SEVERINO ARAMBULO, MAYOR OF CALAMBA, LAGUNA, PETITIONER, VS. THE COURT OF APPEALS, AND THE MUNICIPALITY OF CALAMBA, RESPONDENTS.

G. R . No. L-15669. February 28, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

Appealing by certiorari under Rule 46 of the Rules of Court, the petitioner Severino Arambulo prays for the reversal of a judgment rendered by the Court of Appeals (CA-G. R. No. 24188-R) that set aside the alias writ of execution issued by the Court of First Instance of Laguna and allowed the Municipality of Calamba, Laguna, to intervene in an appeal brought thereto from a judgment rendered by the Justice of the Peace Court of Calamba (Civil Case No. B-138).

It appears that on 20 January 1956 Severino Arambulo, after assuming office as Mayor of Calamba, Laguna, dismissed from service and replaced with new ones thirteen municipal patrolmen of Calamba. Three of the dismissed patrolmen, namely, Juan B. Isip, Pablo Palupit and Cornelio Luna, appealed to the Provincial Governor of Laguna. Warned by the latter of being suspended from office if the three patrolmen be not reinstated to their former positions, Mayor Arambulo immediately filed in the Court of First Instance of Laguna a case for prohibition against the Governor. On 14 May 1956 the court, finding the patrolmen's removal and replacement illegal, ordered that they be reinstated, without stating who was to pay their back salaries during the period of their temporary separation from the service.

After having been reinstated, the three patrolmen tried to collect payment of the back salaries from the Municipality of Calamba, but the Provincial Auditor of Laguna refused to pass in audit the payment thereof in view of an unnumbered Provincial Circular issued on 9 February 1955 by the Office of the President, which reads as follows:

> SUBJECT: Payment of salaries during the period of illegal separation of civil service employees—Official responsible for
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> PROVINCIAL AND CITY AUDITORS:
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> For the information and guidance of all concerned, Provincial Circular (Unnumbered) dated February 9, 1955 of the Office of the President is hereunder quoted:
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> It has been observed that civil service employees who, under the Civil Service Law, may only be removed or suspended or otherwise disciplined by the Commissioner of Civil Service for cause as provided by law as a result of administrative proceedings instituted against them, are often time dismissed arbitrarily and without cause only to be later on reinstated. In order, therefore, to protect the interest of the government and to avoid unnecessary payment by the government (of) salaries during the period of illegal separation of civil service employees, where no service have (has) been rendered at all to the detriment of the government, provincial governors, city and municipal mayors, who separate or remove from the service employees without cause and

> without instituting against them administrative proceedings as required by Civil Service Law and Regulations are hereby made personally responsible and liable for the payment of the salaries of said employees in the event they are reinstated and the payment of their salaries corresponding to the periods they have been out of the service is ordered.
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> * * *
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> By Authority of the President:
>
> (Sgd.) FRED RUIZ CASTRO
>
> Executive Secretary

and of the opinion rendered on 16 November 1956 on the case by the Commissioner of Civil Service, which is quoted in part:

> * * * this Office believes that the Municipal Mayor of Calamba, Laguna, is responsible for the payment of the salaries of Messrs. Isip, Luna and Palupit during the period of their illegal separation in the event that they are reinstated in (to) their former positions as policemen.

So, on 24 September 1957 in the Justice of the Peace Court of Calamba the three patrolmen brought an action against Mayor Severino Arambulo to collect from him in his personal capacity the sums of P495, P483.80 and P540 as back salaries, interest thereon from date of demand, P250 as litigation expenses and attorney's fees, and P1,000 as moral damages (civil No. 223). On 12 December 1957 the defendant Mayor filed an answer and a third-party complaint against the Municipality of Calamba averring, among others, that the latter and not he should answer for the patrolmen's back salaries. On 16 December 1957 the municipality, through one of its councilors, who was a lawyer, filed an answer admitting its liability for the patrolmen's back salaries and stating that its council had passed resolution No, 105 dated 6 October 1956 which appropriated the necessary amount to pay such salaries.

On 17 December 1957 the plaintiffs patrolmen moved for a judgment on the pleadings, for Mayor Severino Arambulo had not denied the right of the patrolmen to be paid their back salaries, although he claimed that the Municipality of Calamba, that had admitted in its answer its responsibility to pay such salaries, should answer and pay for them. On 8 March 1958 the Justice of the Peace Court of Calamba rendered judgment ordering the Municipality of Calamba to pay the patrolmen's back salaries and absolving Mayor Arambulo from any liability, without costs. Their motion for reconsideration and new trial filed on 9 April 1958 having been denied, on 6 June 1958 the plaintiffs patrolmen appealed to the Court of First Instance of Laguna only in so far as it held defendant Severino Arambulo, in his private capacity, not liable to pay the patrolmen's back salaries. The defendant Mayor filed a motion to dismiss the appeal, on the ground that by their motion for a judgment on the pleadings, which in effect is an admission of the facts alleged in the defendant's and third-party defendant's answers, the plaintiffs patrolmen no longer had a cause of action. On 27 August 1958 the motion to dismiss was denied.

Before the expiration of the period for appeal, the Justice of the Peace Court issued a writ for the execution of the judgment rendered against the Municipality of Calamba, which was not satisfied. During the pendency of the appeal the Court of First Instance of Laguna issued an alias writ of execution.

On 15 September 1958 the third-party defendant Municipality of Calamba filed a motion praying for the setting

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aside of the writ of execution issued by the Justice of the Peace Court of Calamba, for the reason that the appeal taken by the plaintiffs patrolmen had the effect of vacating the judgment rendered by the Justice of the Peace Court and the case had to be tried de novo in the Court of First Instance of Laguna. However, before the court could act on the motion to set aside the writ of execution, the Municipality of Calamba filed on 11 September 1958 a motion to intervene and an answer attached thereto. On 3 November 1958 the Court of First Instance denied the two motions, on the ground that as to the third-party defendant Municipality of Calamba the judgment rendered by the Justice of the Peace Court of Calamba had become final and executory as it did not appeal therefrom, and that even if it wanted to appeal, it could not do so, for the judgment in question was one by confession which became immediately final, executory and unappealable. On 28 November 1958 the third-party defendant filed a motion for reconsideration which was denied on 2 December 1958.

On 15 December 1958 the third-party defendant Municipality of Calamba filed in the Court of Appeals a verified petition for certiorari and mandamus, and, on the following day, prayed for a writ of preliminary injunction to restrain the Court of First Instance of Laguna from proceeding with the trial of the appealed case (civil No. B-138) and the Provincial Sheriff of Laguna from carrying out the alias writ of execution issued by the Court of First Instance. On 12 January 1959 the Court of Appeals issued a writ of preliminary injunction upon the filing by the third-party defendant Municipality of Calamba of a bond in the sum of P500. On 24 June 1959 the Court of Appeals rendered judgment ordering the Court of First Instance of Laguna to grant the third-party defendant's motions of 11 September 1958 to intervene and of 15 September 1958 to set aside the writ of execution, and revoking the order entered on 2 December 1958 by the Court of First Instance which had denied the motion for reconsideration filed by the Municipality of Calamba, with costs against Mayor Arambulo.

Mayor Severino Arambulo seeks the reversal of the judgment rendered by the Court of Appeals.

The question to determine is: In a case involving a third-party defendant, does the appeal taken by the plaintiffs against the defendant operate to vacate the judgment rendered by the justice of the peace or municipal court as only between the appealing plaintiffs and the defendant against whom the appeal is taken and not as regards the third-party defendant that has not appealed from the judgment rendered against it?

Relying mainly on section 9, Rule 40, of the Rules of Court, which provides that—

> A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. * * *

the third-party defendant Municipality of Calamba contends that the judgment rendered by the Justice of the Peace Court of Calamba was vacated by the appeal taken by the plaintiffs patrolmen, and for that reason the admission of its liability to pay for their back salaries is deemed as if it never had been made and is brought and submitted on appeal for determination by the appellate court. On the other hand, the petitioner Mayor Severino Arambulo argues that as the appeal taken by the plaintiffs patrolmen was only in so far as it did not hold him in his private capacity liable to pay the plaintiffs' back salaries, it is only that part of the judgment that is brought and submitted on appeal to the Court of First Instance of Laguna for determination.

The appeal from the judgment rendered by the Justice of the Peace Court of Calamba to the Court of First Instance of Laguna vacated the judgment of the former court not only as between the plaintiffs patrolmen who have appealed and the petitioner Mayor Severino Arambulo, who was absolved from the complaint, but also as to the third-party defendant Municipality of Calamba which has not appealed therefrom. Section 9, Rule 40, of the Rules of Court, aforequoted, considers an appealed case from an inferior court "as though the same had never

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been tried before and had been originally there commenced." In effect, it considers all the proceedings in the inferior court, including the judgment, inexistent. Only the complaint is not vacated, which is deemed reproduced in the Court of First Instance.[1] Such being the case, the appeal reopens all issues or questions already passed upon by the inferior court, regardless of whoever appeals. Thus, in Royal Shirt Factory, Inc. vs. Co Bon Tic, 94 Phil, 994) although a third-party defendant was not involved, this Court held—

> * * * that any and all issues involved in a case originating in an inferior court, whether or not passed upon by said court and whether or not appealed upon by any or both parties are thrown open and may be passed upon by the Court of First Instance when the case is appealed to it. (Italics supplied.)

The Court of Appeals correctly held that the Court of First Instance of Laguna is not empowered to issue an alias writ of execution. Section 8, Rule 39, of the Rules of Court provides that execution must issue "from the court in which the judgment or order is entered." The judgment sought to be executed having been rendered by the Justice of the Peace Court of Calamba, only this court could issue the writ of execution.

The judgment appealed from is affirmed, with costs against the petitioner.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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[1] Section 7, Rule 40, of the Rules of Court.

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