

LUIS LUCIANO, PETITIONER, VS. HON. BIENVENIDO TAN AND CORAZON SANDICO, RESPONDENTS.*G.R. No. L-4006. October 29, 1951*

Ponente: TUASON, J.

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This is a petition filed with the Court of Appeals and certified to this Court because it is not in aid of the former Court's appellate jurisdiction and because only questions of law are raised. By its title, the petition is for certiorari, by the prayer, it is for mandamus to have a record on appeal approved, and by the context and supporting memorandum, it is for a review of a decision on the merits.

For background, it appears that Luis Luciano, the petitioner, was the plaintiff, and Corazon Sandico, one of the herein respondents, the defendant in civil case No. 568 of the Court of First Instance of Rizal. Trial of that case having been set for February 4, 1949, in the Pasay City Branch of the above-mentioned court presided over by Honorable Bienvenido A. Tan, the respondent Judge, plaintiff made a written motion for postponement with the conformity of the defendant's attorney, on the grounds that the plaintiff's principal witness would be unable to testify due to a recent child delivery and that the parties had agreed to submit a stipulation of facts. Because, in the opinion of Judge Tan, the motion did not fulfill the legal and formal requirements, His Honor refused to continue the case and received defendant's evidence on her counter-claim. Afterward Judge Tan relented and gave the plaintiff an opportunity to present his evidence, which the plaintiff did. Thereafter, the court gave judgment "in favor of the defendant and against the plaintiff, dismissing the complaint." Before that decision became final, Judge Tan, on motion of the defendant and over the objection of the plaintiff, amended its dispositive part by sentencing the plaintiff to pay the defendant P4,000 plus 4 per cent interest per annum from November, 1944, among other things.

Upon these facts certiorari does not lie. Judge Tan had jurisdiction to deny the motion for continuance, to receive the defendant's evidence on the counterclaim, and to render judgment on the basis of that evidence. And there was no abuse of discretion. The reopening of the case, by reason of which the plaintiff was permitted to have his day in court, wiped out any irregularities which might have been committed previously.

Neither does mandamus lie. The plaintiff's record on appeal was presented on October 28, 1949, while the decision had been handed down on August 4 and the amendatory decision on August 20. It is admitted that this record on appeal was presented out of time and that "in the instant case force majeure was not present," to quote petitioner's own words. In insisting, in the court below, that his record on appeal be approved, the petitioner appealed for a liberal interpretation of the Rules of Court "in favor of substantial justice." But not even on grounds of substantial justice do we find petitioner's plea meritorious. The decision of which he complains is, in our opinion, in accordance with law and the terms of his contract.

After all, the petitioner perhaps is not seeking a new trial or the elevation of the record on appeal to the appellate court. His memorandum filed in lieu of oral argument is a veritable brief. It is devoted entirely to a discussion

of alleged errors committed by the lower court, and the prayer is that the judgment of the lower court be reversed and another entered in line with the reliefs asked for in the main action. This of course is beyond the power of this Court to do or give in a proceeding other than ordinary appeal.

Further compounding the confusion, it appears that before the present proceeding was instituted, a petition for certiorari had been filed in the Court of Appeals by the same petitioner against the same respondents and dismissed by the Court on the grounds that petitioner's re-medey was by appeal. Only the Court of Appeals' resolution is on the record but it may be presumed that the dismissed petition related to the same matters dealt with in the instant proceedings.

The petition is dismissed with double costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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