

**PROVINCIAL AUDITOR OF NEGROS OCCIDENTAL, PETITIONER, VS.
HONORABLE JOSE TEODORO, SR., JUDGE, COURT OF FIRST
INSTANCE OF NEGROS OCCIDENTAL, AND GORGONIO JAVA,
RESPONDENTS. D E C ...**

G.R. No. L-9177. June 30, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

Statement.—The petitioner challenges the respondent judge's order of May 14, 1955, requiring him to authorize the refund in legal currency of "script" or "guerrilla" money deposited as bail bond in 1945. At his request, we issued a preliminary injunction temporarily to restrain the enforcement of said directive.

Facts.—In Criminal Case No. 416 of the court of first instance of Negros Occidental, in August, 1945, Gorgonio Java as bondsman for the accused Fe Villavecer, deposited with the Municipal Treasurer of Gadiz, same province, the sum of five hundred pesos in guerrilla or "script" money. Said Treasurer's receipt expressly noted: "Dep. in script". On January 14, 1945, upon motion of the fiscal, the court dismissed the case and directed the cancellation of the bond.

On May 3, 1955, upon motion of Gorgonio Java, filed the previous month, the respondent judge entered an order, in said criminal case, requiring the provincial auditor, (herein petitioner) to sign the voucher for the release of the cash bond deposit. The said auditor signed the corresponding voucher, remarking however that payment shall be made in "script money". The bondsman again asked the court for a directive for the return in legal tender of the amount he had deposited. After some court skirmishes, and after listening to the auditor's counsel, the respondent judge finally ruled on May 14, 1955 that the cash bond must be returned in legal tender, and commanded said official accordingly to make the corresponding release within five days. An urgent motion to reconsider was promptly denied, Hence this petition for certiorari with preliminary injunction which was given due course.

Discussion.—It is at once apparent that in the Criminal Case No. 416 the provincial auditor was not a party. Wherefore, the orders of the court therein do not normally bind him, unlike the ministerial officers of the court, the sheriff, clerk of court, etc. True, the auditor was furnished copy of the motion to release, and subsequently appeared to contest the petition. However he raised substantial questions, which should not have been decided summarily on a mere motion, to wit: reimbursement in 1955 in legal tender of guerrilla money "deposited" in 1945; validity of said money; error in the acceptance thereof; applicability and operation of Republic Acts 386 and 22 concerning redemption and registration of guerrilla currency; laches; no funds available. These are matters which, with other subsidiary issues, should have been debated in a separate suit (mandamus) against the auditor, who, as already observed, was not a party to the criminal case.

Anyway, respondents might argue, the result is the same, because these matters could be litigated, and in fact have been discussed, in the case; and thereby a "speedy and inexpensive determination" of the question was obtained, in accordance with Rule 1 section 2 of the Rules of Court.

The argument may not be sustained. For one thing if mandamus were instituted by Gorgonio Java against the auditor to compel release of the money in legal tender, the respondent therein could set up one good defense[1], the explanation he offered in his pleadings herein and in the court below: that he had consulted the Auditor General, and that the petitioner's remedy was to appeal his ruling to said higher official of the Executive Branch.[2] Such defense would have been effective in a mandamus proceeding; yet it received no attention in the consideration of Java's motion for reimbursement. If respondents should demur to the institution of another action asserting it is not speedy and is expensive, and therefore obnoxious to the spirit of section 2 Rule 1, they should remember that the purpose of the rules of procedure is to promote not only the speedy and inexpensive determination of issues, but also the just decision thereof; and it is not fair to adjudge an issue in a proceeding where the person to be affected is not a regular party, and, what is worse, can not properly assert a defense particularly approved by statutes and precedents.

Judgment.—For the above reasons, the order complained of is revoked. The injunction heretofore issued is hereby made permanent. Costs against respondent Gorgonio Java.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Besides those already mentioned.

[2]Section 3 Rule 67; *Sherman vs. Horrilleno*, 57 Phil., 13; *Manotoc vs. McMicking*, 11 Phil., 119; *Cruz Herrera vs. McMicking*, 14 Phil., 641 and others.

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