

MARIANO A. ALBERT, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF MANILA (BR. VI), UNIVERSITY PUBLISHING CO., INC., AND JOSE M. ARUEGO, RESPONDENTS.

G.R. No. L-26364. May 29, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

This case is a veritable legal marathon. Originally docketed in 1949, within a span of 19 years, the legal dispute has come to this Court four times:

- (1) L-9300, promulgated April 18, 1958;
- (2) L-15275, promulgated October 24, 1960;
- (3) L-18350, dismissed May 17, 1961; and
- (4) L-19118, promulgated January 30, 1965 (Resolution on Defendant's Motion for Reconsideration denied on June 16, 1965).

The present petition for certiorari is the fifth. The time is long past when courts of justice must write *finis* to this case. For,

"Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies."^[1]

The factual setting necessary to a clear understanding of the instant petition for certiorari needs to be restated. Plaintiff Albert sued University Publishing Company, Inc. for breach of contract. Albert died before the case proceeded to trial, and Justo R. Albert; his estate's administrator, was substituted. Finally, defendant's liability was determined by this Court in L-15275. Plaintiff was to recover P15,000.00 with legal interest from judicial demand.

From the inception of the suit below up to the time the Judgment in L-15275 was to be executed, the corporate existence of University Publishing Company, Inc. appears to have been taken for granted, and was not then put in issue. However, when the Court of First Instance of Manila issued on July 22, 1961 an order of execution against University Publishing Company, Inc., a new problem cropped up. By virtue of this writ, plaintiff's counsel and the Sheriff of the City of Manila went to see Jose M. Aruego who signed the contract with plaintiff on behalf and as President of University Publishing Company, Inc. They then discovered that no such entity exists. A verification made at the Securities and Exchange Commission confirmed this fact. On July 31, 1961, said Commission issued a certification "that the records of this Commission do not show the registration of UNIVERSITY PUBLISHING CO., INC., either as a corporation or partnership."^[2] This triggered a verified petition in the court below on August 10, 1961 for the issuance of a writ of execution ordering the Sheriff of Manila to cause the

satisfaction of the judgment against the assets and properties of Jose M. Aruego as the real defendant in the case.

All along, Jose M. Aruego and his law firm were counsel for the University Publishing Company, Inc.

Instead of informing the lower court that it had in its possession copies of its certificate of registration, its articles of incorporation, its by-laws and all other papers material to its disputed corporate existence, University Publishing Company, Inc. chose to remain silent. On August 11, 1961, University Publishing Company, Inc., by counsel Aruego, Mamaril and Associates (the law firm of Jose M. Aruego aforesaid) merely countered plaintiff's petition for execution as against Aruego with an unsworn manifestation in court that "said Jose M. Aruego is not a party to this case," and, therefore, plaintiff's petition should be denied.[3]

Respondent court, presided over by His Honor, Judge Gaudencio Cloribel, on September 9, 1961, came up with an order, which reads thus:

"It appearing that Jose M. Aruego against whom the judgment rendered herein is sought to be enforced is not a party to this case, plaintiff's motion filed on August 10, 1961 is hereby denied."[4]

Plaintiff appealed to this Court on this sole issue: "The lower court erred in denying the plaintiff-appellant's petition praying that the Judgment rendered against the alleged corporation, the above-named defendant-appellee, be executed against the personal assets and properties of Jose M. Aruego, the real party to this case."

In an extended opinion written by Mr. Justice Jose P. Bengzon, this Court in L-19118, on January 30, 1965, resolved the issue as follows:

"The fact of non-registration of University Publishing Co., Inc. in the Securities and Exchange Commission has not been disputed. Defendant would only raise the point that 'University Publishing Co., Inc.' and not Jose M. Aruego, is the party defendant; thereby assuming that University Publishing Co., Inc. is an existing corporation with an independent juridical personality. Precisely, however, on account of the non-registration it cannot be considered a corporation, not even a corporation de facto (Hall vs. Piccio, 86 Phil. 603). It has therefore no personality separate from Jose M. Aruego; it cannot be sued independently.

"The corporation-by-estoppel doctrine has not been invoked. At any rate, the same is inapplicable here. Aruego represented a non-existent entity and induced not only the plaintiff but even the court to believe in such representation. He signed the contract as 'President' of 'University Publishing Co., Inc. stating that this was 'a corporation duly organized and existing under the laws of the Philippines, and obviously misled plaintiff (Mariano A. Albert) into believing the same. One who has induced another to act upon his willful misrepresentation that a corporation was duly organized and existing under the law, cannot thereafter set up against his victim the principle of corporation by estoppel (Salvatiera vs. Garlitos, 560 G. 3609)

"University Publishing Co., Inc. purported to come to court, answering the complaint and litigating upon the merits. But as stated, 'University Publishing Co., Inc. has no independent personality; it is just a name Jose M. Aruego was, in reality, the one who answered and litigated, through his own law firm as counsel. He was in fact, if not in name, the defendant.

"Even with regard to corporations duly organized and existing under the law, we have in many a case pierced the veil of corporate fiction to administer the ends of justice. (Arnold vs. Willits & Patterson, Ltd., 44 Phil. 634; Koppel (Phil.), Inc. vs. Yatco, 77 Phil. 496; La Campana Coffee Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana, 93 Phil. 160; Marvel Building Corporation vs. David, 94 Phil. 376; Madrigal Shipping Co., Inc. vs. Ogilvie, L-8431, Oct. 30, 1958; Laguna Transportation Co., Inc. vs. S.S.S., L-14606, April 28, 1960; McConnel vs. C.A., L-10510, Mar. 17, 1961; Liddell & Co., Inc. vs. Collector of Internal Revenue, L-9687, June 30, 1961; Pa-lacio vs. Fely Transportation Co., L-15121, August 31, 1962). And in Salvatiera vs. Garlitos, supra, p. 3073, we ruled: 'A person acting or purporting to act on behalf of a

corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent.' Had Jose M. Aruego been named as party defendant instead of, or together, with, 'University Publishing Co., Inc.' there would be no room for debate as to his personal liability. Since he was not so named, the matters of 'day in court' and 'due process' have arisen.

"In this connection, it must be realized that parties to a suit are persons who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from a decision' (67 C.J.S. 887) - and Aruego was, in reality, the person who had and exercised these rights. Clearly, then, Aruego had his day in court as the real defendant; and due process of law has been substantially observed.

"By due process of law we mean 'a law which hears before it condemns; which proceeds upon inquiry, and renders Judgment only after trial. x x x' (4 Wheaton, U.S. 518, 581); or, as this Court has said, 'Due process of law' contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property.' Lopez vs. Director of Lands, 47 Phil. 23, 32).' (Sicat vs. Reyes, 100 Phil., 505; 54 Off. Gaz. [17] 4945.) And it may not be amiss to mention here also that the 'due process' clause of the Constitution is designed to secure Justice as a living reality; not to sacrifice it by paying undue homage to formality. For substance must prevail over form, It may now be trite, but none the less apt, to quote what long ago we said in *Alonso vs. Villamor*, 16 Phil. 315, 321-322:

'A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that Justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to Justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.'

"The evidence is patently clear that Jose M. Aruego, acting as representative of a non-existent principal, was the real party to the contract sued upon; that he was the one who reaped the benefits resulting from it, so much so that partial payments of the consideration were made by him; that he violated its terms, thereby precipitating the suit in question; and that in the litigation he was the real defendant. Perforce, in line with the ends of Justice, responsibility under the judgment falls on him.

"We need hardly state that should there be persons who under the law are liable to Aruego for reimbursement or contribution with respect to the payment he makes under the judgment in question, he may, of course, proceed against them through proper remedial measures.

"PREMISES CONSIDERED, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego."

It is to be observed that even as this case was elevated to this Court in L-19118, University Publishing Company, Inc. or its president and counsel chose to withhold pertinent documents and papers in its possession and control. But when the foregoing judgment came, the University Publishing Company, Inc., in its motion for reconsideration thereof, asked that it be afforded opportunity to prove its corporate existence. It submitted with that motion for reconsideration, its certificate of registration, articles of incorporation, by-laws, and a certificate of reconstitution of records issued by the Securities and Exchange Commission, which was procured only from the Securities and Exchange Commissioner on April 1, 1965 - after the decision in L-19118 was promulgated.

Jose M. Aruego, the president and counsel of University Publishing Company, Inc., for the first time appeared in propria persona before this Court as a "member of the Philippine Bar, private citizen." He pointedly stated that he

did not submit to the jurisdiction of this Court. He wanted, though, that his side of the case be heard. He formally joined hands with University Publishing Company, Inc. on the plea of due process in his favor. He insisted that he was not a party to this litigation.

The resolution of this Court, on June 16, 1965, extensively dwelt on the due process plea of Jose M. Aruego, thus:

"It may be worth noting again that Jose M. Aruego started the negotiation which culminated in the contract between the parties, signing said contract as president of University Publishing Co., Inc. Likewise he was the one who made partial payments up to the amount of P7,000.00 for and in behalf of University Publishing Co., Inc. He also appeared not only as a witness but as lawyer, signing some pleadings or motions in defense of University Publishing Co., Inc., although in other instances it is one of his associates or member of his law firm who did so. Known is the fact that even a duly existing corporation can only move and act through natural persons. In this case it was Jose M. Aruego who moved and acted as or for University Publishing Co., Inc.

"It is elemental that the courts can only decide the merits of a given suit according to the records that are in the case. It is true that in the two previous cases decided by this Court, the first, awarding damages (L-9300), the second, clarifying the amount of P15,000.00 awarded as such (L-15275), the corporate existence of University Publishing Co., Inc., as a legal entity was merely taken for granted.

"However, when the said issue was squarely presented before the court, and University Publishing Co., Inc. chose to keep the courts in the dark by withholding pertinent documents and papers in its possession and control, perforce this Court had to decide the points raised according to the records of the case and whatever related matters necessarily included therein. Hence, as a consequence of the certification of the Securities and Exchange Commission that its records do not show the registration of University Publishing Co., Inc., either as a corporation or partnership' this Court concluded that by virtue of its non-registration it cannot be considered a corporation. We further said that it has therefore no personality separate from Jose M. Aruego and that Aruego was in reality the one who answered and litigated through his own law firm as counsel. Stated otherwise, we found that Aruego was in fact, if not in name, the defendant (Decision, P. 6). Indeed, the Judge of the court of first instance wrote in his decision thus: 'Defendant Aruego (all along the judge who pens this decision considered that the defendant here is the president of the University Publishing Co., Inc. since it was he who really made the contract with Justice Albert).' (Decision of CFI, p. 9, quoted in plaintiff-appellant's brief, p. 10). And this portion of the decision made by the court a quo was never questioned by the defendant.

"The above statement made by the court a quo in its decision compelled this Court to carefully examine the facts surrounding the dispute starting from the time of the negotiation of the business proposition, followed by the signing of the contract considered the benefits received; took into account the partial payments made, the litigation conducted, the decisions rendered and the appeals undertaken. After thus considering the facts and circumstances, keeping in mind that even with regard to corporations shown as duly registered and existing, we have in many a case pierced the veil of corporate fiction to administer the ends of justice, (Arnold vs. Willits & Patterson, Ltd. 44 Phil. 634; Koppel (Phil.), Inc. vs. Yatco, 77 Phil. 496; La Campana Coffee Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana, 93 Phil. 160; Marvel Building Corporation vs. David, 94 Phil. 376; Madrigal Shipping Co., Inc. vs. Ogilvie, L-8431, Oct. 30, 1958; Laguna Transportation Co., Inc. vs. S.S.S., 107 Phil., 833; McConnel vs. C.A., 59 Off. Gaz (250 3925; Liddell & Co., Inc. vs. Collector of Internal Revenue, L-9687, June 30, 1961; Palacio vs. Fely Transportation Co., L-15121, August 31, 1962) we held Aruego personally responsible for his acts on behalf of University Publishing Co., Inc.

"Defendant would reply that in all those cases where the Court pierced the veil of corporate fiction the officials held liable were made party defendants. As stated, defendant-appellee could not even pretend to possess corporate fiction - in view of its non-registration per the evidence -so that from the start Aruego was the real defendant. Since the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held liable as a party. Jose M. Aruego definitely had his day in court, and due process of law

was enjoyed by him as a matter of fact as revealed by the records of the case. (Decision, p. 6).

"The dispositive portion of the decision the reconsideration of which is being sought is the following; 'Premises considered, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego.'

"According to several cases a litigant is not allowed to speculate on the decision the court may render in the case. (Rodriguez vs. Treasurer of the Philippines, 45 O.G. 4457 (Resolution); Arnault vs. Nazareno, 87Phil., 29; Howden vs. Collector of Internal Revenue, L-19392, April 14, 1965). The University Publishing Co., Inc. speculated on a favorable decision based on the issue that Jose M. Aruego not being a formal party defendant in this case a writ of execution against him was not in order. It therefore preferred to suppress vital documents under its possession and control rather than to rebut the certification issued by the Securities and Exchange Commission that according to its records University Publishing Co., Inc. was not registered. If the lower court's order is sustained, collection of damages becomes problematical. If a new suit is filed against Aruego, prescription might be considered as effective defense, aside from the prospect of another ten years of pending litigation. Such are the possible reasons for adopting the position of speculation of our decision. Our ruling appeared to be unfavorable to such speculation. It was only after the receipt of the adverse decision promulgated by this Court that University Publishing Co., Inc. dis-closed its registration papers. For purposes of this case only and according to its particular facts and circumstances, we rule that in view of the late disclosure of said papers by the University Publishing Co., Inc., the same can no longer be considered at this stage of the proceedings."

And on the issue of whether or not the certificate of registra-tion, the articles of incorporation, the by-laws and the certificate of the reconstitution of the records proffered by the University Publishing Company, Inc. should be admitted, this Court, in the said resolution of the motion for reconsideration, in part, said:

"Defendant-appellee could have presented the fore-going papers before the lower court to counter the evidence of non-registration, but defendant-appellee did not do so. It could have reconstituted its records at that stage of the proceedings, instead of only on April 1, 1965, after decision herein was promulgated.

x x x x

"As far as this case is concerned, therefore, University Publishing Co., Inc. must be deemed as unregistered, since by defendant-appellee's choice the record shows it to be so. Defendant-appellee apparently sought to delay the execution by remain-ing unregistered per the certification of the Securities and Exchange Commission. It was only when execu-tion was to be carried out, anyway, against it and/or its president - and almost 19 years after the approval of the law authorizing reconstitution - that it reconstituted its records to show its registration, thereby once more attempting to delay the payment of plaintiff's claim, long since adjudged meritorious. Deciding, therefore, as we must, this particular case on its record as sub-mitted by the parties, defendant-appellee's proffered evidence of its corporate existence cannot at this stage be considered to alter the decision reached herein. This is not to preclude in future cases the consideration of properly submitted evidence as to defendant-appellee's corporate existence.

"WHEREFORE, the motion for reconsideration and for leave to file original papers not in the record, is hereby denied."

Armed with the aforementioned decision and resolution of this Court in L-19118, petitioner returned to the lower court on July 2 8, 1965 with a motion for execution and approval of the bill of costs and asking specifically for the issuance of the corresponding writ against Aruego to satisfy the judgment.

On July 30, 1965, Aruego moved to intervene with an opposition in intervention to the motion for execution. Alleging that the Judg-ment of this Court in L-19118 dated January 30, 1965, which reads: -

"PREMISES CONSIDERED, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the Judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego,"

should be construed in the sense that "the supplementary proceedings mentioned in the aforequoted dispositive portion of the Supreme Court Decision means no other than a proceeding to show cause why the Judgment should be carried into effect against either the University Publishing Co., Inc. and/or Jose M. Aruego, as the case may be" and that until such supplementary proceedings was had petitioner could not ask for the execution of the Judgment against Jose M. Aruego as a matter of course, Aruego falls back on his averment (made in his manifestation already ruled out by this Court in L-19118) that he had never been a party to the case and that the judgment sought to be executed was solely against University Publishing Company, Inc.

On February 21, 1966, Judge Gaudencio Cloribel, upon consideration of this motion for execution and for approval of the bill of costs, the opposition thereto by Aruego, and the reply to the opposition, granted the motion for execution and directed that a writ of execution "be issued accordingly".

Aruego came back with a motion for reconsideration, adamant in his resolve that he would not pay as he was not a party to the suit. This was opposed by plaintiff.

On March 5, 1966, Judge Gaudencio Cloribel reconsidered his order of February 21, 1966, and denied the motion for a writ of execution against Jose M. Aruego - upon the ground that "said Jose M. Aruego has never been a party to the case and that the judgment sought to be executed is not against him."

On April 4, 1966, it was petitioner's turn to file a motion for reconsideration for the reason that the question of whether or not an order of execution could issue against Aruego had already been resolved by this Court in its final judgment in L-19118.

On April 20, 1966, Jose M. Aruego opposed the motion for reconsideration and prayed for supplementary proceedings to allow him as intervenor to present evidence in support thereof, alleging that the execution of the judgment against him was not sanctioned by law and procedure and that had intervenor been impleaded or given his day in court, he could have easily proven the legitimate and due existence of the University Publishing Company, Inc. as a bona fide corporation. He attached thereto the very same articles of incorporation, certificate of registration, by-laws and certificate of the Securities and Exchange Commission in the reconstitution of its records - documents which were rejected by this Court in its resolution of June 16, 1965 in L-19118.

On April 28, 1966, petitioner filed his reply to Aruego's opposition upon the ground that these are matters concluded in the decision and resolution of this Court, and that respondent court cannot admit said documents without going against this Court's clear mandate.

Resolution on plaintiff's motion for reconsideration was, by Judge Gaudencio Cloribel's order of May 20, 1966, held in abeyance until the termination of the supplementary proceedings, which the court thereupon granted, to allow Aruego to present evidence in support of his opposition to the motion for reconsideration.

On May 28, 1966, Aruego presented in evidence the documents heretofore mentioned, and in addition, the certificate dated February 17, 1965 signed by a majority of the directors of the University Publishing Company, Inc. declaring that the corporation still exists and that the articles of incorporation have not been amended or modified.

On July 13, 1966, notwithstanding plaintiff's opposition to the admission of the documents just mentioned, and his claim that the matter involved in the execution had long been finished and decided by this Court, Judge Gaudencio Cloribel denied plaintiff's motion for execution.

Hence, this petition for a writ of certiorari and mandamus.

1. When this case was elevated to this Court for the fourth time in L-19118, we made it abundantly clear in the decision therein rendered and in the resolution issued thereafter, that the judgment rendered against University Publishing Company, Inc. could and should be enforced against respondent Jose M. Aruego. Our language in the dispositive portion is clear. It reads:

"PREMISES CONSIDERED, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the Judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego."

The judgment does not contemplate of any proceeding other than for the purpose of carrying into effect the judgment against University Publishing Company, Inc. and/or Jose M. Aruego - which is the proceeding on execution. It does not admit of any other interpretation such as that which is advocated by Aruego that such proceeding "is to show cause why the judgment should be carried into effect against either the University Publishing Co., Inc. and/or Jose M. Aruego." Indeed, the issue of whether or not the judgment rendered against University Publishing Company, Inc. could be enforced against Jose M. Aruego had already been definitely decided in that case, L-19118. Even worse, all the arguments and evidence presented by Aruego before the respondent court resulting in the orders that gave rise to the present proceedings had been previously adduced before this Court and decided adversely against him in the January decision and the June resolution of 1965 in L-19118. There can be no clearer case for the principle of conclusiveness of judgment to apply. Thus, in certiorari and prohibition proceedings brought by the Manila Underwriters Insurance Co., Inc. against Judge Bienvenido A. Tan, L-17445, November 27, 1964, this Court ruled:

"On August 15, 1960, respondent Borja filed another motion in the same case asking the court to require petitioner again to show cause why it should not be made liable under its bond, and thereafter to issue a writ of execution against it. Petitioner opposed the motion on the ground that our decision in 107 Phil., 911; had finally disposed of the issue raised therein. Despite this, the respondent judge, on August 30, 1960 issued an order citing petitioner to appear before it and show cause why it should not be held liable under its bond, and on September 10 of the same year, his honor also denied petitioner's motion for reconsideration of said order. Thereupon, the present action was filed.

"Upon the undisputed facts stated heretofore, it appears abundantly clear that the respondent judge seriously erred in issuing the orders complained of. The question of whether petitioner could still be held liable upon its bond must be deemed finally settled by our decision in 107 Phil., 911; and any attempt to hold petitioner liable upon the bond already mentioned must necessarily be deemed as an improper attempt to reopen a case already finally adjudicated.

"WHEREFORE, the orders complained of are hereby declared void and of no legal force and effect. The writ of preliminary injunction issued in this case on October 26, 1960 is hereby made final. Costs against respondent Borja."

The liability of Aruego has been established so plainly in the decision and resolution in L-19118 that there could not be any quibbling as to the import of the words there used. Case L-19118 was brought into being because precisely Judge Cloribel ruled that execution could not be issued against Jose M. Aruego upon the ground, so he said in his appealed order, that Aruego was not a party to the action. This Court there reversed Judge Gaudencio Cloribel.

In the circumstances of this case, we are constrained to articulate a number of possibilities: that judge Gaudencio Cloribel either (1) did not read our decision in L-19118, January 30, 1965, and our resolution in the same case promulgated on June 16, 1965; or (2) having read, did not comprehend their import; or (3) having read and

understood, wantonly ignored them. It is the thinking of this Court, however, that Judge Gaudencio Cloribel simply shunted aside our said decision and resolution. He could not have overlooked the fact that it was his own order of September 9, 1961 denying execution - because Aruego is not a party to this case - which was appealed to this Court. That very question of whether execution should issue against Aruego was squarely presented and as squarely resolved in the affirmative by this Court in L-19118. That Judge Gaudencio Cloribel should have insisted in his opinion after his attention to this Court's decision and resolution adverse thereto had been repeatedly called by plaintiff, is an act which deserves unsympathetic and unqualified condemnation.

Judge Gaudencio Cloribel need not be reminded that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any Justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5] Judge Gaudencio Cloribel should have known that "[a] becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated Judicial system of the nation." [6]

So it is, that in *Martiniano P. Vivo vs. Hon. Gaudencio Cloribel, et al* 64 Off. Gaz. (29) 7328; (18 Supreme Court Reports Anno. 713, 726), this Court stressed the need for trial Judges to take cognizance of the rulings of the Supreme Court. We there reproduced the following from *People vs. Santos*, 56 O.G. 3546, 3552-3553, viz.:

"Now, if a Judge of a lower Court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by this Superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views he must first think that it is his duty to apply the law as interpreted by the Highest Court of the Land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. And if despite of what is here said, a judge, still believes that he cannot follow Our rulings, then he has no other alternative than to place himself in the position that he could properly avoid the duty of having to render Judgment on the case concerned (Art. 9, C.C.), and he has only one legal way to do that." [7]

We rule that because of the foregoing circumstances, Judge Gaudencio Cloribel acted with grave abuse of discretion and certiorari lies.[8]

2. We now come to the cry of injustice proffered by respondent Jose M. Aruego. Even upon a cursory examination of his gripe, his position at once loses leverage; the potency of his arguments vanishes.

As we look in retrospect at the facts, we find that it was Aruego who executed the contract as president of the University Publishing Company, Inc. He is a lawyer. At the time he executed the contract with plaintiff, he should have known that the possibility existed that the records of the corporation had been destroyed. For, it is a matter of public knowledge that buildings which kept public records in the City of Manila had been razed by fire during the last war. He should have at least inquired whether the records of the corporation in the Securities and Exchange Commission had been saved. Of course, he knew and should have known that persons dealing with corporations are wont to look to records of the Securities and Exchange Commission for the existence or non-existence thereof. In this particular case, from the documents he himself presented in the court below (after he had knowledge of the fact that admission thereof was denied by this Court in L-19118), he is practically the corporation itself. Because out of the capital stock of P2,000.00, he subscribed to P1,600.00, and out of the paid subscription of P500.00, he contributed the sum of P450.00, leaving but P50.00 to be spread amongst the minor stockholders.

This case was filed and concluded as against the corporation. When finally, plaintiff's counsel and the Sheriff came to him as president (and incidentally counsel) of University Publishing Company, Inc. for execution of that judgment, he sought to stave off satisfaction thereof. Then, plaintiff's counsel and the Sheriff came to know that

the corporation did not legally exist. Aruego could have very easily caused the corporation to pay. Or did he think that the corporation could evade payment, since the records of the corporation in the Securities and Exchange Commission had not yet been reconstituted? The resultant effect is that after long years of litigation, plaintiff is still left holding the bag. As this Court noted in L-19118, it would be too late for the plaintiff to file suit against Aruego personally. For, by then prescription has set in.

Canon 22 of the Canons of Legal Ethics is a constant reminder to the members of the Bar that the conduct of a lawyer before the court "should be characterized by candor and fairness"; and it is "unprofessional and dishonorable to deal other than candidly with the facts x x x in the presentation of causes." When the question of whether execution should issue against Jose M. Aruego, a (member of the Bar, did emerge before the lower court in the proceedings for execution of the judgment, candor and fairness should have impelled him to tell the court that the representation of counsel for plaintiff that University Publishing Company, Inc. is not a corporation, was not true, and that the corporation had the papers and documents to show otherwise. He should not have kept this fact under wraps for so long a time while the execution proceedings were still with the lower court and before judgment on the appeal taken by plaintiff in L-19118. He has failed in these. Literally, he laid an ambush. It was only after he realized that this Court considered him as the real party in interest that he presented the fact of corporate existence to this Court to overturn the decision rendered in L-19118. Where a party "has taken a position with regard to procedure, which has been acted or relied on by his adversary or by the court," he must be held to be in estoppel "from taking an inconsistent position respecting the same matter in the same proceeding, to his adversary's prejudice." [9]

This is not the first time that this Court has ordered the execution of a judgment against a person who was not formally named as party defendant in the action. In a series of cases, substantial in number, [10] this Court's stand has been consistent that the judgment for payment of back salaries of officers entitled to reinstatement may, in effect, be enforced against the city or municipality, although not by name impleaded in the suit. Reasons therefor are concretely expressed in *Mangubat vs. Osmeña*, supra, in this wise:

"The necessity of making the City a respondent herein is based upon its right to defend itself, as demanded by the requirements of due process. However, these requirements have been substantially complied with in the case at bar. The parties herein have handled the case, and the same was heard and decided in the lower court, as if the City had been named respondent in the pleadings. The officer required by law to cause 'to be defended all suits against the City', namely, its mayor (Sec. 8, Commonwealth Act No. 58), is respondent in his official capacity. The officer charged with the duty to represent the City 'in all civil cases wherein the city x x x is a party' - to wit, its city attorney (Sec. 17, Commonwealth Act No. 58) - is counsel for respondents herein. In addition thereto, the auditor, the treasurer and even the municipal board of the City of Cebu, are parties respondents.

"There is no reason to believe that these officers and the City Mayor would have exerted greater efforts than those already displayed by them, in protecting the interests of the City of Cebu, were it formally a respondent 'herein. Indeed, it is only logical to expect that, having been individually named as respondents, said officers must have taken as much concern, if not more, in warding off petitioners' claim. Under the foregoing circumstances, we would be subordinating the substance to the form if the action for mandamus - insofar as the claim for back salaries is concerned - were either dismissed or remanded to the lower court, for the corresponding amendment of the pleadings and a repetition of the proceedings held for the last five (5) years, in order to reach the same decision rendered by the lower court and the same conclusions set forth in this decision, as regards the substantive rights of the parties. It is our considered opinion, therefore, that the ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment of the pleadings had been made."

A recent case, whose factual situation has great relevance to the present, is *Torres vs. Caluaq*, 64 Off. Gaz., (6) 1296. There, petitioner Torres was not a party defendant in a suit to recover possession of land instituted against defendant Conocido who declared that he was a mere tenant of Torres. Judgment was rendered against Conocido, and a writ of execution was issued ejecting Torres from the property. On writ of certiorari and prohibition to this Court to nullify the writ of execution aforesaid, we pronounced that when petitioner Torres testified in the court below, she had her day in court and had laid squarely before said court the issue of ownership. We then explicitly stated that the fact that petitioner was not formally made a party defendant is a mere technicality that does not serve the interest of justice.

In the end, we find it pertinent to quote from the early case of *Herrera vs. Barretto*, 25 Phil. 245, 271, thus:

"x x x The office of the writ of certiorari has been reduced to the correction of defects of Jurisdiction solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases - cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of certiorari is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it."

FOR THE REASONS GIVEN, the petition for certiorari and mandamus prayed for herein is hereby granted; and

(a) the orders of Judge Gaudencio Cloribel of March 5, May 20, and July 13, 1966 are hereby set aside and declared null and void; and

(b) The Court a quo is hereby directed forthwith to issue a writ of execution against respondent University Publishing Com-pany, Inc. and/or Jose M. Aruego.

Treble costs shall be paid by respondent Jose M. Aruego.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] *Dy Cay vs. Crossfield & O'Brien*, 38 Phil. 521, 526.

[2] Record on Appeal in G. R. No. L-19118, pp. 5-6.

[3] Record on Appeal in G. R. No. L-19118, pp. 6-8.

[4] Record on Appeal in L-19118, pp. 8-9.

[5] *People vs. Aquino*, L-1857, January 19, 1949.

[6] Laurel, J. in *People vs. Vera*, 65 Phil. 56, 82.

[7] At p. 726.

[8] Where the lower court alters or modifies its decision which has become final and executory (*Henderson vs. Tan*, 87 Phil. 466; *Jabon vs. Alo*, 91 Phil. 750; *Villoria vs. Piccio*, 95 Phil. 802; *Aurelio vs. First National Surety & Ass. Co.*, 102 Phil. 714; *Samson vs. Montejo*, L-18605, October 31, 1963; *Socco vs. Vda. de Leary*, L-19461, October 31, 1964; *Ocampo vs. Caluag*, L-21113, April 27, 1967), or the decision of an appellate court (*Doliente vs. Blanco*, 87 Phil. 670; *Manila Underwriters Insurance Co., Inc. vs. Tan*, supra; *Republic vs. Angeles*, L-2 6112,

June 30, 1967), certiorari lies.

[9] 31 C.J.S., p. 380.

[10] *Mission vs. del Rosario*, 94 Phil. 483; *Abella vs. Rodriguez*, 95 Phil. 289; *Uy vs. Rodriguez*, 95 Phil. 493; *Meneses vs. Lacson*, 97 Phil. 857; *Mangubat vs. Osmeña*, L-12837, April 30, 1959; *City of Cebu vs. Piccio*, L-14876, Dec. 31, 1960; *Arcel vs. Osmeña*, L-14956, Feb. 27, 1961; *Sison vs. Pajo*, L-18443, May 31, 1965.

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