

**GOVERNMENT OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
MOISES SONGCUYA AND ISIDRO LABRADOR,
DEFENDANTS-APPELLEES.**

G.R. No. L-18981. May 16, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal by the Government of the Philippines from the order of the Court of First Instance of Cotabato dismissing its amended complaint in Civil Case No. 699 against Moises Songcuya and Isidro Labrador, on the ground of failure to prosecute, without special pronouncement as to costs.

The action filed by appellant on March 24, 1954 was for the recovery of the sum of 24,224.30, representing the total amount of eleven (11) War Damage checks drawn on the National City Bank of New York (Manila Branch) in favor of Sabel Bankono and 10 other persons which appellees Labrador and Songcuya "endorsed x x x to the plaintiff Government of the Philippines" (Record on Appeal p. 12). When the latter presented the 11 checks to the drawee bank, the latter refused payment. Whereupon appellant gave the corresponding notice of dishonor to both appellees who refused payment.

In their separate answers appellees disclaimed liability and as special defense alleged that, as bonded postmaster and money order clerk, respectively, they were authorized under an unnumbered circular of the Bureau of Posts dated January 26, 1948 to pay the checks of war damage claimants, and that other indorsers of said checks were not impleaded. The case was called for trial on October 10, 1955 but as both defendants asked for postponement without opposition on the part of the provincial fiscal of Cotabato, the trial was postponed "until further assignment".

It was only on August 20, 1959 that the case was again called for trial, but as the Director of Posts or his representative failed to appear, the provincial fiscal of Cotabato was constrained to move, in open court, for postponement. On the same date, however, the trial court denied the motion and dismissed the case on the ground of appellant's failure to prosecute the case with diligence. On the same day - in fact, a few hours after the dismissal of the case, the provincial fiscal of Cotabato filed a motion for reconsideration alleging that the denied motion for postponement was his first request for postponement and also attached to his motion for reconsideration a copy of a telegram from the Bureau of Posts Inspector Policarpio Baguio, one of the witnesses for appellant, stationed in Bacolod, Negros Occidental stating that he was unable to appear for lack of transportation but that he would arrive on August 24.

Appellees objected to the motion for reconsideration alleging that sufficient time and notice had been given to Inspector Baguio to enable him to appear on the date of the trial, and alleging furthermore that it was not shown that his testimony was material to the case.

On November 20, 1959 the trial court not only denied the motion for reconsideration but in its order stated *inter alia* the following:

"The Court can not overlook the fact that the checks mentioned in the complaint and which were paid by the defendant, were all signed by witnesses who not only identified the payee but also guaranteed their payment. Everything was done in the ordinary course of business."

From the order of dismissal the Government appealed to the Court of Appeals. As the only issue involved is a question of law, the latter certified the case to Us pursuant to Sec. 31 in relation to Sec. 17 (6) of Act No. 296, as amended.

The record sufficiently shows that counsel for appellant was constrained to ask for the postponement of the trial set for August 20, 1959, not only because of the failure of the Director of Posts or his representative to appear and testify on that date, but also because other witnesses for the government were not served with the subpoenas issued by the trial court. Moreover, it appears that the failure of Post Office Inspector Policarpio Baguio to appear was due to lack of transportation from the place where he was officially assigned on duty to the place of trial, for which reason he sent the telegram mentioned heretofore. Lastly, the statement made by the trial judge in his order denying appellant's motion for reconsideration quoted above seems to be improper as, without due trial, he appears to have prejudged the merits of the complaint.

It can not be denied, of course, that there was failure on the part of appellant to show sufficient interest in the prosecution of its case because it allowed four years to elapse from the first date of trial before securing another assignment of date. Considering, however, the possibility that court sessions in the jurisdiction where the case was pending were not continuous - for which reason the Court itself seems to have forgotten the case all together - and considering likewise the fact that appellees had also shown lack of interest in having the case tried and disposed of, We feel that, in equity, the order of dismissal - which by its terms would amount to a dismissal on the merits - should not be allowed to stand to the prejudice of the claim of the appellant entity.

WHEREFORE, the appealed order is reversed and set aside, and the case is remanded below for the corresponding proceedings.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

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