

MAYOR LUCILO ALKUINO, ET AL., PETITIONERS, VS. HON. ABUNDIO Z. ARRIETA, ETC. ET AL., RESPONDENTS.*G.R. Nos. L-21538-40. October 31, 1963*

Ponente: BAUTISTA ANGELO, J.

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Teodoro N. Pepito, et al. filed before the Court of First Instance of Bukidnon on January 19, 1963 a petition for quo warranto wherein they disputed the right of Lucilo Alkuino, et al. to hold the positions of mayor, vice-mayor and councilors, respectively, of the Municipality of Valencia, Province of Bukidnon (Civil Case No. 239). Vicente Cabiling, et al. also filed a similar petition of quo warranto before the same court on January 13, 1963 questioning the right of Eusebio Pabualan, et al. to hold the positions of Mayor, vice-mayor and councilors of the Municipality of Dangcagan, Province of Bukidnon (Civil Case (No. 240). And Benjamin Belisario likewise filed a quo warranto case before the same court on January 2, 1963 questioning the right of Marcelo Ramirez to hold the position of secretary of the Municipality of Valencia, Province of Bukidnon (Civil Case No. 243).

The respondents in the three cases above-mentioned filed their respective answers in due time, and upon agreement of the parties, they were tried jointly. On June 7, 1963, the court a quo, after the reception of the evidence renders decision upholding the right of petitioners therein to the positions of which they were allegedly deprived by respondents awarding to them the salaries and emoluments pertinent thereto from the date of their removal until their reinstatement, with costs against respondents.

On June 10, 1963, copies of the decision were served both upon petitioners and respondents, thru their counsel. On the same date, in the afternoon, petitioners filed an urgent motion for execution setting the hearing thereof on June 13, 1963. On June 11, 1963, respondents filed their notice of appeal in the three cases, as well as their corresponding cash bonds. Because of the appeal they interposed respondents registered their opposition to the motion for execution but, notwithstanding said opposition, the court a quo granted the motion ordering forthwith the immediate execution of the decision. In its order the court a quo stated the special reasons why in its opinion the issuance of the writ was justified. And considering that the writ of execution was null and void for the reason that it has been issued after the court had lost jurisdiction over the case, respondents interposed the present petition for certiorari.

This Court gave due course to the petition and issued the preliminary injunction prayed for without bond.

It appears that the decision of the court a quo was rendered on June 7, 1963, copies of which were served upon the parties on June 10, 1963. It also appears that on the same date, in the afternoon, petitioners therein, now respondents, filed an urgent motion for execution setting the hearing thereof on June 13, 1963. And on June 11, 1963, respondents therein, now petitioners, filed their notice of appeal in the three cases, together with the corresponding cash bonds. It is now contended that when the court a quo granted the motion for execution in its order of July 10, 1963, it no longer had jurisdiction over the case for the reason that respondents therein, now petitioners, had already filed their notice of appeal and cash bonds long before, or on June 11, 1963. In other

words, the theory of respondents, now petitioners, is that upon the filing of said notice of appeal and bonds, the appeal is deemed perfected, and consequently, the court has thereby lost its jurisdiction over the case except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal under Section 9, Rule 41, of the Rules of Court.

There is no merit in this contention: Note that the urgent motion for execution was filed on June 10, 1963, when no notice of appeal has as yet been filed on the part of the losing party. It was only on June 11, 1963, the next day, when respondents therein, now petitioners, filed their notice of appeal and cash appeal bonds. They have even filed on the same date, June 11, 1963, a motion to postpone the hearing of the motion for execution. From these facts it is clear that the court a quo could still act on the motion for execution filed on June 10, 1963 because it was filed ahead of the notice of appeal and cash bonds filed by petitioners herein. It cannot be successfully contended that the mere filing of the notice of appeal and cash bonds has the effect of nullifying the motion for execution filed one day ahead for that would sanction a precedent wherein a party to a case, by the mere filing of the notice of appeal and appeal bond, may deprive the court of its authority to act upon a motion that has already been placed within its jurisdiction. As this Court has aptly said: "To hold that, in the present case, the mere filing of the notice of appeal, and the filing or deposit of cash bond with the clerk of court has automatically deprived the trial court of its jurisdiction over this case, would be to practically nullify the discretionary power granted said court by section 2, Rule 39, to order, upon good reasons, the execution of its judgment before the expiration of the time to appeal; because in all cases the judgment debtor may, on the very day the judgment is rendered or notified to him, file notice of appeal and deposit of P60.00 as cash bond with the clerk of court." [1]

Moreover, in case of cash bond, mere deposit of the amount of P60.00 with the clerk of court is not sufficient. Notice of such deposit upon the adverse party is still necessary, as well as its submission to the court for approval, in order that the adverse party may object to the amount of the bond and the court may decide whether to approve the bond, or fix a different amount. [2] In other words, mere filing of the cash bond is not sufficient. It is still necessary that it be approved by the court. Therefore, before this is done, the appeal cannot be deemed perfected so as to deprive the court of its jurisdiction over the case.[3]

Here, it does not appear that the appeal bonds had already been approved by the court a quo when it acted on the motion for execution. The approval of the requisite appeal bonds by the Justice of the Peace of Malaybalay, Bukidnon, cannot be considered valid it appearing that the judge presiding the court a quo was not absent from his district when the alleged approval was stamped by said justice of the peace.

As to whether there are good reasons justifying the immediate execution of the decision of the court a quo, suffice it to quote hereunder what said court says on the matter:

"In the cases at bar, stronger and more compelling reasons exist than in the Mabutas versus Alzate case which involved only the position of a high school principal, to warrant immediate execution of the judgment. This Court is aware that since June, 1962 when the respondents were appointed to their respective positions, a state of confusion ensued in the municipalities concerned because two sets of municipal officials claimed to be rightfully entitled to the office and pretended to discharge its functions. In the municipality of Dangcagan two Chiefs of Police appointed by the contending Municipal Mayors performed the duties of the position, and criminal complaints had to be referred on many occasions to the constabulary before they could be filed in court. Varied official matters and transactions have been the object of wrangling and dispute between the two sets of municipal officials in the above-mentioned municipalities. The controversy in Dangcagan reached a point wherein the Provincial Commander and the Provincial Fiscal had to rush there to prevent bloodshed between the warring factions on the occasion of the transfer of the seat of government from the town proper of the barrio of Kitaotao last March, 1963. Complaints from various residents of said municipalities about whom to deal with in official matters have been brought to the attention of the Court. Further continuation of the

existing state of chaos obtaining in the above-stated municipalities pending the final disposition of these cases on appeal will aggravate the injury to the public service which could not be allowed to pass with unconcern."

Wherefore, petition is denied. The writ of injunction issued by this Court is hereby dissolved. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J.B.L, Barrera, Paredes, Dizon, Regala, and Makalintal J.J., concur.

[1] PRISCO, et., al. vs. Castelo, et. al., 48 O.G. 2193, 2195.

[2] PRISCO, et., al. vs. Castelo, et. al. supra.

[3] Espartero, et., al. vs. Hon. Juan Ladaw, et., al. G.R. No. L-5181, February 24, 1953.

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