

THE PROVINCE OF MISAMIS OCCIDENTAL, PETITIONER, VS. HON. ALFREDO CATOLICO, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, AND ATTY. RUFINO J. ABADIES, RESPONDENTS.

G.R. No. L-24397. June 29, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this action for mandamus with preliminary injunction, petitioner Province of Misamis Occidental, relying on the Rules of Court,[1] seeks to compel respondent Judge of the Court of First Instance of Misamis Occidental, the Honorable Alfredo Catolico, to allow an appeal from its order of September 12, 1964, fixing at P50,000.00 the amount of attorney's fees that should be paid by petitioner to respondent Abadies. The facts, as set forth in the petition, dated March 31, 1965, are admitted in the answer of May 6, 1965 of respondent Abadies subject to "qualifications and explanations" therein made.

Respondent Judge, in his decision of April 30, 1963, in a case where petitioner, as plaintiff, sought the recovery of the Oroquieta waterworks system, from the National Waterworks and Sewerage Authority,[2] declared petitioner "the sole and absolute owner thereof", being awarded further the sum of P5,000.00 as attorney's fees. The original counsel of petitioner was its then provincial fiscal, who, in a motion of August 6, 1960, sought his withdrawal from the case to be substituted by respondent Abadies, then legal assistant of the provincial governor of the petitioner.[3] Such a motion was granted with the proviso that "according to a statement in the record" the new counsel "will not be paid attorney's fees".[4] It was thus respondent Abadies who thereafter handled the case of petitioner, the decision, as afore-said, having been rendered on April 30, 1963.

Then on May 8, 1964, a motion was filed by respondent Abadies seeking an order from the respondent Judge to direct the Province of Misamis Occidental, its provincial governor, the provincial board, the provincial treasurer and provincial auditor to pay the amount of P5,000.00 as attorney's fees as authorized in Resolution No. 416, of November 15, 1963, of petitioner. Notwithstanding an opposition filed by petitioner, dated May 16, 1964, asking that the motion be denied or in the alternative that the movant be made to "account for his unliquidated cash balance, chargeable against whatever award he may obtain by this motion, " respondent Judge granted the motion.[5] Then on July 4, 1964, petitioner filed a notice of appeal, a cash appeal bond of P120.00 and a record on appeal.[6] Respondent Abadies in turn filed a motion for reconsideration seeking a modification of an amendment to an order of June 6, 1964 to the effect that on the basis of quantum meruit his attorney's fees be raised to P25,000.00.[7] The opposition of petitioner notwithstanding, respondent Judge, in his order dated September 12, 1964, reconsidered his previous order of June 6, 1964, and fixed the amount of attorney's fees that should be paid by petitioner to respondent Abadies not at P25,000.00, but at P50,000.00.[8]

On October 2, 1964, a motion for reconsideration was filed by petitioner, which motion was denied in an order of October 24, 1964 by respondent Judge, copy of which being served on petitioner on November 6, 1964. On the

very same date, petitioner filed a manifestation reiterating its "intention to appeal" the matter of attorney's fees as had been done earlier, with a new notice of appeal being filed on the next day, November 7, 1964.[9] An order of November 14, 1964 followed, respondent Judge disallowing the record on appeal filed by petitioner.[10] A motion for reconsideration was filed by petitioner, but it was in vain, the lower court, on January 23, 1965, denying the same.[11] Then came this petition.

On April 7, 1965, this Court required respondents to file an answer to the petition and likewise granted the plea for preliminary injunction upon petitioner posting a bond in the amount of P2,000.00. As noted earlier, an answer was filed by respondent Abadies admitting the allegations of fact, but seeking the dismissal of the petition on the ground that mandamus is not available, the order of September 12, 1964 having become final and executory, it being separate and distinct from that on June 6, 1964, which, according to respondent Abadies, was the subject of the notice of appeal, the appeal bond and the record on appeal filed by petitioner on July 4, 1964.

Petitioner is entitled to the writ prayed for. There was no question that its appeal from the grant of attorney's fees to respondent Abadies was duly perfected. Its dissatisfaction at the award of P5,000.00 to respondent Abadies was made manifest. It would be unreasonable to assume that when such an amount was increased to P50,000.00 in the order of September 12, 1964, respondent Judge being rather fulsome in his appreciation of the legal services rendered, respondent Abadies apparently setting his sights on the lesser sum of P25,000.00, that petitioner would not have felt itself even more unjustly aggrieved. The motion for reconsideration from this latter order could have been more vigorously expressed and perhaps more persuasively couched. Petitioner, however, as a government entity, should not be penalized for the failure of its counsel to put its case in the strongest possible light. To say that the motion for reconsideration could have been improved in its logic as well as in its rhetoric is one thing. To characterize it as pro forma is quite another. It is not to be condemned as an exercise in futility. In view of the failure of respondent Judge then to give due course to the appeal, mandamus lies.

The right to appeal has invariably accorded full recognition by this Court. Such a trend is most discernible in recent decisions.[12] There is no occasion to depart from such a course. This is not a case that calls for a different conclusion. No argument advanced by respondent Abadies suffices to defeat the right of petitioner to pursue an appeal.

In addition to the objection already considered and found lacking in merit that the order of September 12, 1964 became final and executory, fifty (50) days having elapsed without petitioner having filed the proper notice of appeal, appeal bond and record on appeal, the motion for reconsideration dated October 2, 1964 being pro forma in character, it was further urged as a basis for dismissing this petition that the order of execution having been issued by respondent Judge, on April 10, 1965, followed by a writ of execution served upon petitioner, mandamus is no longer an appropriate remedy. In view of the fact however that as early as April 7, 1965 this Honorable Court in a resolution, had given due course to this petition and issued the writ of preliminary injunction, whatever proceedings were thereafter had before respondent Judge, should not and could not in any way prevent the ultimate disposition of this petition by this Court.

The last principal objection raised in the answer that mandamus could no longer be availed of by petitioner as it allowed more than four (4) months and twenty-one (21) days, from November 17, 1965, when the appeal was denied before this petition was filed could easily be disposed of by reference to the leading case of *Centenera v. Yatco*.^[13] This Court, in an opinion penned by Justice J.B.L. Reyes, stated: "Respondent finally urges that this petition for mandamus is frivolous and dilatory, having been filed only after four months from the denial of petitioner's motion to reconsider the disapproval of his appeal, and after the lower court had already issued a writ of execution. On this question, it is significant to note that Section 15, Rule 41 of the Rules of Court does not specify the period for the filing of mandamus proceedings against an order disapproving an appeal, which implies

that the period for its filing is variable as the ends of justice may demand. Indeed, the constant policy of the courts is not to deny the writ if the result would be to deprive a party of his substantial right and leave him without remedy * * *."

It must be reiterated that the express admission by respondent Abadies in his answer in the statement of facts, subject to his qualifications and explanations, which in no wise detracted from the merit of the petition, is fatal to his plea that this petition be dismissed.

WHEREFORE, the writ of mandamus prayed for is granted, with costs against respondent Abadies.

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

[1] Section 15, Rule 41, Rules of Court.

[2] Civil Case No. 2281 of the Court Of First Instance of Misamis Occidental.

[3] Statement of Facts, p. 3 and Annex D.

[4] Ibid, p. 4 and Annex E.

[5] Ibid, pp. 5 and 6, and Annexes L, M, and N.

[6] Ibid, p. 6 and Annex O.

[7] Ibid, pp. 6 and 7 and Annex 7 of Answer of respondent Abadies.

[8] Ibid, pp. 6 and 7 and Annexes P and Q.

[9] Ibid, pp. 8 and 9 and Annexes R, S and T.

[10] Ibid, p. 8 and Annexes V of Petition and 5 of the Answer.

[11] Ibid, p. 8 and Annexes. W and X.

[12] Valerio v. Tan, etc., et al., 97 Phil. 558 (1955); Remo, et al. v. Palacio, etc., et al., L-13718, April 28, 1960; Reñosa v. Yatco, et al., L-16226, Sept. 30, 1960; Lagrimas, etc. v. Zurbano, etc., L-12508, Nov. 29, 1960; Neibert, etc. v. Montejo, etc., et al., L-17114, Apr. 1961; Fernandez v. Caluag, etc., et al., L-16124, Dec. 1961; Ramirez, et al. v. Arrieta, et al., L-19183, Nov. 29, 1962; Dasalla, et al. v. Caluag, et als., L-18765, July 31, 1963; Government Service Insurance System v. Cloribel, etc., et al., L-22236, June 22, 1965; Deananeas v. Mangosing, L-27550, Nov. 25, 1967.

[13] L-13564, January 30, 1960.

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