

**RE: LETTER COMPLAINT OF MERLITA B. FABIANA AGAINST
PRESIDING JUSTICE ANDRES B. REYES, JR., ASSOCIATE JUSTICES
ISAIAS P. DICDICAN AND STEPHEN C. CRUZ; CARAG JAMORA
SOMERA AND VIL...**

A.M. No. CA-13-51-J. July 02, 2013

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This administrative matter stems from the claim for death benefits by the heirs of the late Marlon Fabiana (heirs of Fabiana) against manning agent Magsaysay Maritime Corporation and its principal Air Sea Holiday GMBH-Stable Organizations Italia.

Complainant Merlita B. Fabiana, Marlon's surviving spouse, hereby accuses Court of Appeals (CA) Presiding Justice Andres B. Reyes, Jr., Associate Justice Isaias P. Dicdican and Associate Justice Stephen C. Cruz, as the former Members of the CA's First Division, of having openly defied the resolution promulgated by the Court on January 13, 2010 in G.R. No. 189726 entitled Heirs of the Late Marlon A. Fabiana, [herein represented by Merlita B. Fabiana] v. Magsaysay Maritime Corp., et al., whereby the Court had allegedly "fixed with finality complainant's claims for death benefits and other monetary claims, including damages and attorney's fees, against the Maritime Company arising from the death of her husband." [1]

The relevant antecedents follow.

On December 19, 2007, the Labor Arbiter granted the following claims to the heirs of Fabiana, to wit:

WHEREFORE, considering all the foregoing premises, respondents are liable to pay the following to the complainants:

- US \$82,500.00 death benefits to complainant Merlita B. Fabiana;
- US \$16,500.00 to complainant Jomari Paul B. Fabiana;
- Salary differentials from July 17, 2006 to April 23, 2007 computed at US \$1,038 deducting the US \$424.00 monthly salaries already paid by the respondents;
- The difference of 1,500.00 Euro contributed by fellow Filipino seafarer and US \$1,000 remitted by respondents computed at the rate of exchange at the time of payment;
- Sick benefits from April 23, 2007 to May 11, 2007 computed at US \$1,038.00 monthly salary rate;
- US \$331.00 guaranteed overtime pay;
- P7,574.00 actual damages;
- P100,000.00 for moral damages;

- P1,000,000.00 exemplary damages;
- Ten percent (10%) attorney's fees computed on the total awards.[2]

On December 10, 2008, the National Labor Relations Commission (NLRC) rendered its decision,[3] disposing:

WHEREFORE, foregoing premises considered, the appeal is MODIFIED in the sense that the award of moral and exemplary damages are reduced to P50,000.00 each while the other awards are AFFIRMED.

SO ORDERED.

The parties then separately brought their respective petitions for certiorari to the CA, specifically:

(a)

C.A.-G.R. SP No. 109382 entitled Heirs of the late Marlon A. Fabiana, herein represented by Merlita B. Fabiana v. National Labor Relations Commission, Magsaysay Maritime Corporation and Air Sea Holiday GMBH-Stab[i]le Organizations Italia (Hotel), assailing the jurisdiction of the NLRC in entertaining the appeal of Magsaysay Maritime Corporation and its principal, and seeking the reinstatement of the moral and exemplary damages as awarded by the Labor Arbiter (first petition);[4] and

(b)

C.A.-G.R. SP No. 109699 entitled Magsaysay Maritime Corporation, Eduardo Manese, Prudential Guarantee (Surety), and Air Sea Holiday GMBH-Stable Organizations, Italia v. Heirs of the late Marlon Fabiana, and National Labor Relations Commission challenging the propriety of the monetary awards granted to the heirs of Fabiana (second petition).[5]

In the second petition, the petitioners averred that the late Marlon Fabiana had died from a non-work related disease after his employment contract had terminated.

On August 20, 2009, when the heirs of Fabiana filed their comment vis-à-vis the second petition, they sought the consolidation of the two petitions. Their request for consolidation was not acted upon, however, but was soon mooted a month later by the First Division of the CA promulgating its decision on the first petition (C.A.-G.R. No. 109382) on September 29, 2009,[6] to wit:

WHEREFORE, premises considered, the petition is partly GRANTED. Accordingly, the challenged Decision is AFFIRMED but MODIFIED insofar as interest at the rate of six percent per annum (6% p.a.) is imposed on all the monetary awards, reckoned from the Labor Arbiter's judgment on 19 December 2007, except moral and exemplary damages to which the same rate of interest is imposed, but reckoned from the time the aforementioned decision was promulgated on 10 December 2008 by the NLRC Sixth Division. An additional interest of twelve percent per annum (12% p.a.) is applied on the total amount ultimately awarded upon finality of the decision until fully paid.

The petitioners' motion for preliminary mandatory injunction is deemed resolved by this decision.

IT IS SO ORDERED.

Magsaysay Maritime Corporation filed on October 25, 2009 a motion for clarification in C.A.-G.R. No. 109382 instead of a motion for reconsideration.[7] In response, the CA issued its clarification on November 26, 2009 by stating that the "affirmance with modification" was but the "consequence of the certiorari petition being merely 'partially granted.'"[8]

On their part, the heirs of Fabiana filed a motion for reconsideration in C.A.-G.R. No. 109382, which the CA denied. Hence, on November 23, 2009, they appealed to the Court by petition for review on certiorari (G.R. No.

189726). However, the Court, through the Third Division,[9] denied the petition for review on certiorari through the resolution of January 13, 2010,[10] quoted as follows:

Acting on the petition for review on certiorari assailing the Decision dated 29 September 2009 of the Court of Appeals in CA-G.R. SP No. 109382, the Court resolves to DENY the petition for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction.

A careful consideration of the petition indicates a failure of the petitioners to show any cogent reason why the actions of the Labor Arbiter, the National Labor Relations Commission and the Court of Appeals which have passed upon the same issue should be reversed. Petitioners failed to show that their factual findings are not based on substantial evidence or that their decisions are contrary to applicable law and jurisprudence.

SO ORDERED.

In the meanwhile, on October 16, 2009, the heirs of Fabiana moved to dismiss the second petition (C.A.-G.R. SP. No. 109699) on the ground that the intervening promulgation on September 29, 2009 by the First Division of the decision on the first petition (C.A.-G.R. No. 109382) had rendered the second petition moot and academic.[11]

On June 4, 2010, however, the First Division of the CA, then comprised by Presiding Justice Reyes, Jr., Associate Justice Dicdican (ponente) and Associate Justice Cruz, denied the motion to dismiss filed in C.A.-G.R. SP. No. 109699,[12] holding thusly:

This has reference to the motion filed by the private respondents, through their counsel, to dismiss the petition in the case at bench on the ground that it has been rendered moot and academic by the decision promulgated on September 29, 2009 by this Court in CA-G.R. SP No. 109382.

After a judicious scrutiny of the whole matter, we find the said motion to dismiss to be wanting in merit. It is not true that the petition in this case has been rendered moot and academic by the decision promulgated by this Court on September 29, 2009 in CA-G.R. SP No. 109382. The said decision rendered by this Court passed upon two limited issues only, namely, the NLRC's jurisdiction to allow the petitioners' appeal thereto despite flaws in their verification and non-forum shopping papers and the propriety of the reduction by the NLRC of the amount of damages awarded to the private respondents. A reading of the said decision will unmistakably bear this out. However, in the case at bench, the petitioners have assailed omnibously the NLRC's awards in favor of the private respondents for death benefits, sickness allowance, salary differentials and other monetary claims. We have to pass upon the propriety of all these monetary awards.

WHEREFORE, in view of the foregoing premises, we hereby DENY the aforementioned motion to dismiss filed in this case.

We hereby give the parties a fresh period of fifteen (15) days from notice hereof within which to file memoranda in support of their respective sides of the case.

SO ORDERED.

The second petition (C.A.-G.R. SP. No. 109699) was ultimately resolved on September 16, 2011 by the Sixth Division of the CA, composed of Associate Justice Amelita G. Tolentino, Associate Justice Normandie B. Pizarro (ponente) and Associate Justice Rodil V. Zalameda, dismissing the petition upon not finding the NLRC to have gravely abused its discretion.

As earlier adverted to, the complainant accuses Presiding Justice Reyes, Jr., Associate Justice Dicdican and Associate Justice Cruz with thereby willfully disobeying the resolution of January 13, 2010 promulgated by the Court.

The complaint lacks merit.

In administrative proceedings, the burden of substantiating the charges falls on the complainant who must prove her allegations in the complaint by substantial evidence.[13] Here, the allegation of willful disobedience against respondent CA Justices was unsubstantiated and baseless. The issues raised in the first petition (C.A.-G.R. No. 109382) were limited to the NLRC's jurisdiction over the appeal by Magsaysay Maritime Corporation and its principal, and to the reduction of the amounts awarded as moral and exemplary damages. In contrast, the second petition (C.A.-G.R. SP. No. 109699) concerned only the propriety of awarding monetary benefits. Under the circumstances, the promulgation by the Court of the resolution of January 13, 2010 in G.R. No. 189726 did not divest the respondents as members of the First Division of the CA of the jurisdiction to entertain and pass upon the second petition (C.A.-G.R. SP. No. 109699), something that they sought to explain through their resolution promulgated on June 4, 2010. The explanation, whether correct or not, was issued in the exercise of judicial discretion. It is not for us to say now in a resolution of this administrative complaint whether the explanation was appropriate or not, nor for the complainant to herself hold them in error. The recourse open to the heirs of Fabiana, including the complainant, was to move for the correction of the resolution, if they disagreed with it, and, should their motion be denied, to assail the denial in this Court through the remedy warranted under the law.

The complainant's initiation of her complaint would take respondent Justices to task for their regular performance of their office. Yet, as the surviving spouse of the late-lamented Marlon, she was understandably desirous of the most favorable and quickest outcome for the claim for death benefits because his intervening demise had rendered her and her family bereft of his support. Regardless of how commendable were her motives for initiating this administrative complaint, however, she could not substitute a proper judicial remedy not taken with an improper administrative denunciation of the Justices she has hereby charged. That is impermissible. If she felt aggrieved at all, she should have resorted to the available proper judicial remedy, and exhausted it, instead of resorting to the unworthy disciplinary charge.

Truly, disciplinary proceedings and criminal actions brought against any Judge or Justice in relation to the performance of official functions are neither complementary to nor suppletory of appropriate judicial remedies, nor a substitute for such remedies.[14] The Court has fittingly explained why in *In Re: Joaquin T. Borromeo*,[15] to wit:

Given the nature of the judicial function, the power vested by the Constitution in the Supreme Court and the lower courts established by law, the question submits to only one answer: the administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof.

Simple reflection will make this proposition amply clear, and demonstrate that any contrary postulation can have only intolerable legal implications. Allowing a party who feels aggrieved by a judicial order or decision not yet final and executory to mount an administrative, civil or criminal prosecution for unjust judgment against the issuing judge would, at a minimum and as an indispensable first step, confer the prosecutor (Ombudsman) with an incongruous function pertaining, not to him, but to the courts: the determination of whether the questioned disposition is erroneous in its findings of fact or conclusions of law, or both. If he does proceed despite that impediment, whatever determination he makes could well set off a proliferation of administrative or criminal litigation, a possibility hereafter more fully explored.

Such actions are impermissible and cannot prosper. It is not, as already pointed out, within the power of public prosecutors, or the Ombudsman or his deputies, directly or vicariously, to review judgments or final orders or resolutions of the Courts of the land. The power of review—by appeal or special civil action—is not only lodged exclusively in the Courts themselves but must be exercised in accordance with a well-defined and long established hierarchy, and long standing processes and procedures. No other review is allowed; otherwise

litigation would be interminable, and vexatiously repetitive.

Moreover, in Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of FH-Gymn Multi-Purpose and Transport Service Cooperative, against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals,[16] the Court ruminates:

In this regard, we reiterate that a judge's failure to correctly interpret the law or to properly appreciate the evidence presented does not necessarily incur administrative liability, for to hold him administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, will be nothing short of harassment and will make his position doubly unbearable. His judicial office will then be rendered untenable, because no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment. Administrative sanction and criminal liability should be visited on him only when the error is so gross, deliberate and malicious, or is committed with evident bad faith, or only in clear cases of violations by him of the standards and norms of propriety and good behavior prescribed by law and the rules of procedure, or fixed and defined by pertinent jurisprudence.

To be clear, although we do not shirk from the responsibility of imposing discipline on the erring Judges or Justices and employees of the Judiciary, we shall not hesitate to shield them from baseless charges that only serve to disrupt rather than promote the orderly administration of justice.[17]

Even as we dismiss the administrative charge, we deem it necessary to observe further, in the exercise of our administrative supervision over the CA, that the matter addressed here was really simple and avoidable if only the CA had promptly implemented its current procedure for the consolidation of petitions or proceedings relating to or arising from the same controversies. Section 3(a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, viz:

Section 3. Consolidation of Cases. – When related cases are assigned to different justices, they shall be consolidated and assigned to one Justice.

(a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any or the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law. (Emphases supplied)

x x x x

A perusal of the two petitions showed that they involved the same parties and the same facts. Even their issues of law, albeit not entirely identical, were closely related to one another. It could not also be denied that they assailed the same decision of the NLRC. For these reasons alone, the request for consolidation by the heirs of Fabiana should have been granted, and the two petitions consolidated in the same Division of the CA.

The consolidation of two or more actions is authorized where the cases arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction and that consolidation will not give one party an undue advantage or that consolidation will not prejudice the substantial rights of any of the parties.[18] As to parties, their substantial identity will suffice. Substantial identity of parties exists when there is a community of interest or privity of interest between a party in the first case and a party in the second, even if the latter has not been impleaded in the first case.[19] As to issues, what is required is mere identity of issues where the parties, although not identical, present conflicting claims.[20] The justification for consolidation is to prevent a judge from deciding identical issues presented in the case assigned to him in a manner that will prejudice another judge from deciding a similar case before him.

We are perplexed why the CA did not act on and grant the request for consolidation filed on August 20, 2009 by

the heirs of Fabiana. In fact, the consolidation should have been required as a matter of course even without any of the parties seeking the consolidation of the petitions, considering that the two cases rested on the same set of facts, and involved claims arising from the death of the late Marlon Fabiana.

It is true that under the Rules of Court,[21] the consolidation of cases for trial is permissive and a matter of judicial discretion.[22] This is because trials held in the first instance require the attendance of the parties, their respective counsel and their witnesses, a task that surely entails an expense that can multiply if there are several proceedings upon the same issues involving the same parties. At the trial stage, the avoidance of unnecessary expenses and undue vexation to the parties is the primary objective of consolidation of cases.[23] But the permissiveness of consolidation does not carry over to the appellate stage where the primary objective is less the avoidance of unnecessary expenses and undue vexation than it is the ideal realization of the dual function of all appellate adjudications. The dual function is expounded thuswise:

An appellate court serves a dual function. The first is the review for correctness function, whereby the case is reviewed on appeal to assure that substantial justice has been done. The second is the institutional function, which refers to the progressive development of the law for general application in the judicial system.

Differently stated, the review for correctness function is concerned with the justice of the particular case while the institutional function is concerned with the articulation and application of constitutional principles, the authoritative interpretation of statutes, and the formulation of policy within the proper sphere of the judicial function.

The duality also relates to the dual function of all adjudication in the common law system. The first pertains to the doctrine of *res judicata*, which decides the case and settles the controversy; the second is the doctrine of *stare decisis*, which pertains to the precedential value of the case which assists in deciding future similar cases by the application of the rule or principle derived from the earlier case.

With each level of the appellate structure, the review for correctness function diminishes and the institutional function, which concerns itself with uniformity of judicial administration and the progressive development of the law, increases.[24]

In the appellate stage, therefore, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Such consolidation should be made regardless of whether or not the parties or any of them requests it. A mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice.

In this connection, the Court reminds all attorneys appearing as counsel for the initiating parties of their direct responsibility to give prompt notice of any related cases pending in the courts, and to move for the consolidation of such related cases in the proper courts. This responsibility proceeds from their express undertakings in the certifications against forum-shopping that accompany their initiatory pleadings pursuant to Section 5 of Rule 7 and related rules in the Rules of Court, to the effect that they have not theretofore commenced any actions or filed any claims involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of their knowledge, no such other actions or claims are pending therein; that if there were such other pending actions or claims, to render complete statements of the present status thereof; and if they should thereafter learn that the same or similar actions or claims have been filed or are pending, they shall report that fact within five days therefrom to the courts wherein the said complaints or initiatory pleadings have been filed.

WHEREFORE, the Court DISMISSES the administrative complaint against Presiding Justice Andres B. Reyes, Jr., Associate Justice Isaias P. Dicdican and Associate Justice Stephen C. Cruz of the Court of Appeals for its lack

of merit.

The Court of Appeals is DIRECTED to forthwith adopt measures that will ensure the strict observance of Section 3, Rule III of the 2009 Internal Rules of the Court of Appeals, including the revision of the rule itself to make the consolidation of cases and proceedings concerning similar or like issues or involving the same parties or interests mandatory and not dependent on the initiative of the parties or of any of them.

All attorneys of the parties in cases brought to the third level courts either on appeal or interlocutory review (like certiorari) are REQUIRED to promptly notify the reviewing courts of the pendency of any other cases and proceedings involving the same parties and issues pending in the same or other courts.

Let this decision be FURNISHED to the Court of Appeals, Sandiganbayan, Court of Tax Appeals and the Office of the Court Administrator for their guidance; and to the Integrated Bar of the Philippines for dissemination to all its chapters.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

[1] Rollo, p. 2.

[2] Id. at 3-4.

[3] Id. at 26-35.

[4] Id. at 42-59 (entitled Heirs of the Late Marlon A. Fabiana, herein represented by Merlita B. Fabiana v. National Labor Relations Commission, et al., respondents).

[5] Id. at 60-79.

[6] Id. at 16-25; penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Presiding Justice Conrado M. Vasquez, Jr. (retired) and Associate Justice Jose C. Reyes, Jr.

[7] Id. at 82-85.

[8] Id. at 86.

[9] Associate Justice Renato C. Corona, Chairperson; Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura, Associate Justice Diosdado M. Peralta, and Associate Justice Jose C. Mendoza, as Members.

[10] Rollo, pp. 14-15.

[11] Id. at 87-88.

[12] Id. at 94-95.

[13] Dayag v. Gonzales, A.M. No. RTJ-05-1903, June 27, 2006, 493 SCRA 51, 60-61.

[14] In Re: Wenceslao Laureta, March 12, 1987, 148 SCRA 382, 420, where the Court stated:

To allow litigants to go beyond the Court's resolution and claim that the members acted "with deliberate bad faith" and rendered an "unjust resolution" in disregard or violation of the duty of their high office to act upon

their own independent consideration and judgment of the matter at hand would be to destroy the authenticity, integrity and conclusiveness of such collegiate acts and resolutions and to disregard utterly the presumption of regular performance of official duty. To allow such collateral attack would destroy the separation of powers and undermine the role of the Supreme Court as the final arbiter of all judicial disputes.

[15] A.M. No.93-7-696-0, February 21, 1995, 241 SCRA 405, 459-460.

[16] A.M. OCA I.P.I. No. 11-184-CA-J, January 31, 2012, 664 SCRA 465, 475-476.

[17] Mataga v. Rosete, A.M. No. MTJ-03-1488, October 13, 2004, 440 SCRA 217, 221-222.

[18] Caños v. Peralta, No. L-38352, August 19, 1982, 115 SCRA 843, 846.

[19] Heirs of Trinidad De Leon Vda. de Roxas v. Court of Appeals, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 116.

[20] Hacienda Bigaa, Inc. v. Chavez, G.R. No. 174160, April 20, 2010, 618 SCRA 559, 576.

[21] For civil trials, the rule on consolidation is Section 1, Rule 31, Rules of Court, which provides:

Section 1. Consolidation. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1)

For criminal trials, Section 22, Rule 119, Rules of Court states:

Section 22. Consolidation of trials of related offenses. – Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court. (14a)

[22] Mega-Land Resources and Development Corporation v. C-E Construction Corporation, G.R. No. 156211, July 31, 2007, 528 SCRA 622, 636; People v. Sandiganbayan, G.R. No. 149495, August 21, 2003, 409 SCRA 419, 423.

[23] Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc., G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618, 631.

[24] Bersamin, L.P., Appeal and Review in the Philippines, 2000 (2[nd] Edition), Central Professional Books, Inc., Quezon City, p. 355.

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