substituted as counsel of record for respondents, was not served with copies of the decision and of the amendatory order. Instead, Atty. Rodrigo, the former lawyer for the respondents, was furnished with a copy of the decision itself, and Mayor Manuel Marcos of Naujan, with a copy of the amendatory order, the latter receiving it on September 14, 1964.

On October 12, 1964 the respondents, through their then newly engaged counsel, Attys. Mascardo, Calupitan and Ferrer, filed with the lower court a motion to set aside judgment on the ground that the case had already been dismissed by Judge de Borja. Attached to and in support of the motion were: (1) a certification by the said Judge stating that on February 13, 1962 he dismissed the petition and that he sent his decision to the Clerk of the Court of First Instance of Oriental Mindoro on or about the same date, and (2) a copy of the decision itself. Before the motion to set aside the judgment (of Judge Nicolas) could be re-solved, the petitioners filed their first motion for the execution thereof on October 22, 1964.

On November 27, 1964 the court denied the motion to set aside judgment "for being unmeritorious." Said the Court:

x x x. The respondents, thru their new counsel, cannot and should not be allowed to seek the setting aside of the decision rendered after the parties had submitted the case for decision; and after they have led the Court to believe that the case was submitted for decision. The decision of the Court cannot be set aside on the allegation of the existence of another decision which was not brought to its attention by the remedy provided for by law. This is not to impugn the merit of the decision of Judge de Borja, much less His Honor's certification to the effect that he rendered a decision on February 13, 1962 which was sent to the Clerk of Court of Oriental Mindoro. The merit of the decision of Honorable Juan de Borja and his certification are not in issue. What is pivotal in this case is the inaction for so long a time of the respondents in not taking the necessary legal steps to bring to the attention of the Court the existence of that decision of Judge de Borja. This inaction amounting to laches produced consequences the legal effects of which must necessarily be assumed by the respondents. They created it and hence they must suffer for it. x x x

"Under Section 1, Rule 26 of the New Rules of Court, the decision must be (1) signed by the Judge and (2) filed with the Clerk of Court.

"As adverted to above, the decision of Judge de Borja was not filed with the Clerk of Court, and hence, lacking in that requisite, the Court cannot validly consider said decision. This circumstance probably induced respondents to submit the case for decision on January 9, 1964. For if they had in their possession copies of the decision or if they knew its existence, they would not have submitted this case for decision."

On December 4, 1964 Atty. Calupitan, who had not been served with a copy of the aforesaid order, filed an opposition to the motion for execution, alleging that the reglementary period for appeal had been interrupted by the motion to set aside judgment.[1] On January 27, 1965 the petitioners again filed a motion for execution, which was granted by the lower court in an order dated February 3, 1965. Manifesting that they had not received a copy of the order denying the motion to set aside judgment and intimating that they would appeal, counsel for the respondents filed on February 8, 1965 a belated opposition to the second motion for execution.

Pursuant to the order of February 3, 1965, a writ of execution signed by Clerk of Court Arthur B. Panganiban was issued and thereafter served by the Provincial Sheriff on Mayor Manuel Marcos of Naujan. On May 3, 1965 Assistant Provincial Fiscal Añonuevo of Oriental Mindoro filed a motion to suspend the execution. The petitioners opposed the motion and asked the court to cite Mayor Marcos for contempt. Fiscal Añonuevo filed his

reply and opposition to the petitioners' motion for contempt. On May 21, 1965 he was furnished with a copy of the order of the trial court dated November 27, 1964, denying the motion to set aside judgment.

With the expiration of the lifetime of the original writ of execution, a first alias writ was issued on July 15, 1965 against "defendant Municipality of Naujan, thru its Municipal Mayor or anyone acting in his place as Municipal Mayor of said municipality". On August 10, 1965 Fiscal Añonuevo again filed a motion to stay execution of judgment, but was turned down for lack of merit.

On October 22, 1965 Mayor Manuel Marcos personally filed with the Court of Appeals a petition for certiorari against Judge Nicanor Nicolas, raising the issue of the in-validity of the decision rendered on September 8, 1964, as amended by the order of September 9, 1964. The petition was dismissed outright by the appellate court on November 3, 1965. The motion for reconsideration was likewise denied on November 17, 1965.

On November 19, 1965 a second alias writ of execution was issued by the Clerk of Court, and by virtue thereof the Provincial Sheriff levied on the properties of the municipality of Naujan, among which were one jeep, several typewriters and other office equipment. The sale of the said properties was scheduled to be held on December 14, 1965.

On December 8, 1965 Assistant Provincial Fiscal Narciso D. Salcedo, who had been designated under Department of Justice Administrative Order No. 360 to assist the Pro-vincial Fiscal of Oriental Mindoro in handling the case, filed an urgent motion to stay execution and for clarification of the dispositive portion of the decision dated September 9, 1964. In support thereof, the respondents submitted a memorandum raising, among other questions, the nullity of the decision dated September 8, 1964 as amended by the order dated September 9, 1964. To prove the existence of the decision of February 13, 1962, penned by Judge de Borja, its transmit-tal to and receipt by the Clerk of the Court of First Instance of Oriental Mindoro, and its service upon the counsel of both parties, numerous records and documents were annexed to the memorandum and to the motion itself. Without passing upon the questions of fact raised by the respondents, the lower court in its order of March 31, 1966 denied the motion for lack of merit, but granted the respondents a period of 45 days from receipt of the order within which to comply with the decision of September 8, 1964, as amended by the Order of September 9, 1964.

With the denial of their motion, Porfirio Comia and Chief of Police Antonio Gaba, Sr., two of the respondents in the court below, filed the instant petition, praying inter alia that pending the final disposition of the issues raised a preliminary injunction be issued enjoining the respondents, Hon. Judge Nicanor P. Nicolas and the Pro-vincial Sheriff and/or his deputies, from enforcing the decision dated September 8, 1964, as amended by the order of September 9, 1964, and the other orders of the respondent Judge in Civil Case No. R-979; that said decision, as amended, and the other orders be all declared null and void; and that after due hearing, all the respondents be permanently enjoined from enforcing the same. Mayor Manuel R. Marcos, as Mayor of Naujan, Oriental Mindoro, and the municipality of Naujan itself, filed a motion for intervention which this Court granted in a resolution of May 23, 1966. Upon petitioners' filing of a bond, a writ of preliminary injunction was issued on June 18, 1966.

The principal issue posed in this case concerns the jurisdiction of the respondent Judge in rendering the decision of September 8, 1964, as well as the amendatory order of September 9, 1964, and, of course, the validity thereof.

The petitioners and intervenors contend that since the case had been decided by Judge de Borja on February 13, 1962, which decision had already become final, the decision of respondent Judge on September 8, 1964 was an absolute nullity, as was also the amendatory order of September 9, 1964. On the other hand, private respondent Garachico denies the existence of the decision of Judge de Borja and therefore maintains that the respondent Judge acted within his jurisdiction in deciding the case.

The questions of fact raised by herein petitioner have a decisive bearing on the instant petition, but were not passed upon by respondent Judge. The numerous annexes to the Urgent Motion dated December 8, 1965 and the memo-randum in support thereof, particularly the deposition of Hon. Juan de Borja taken on February 12, 1966 in the sala of the Court of First Instance of Bulacan, Valenzuela Branch, clearly show that on February 13, 1962 said Judge de Borja penned a decision in Case No. R-979 of the Court of First Instance of Oriental Mindoro; that on February 14, 1962, under a transmittal letter of the same date, he sent the said decision and the records of the case, together with other records and decisions, to the Clerk of the Court of First Instance of Oriental Mindoro, via the Philippine Air Lines under its Airway Bill No. P-00351; and that the aforementioned decisions and records, including the decision and records of Case No. R-979, were received by the then Clerk of Court, Cristino Paras, on February 17, 1962. The in-consistency noted by the private respondent here between the statement in the affidavit of Clerk of Court Paras to the effect that he received the decision by registered mail, and the statement of Judge de Borja in his deposition that he sent it by the Philippine Air Lines, does not alter the fact that the decision in the case was in fact received by the Clerk of Court.

Under the circumstances, the decision of Judge de Borja was validly rendered in accordance with Section 1, Rule 36[2] in relation with Section 9, Rule 135[3], of the Revised Rules of Court. It is to be noted that it is the filing of the judgment with the Clerk of Court that constitutes rendition thereof. If the judgment is signed out-side the province by reason of the expiration of the temporary assignment of the trial judge who terminated the hearing of the case, it is considered filed with the Clerk of Court as of the date when the same is received by him.

That Judge de Borja's decision was received by the Clerk of Court is indubitably established by the following: (1) The monthly reports submitted by the then Clerk of Court (Cristino Paras) to the Department of Justice for December 1961 and January 1962 show that Case No. R-979 was pending decision; the monthly report for February 1962 shows that it had been decided. (2) The annexes also clearly show that both parties were served with copies of the decision of Judge de Borja. In his affidavit, the former Clerk of Court declared that he effected the service by registered mail addressed to the respective attorneys of the parties. (3) His allegation is supported by the photographs of the registry receipt stubs of the Calapan post office and by the certification of the postmaster that "registered letters Nos. 2497, 2502 and 2503 were sent by the Court of First Instance of Oriental Mindoro on February 28, 1962 to Attys. Manuel Gaba, Jose Rodrigo and Romeo Comia, respectively, all residents of Naujan, Oriental Mindoro"; (4) Receipt of said letters by the respective addressees is shown by the photographs of the corresponding entries in the Registry Book of the Naujan post office and by the certification of the postmaster to the effect that on March 2, 3 and 5, 1962, Attys. Gaba, Rodrigo and Comia received registered letters Nos. 2497, 2502 and 2503, respectively. Atty. Comia has not denied that he received his copy; and since, as pointed out by the petitioners herein in their memo-randum in support of their motion of December 8, 1965 (Annex "P" of the petition), the petitioners in the court below filed their petition jointly and were represented by several lawyers, one of whom was Atty. Comia, service upon him may be deemed to be the service upon the others.[4] No appeal having been perfected nor any motion for reconsideration filed within the thirty-day period from March 5, 1962, the decision of Judge de Borja became final on April 4, 1962. The case, therefore, was removed from power or jurisdiction of the court a quo to decide anew.[5] And the decision rendered by the respondent Judge on September 8, 1964, as amended by the order of September 9, 1964, is null and void. "A void judgment is in effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. x x x."[6]

WHEREFORE, the decision dated September 8, 1964, as amended by the order dated September 9, 1964, and the other orders of the respondent judge in Civil Case No. R-979 are hereby declared null and void, and the

preliminary injunction enjoining the respondents from enforcing said decision and orders is made permanent. No costs.

Concepcion, C.J., Dizon, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur. Reyes, JBL, and Sanchez, JJ., on leave.

[1] On page 25 of the Memorandum In Support of Defendants' motion dated December 8, 1965 (Annex "P" of the Petition) there is an allegation that "up to February 8, 1966, Atty. Calupitan was never furnished a copy of the order of denial dated November 27, 1964, and during the hearing on February 8, 1966, the attention of the trial court was invited to the fact that on page 274 of the Records a copy of the order, properly sealed and addressed to Atty. Calupitan and a prepared Registry Return Card are still attached to the records BUT never mailed to Atty. Calupitan."

[2] Section 1. Rendition of judgments. - All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

[3] Section 9. Signing judgments out of province. - Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. x x x. (Underscoring supplied)

[4] Sy It vs. Tiangco, G. R. No. L-18376 February 27, 1962, 4 SCRA 436.

[5] Samson vs. Montejo, G. R. No. L-18605, October 31, 1963, 9SCRA 419; Ocampo vs. Caluag, G. R. No. L-21113, April 27, 1967, 19 SCRA 971.

[6] Chavez vs. Court of Appeals, G. R. No. L-29169 August 19, 1968, 24 SCRA 663, 685. Gomez vs. Concepcion, 47 Phil. 717, 722, citing Freeman on Judgments, Sec. 117.

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