

**TOMAS C. AGUADOR, SANTIAGO L. ABELO, AQUILINO A. BACUS,
ROSENDO T. DAGOHOY, PAULINO A. SABIJON, ULDARICO D.
BONG-ABONG, SIMEON C. BADIANG, PEDRO T. ADLAON, PEDRO T.
PUDE, BIENVE...**

G.R. No. L-20388. January 30, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from a judgment of the Court of First Instance of Misamis Occidental dated August 25, 1962, finding the herein appellants guilty of contempt of court for non-compliance with the court's decision rendered in civil case 1865 for mandamus which directed and ordered them to appropriate the necessary amount available from the municipal treasury of Oroquieta for the payment of salary differentials due to the herein appellees.

On February 20, 1956 the appellees filed a petition for mandamus in the court below against the municipal treasurer, the then incumbent municipal mayor and members of the municipal council of Oroquieta, Misamis Occidental, for payment of salary differentials allegedly due them, as employees of the municipal government, under the terms of their respective appointments. The main cause of complaint of the appellees in that case was that, while the municipal council of Oroquieta, on December 29, 1955 passed two resolutions, numbered 125 and 126, authorizing the appropriation and payment to them of salary differentials on account of the enactment of the Minimum Wage Law (R. A. 602 which fixed the minimum wage of industrial workers and government employees at 4.00 per day), the said council, on January 14, 1956, revoked the said resolutions, allegedly because the latter were passed merely to benefit a few officials and employees of the municipality, there were not enough funds to pay the said salary differentials, and the Minimum Wage Law is not obligatory upon the government and public corporations.

The petitioners (the herein appellees) and the respondents in the mandamus petition subsequently submitted to the court an "Agreed Statement of Facts," on the basis of which the court below rendered its decision dated January 30, 1957, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered the respondents Malcolm S. Enerio [Municipal Mayor] Anacleto A. Bandala [Vice-Mayor], Yunilo Taghap, Felicisimo S. Solito, Constancio Ira, Francisco German, Felicisimo Jonson, Lorenzo Arado, Santiago Hayo, Juan Caliso, as Members of the Municipal Council of Oroquieta, are hereby ordered to appropriate necessary amounts to pay the salary differentials for the petitioners and also for the payment of their entire salaries from month to month, subject naturally to the availability of funds after all statutory and subsisting contractual obligations shall have been properly covered by adequate appropriations."

The above decision became final and executory, but as the municipal council failed to implement it, the appellees filed a motion for execution of judgment on March 2, 1957, pursuant to which a writ of execution was issued on March 9, 1957 and duly served on the respondents. Evidently, the council still failed to comply with the lower

court's decision and writ of execution, as on June 18, 1957 the appellees, through counsel, filed a motion for the respondents to show cause why they should not be dealt with in contempt of court. Acting on this motion, the court issued an order requiring the respondents to appear before the said tribunal to show cause why they should not be held for contempt for their failure to comply with its decision. Nothing was done, however, on this motion as before the same could be heard, the presiding judge of the court went on leave, and the temporary judge on detail thought that the incident should be heard by the regular judge.

Then, on April 1, 1959, the appellees filed with the court a "Motion to Implement Decision" of January 30, 1957 on the ground, among others, that the respondents in the mandamus case had not yet complied with the writ of execution issued in connection with the court's decision in the case and that the council had, in the intervening period, made new appropriations in violation of the said decision.

Acting on this motion, the court issued an order on April 4, 1959, the dispositive portion of which reads as follows:

"WHEREFORE, finding the motion of the counsel for the petitioners to be well founded, the Municipal Council of Oroquieta, Misamis Occidental, composed of the Municipal Mayor, Malcolm S. Enerio, Vice-Mayor Anacleto Bandala, Councilors Yunilo Taghap, Felicisimo Jonson, Felicisimo S. Solito, Constancio Ira, Francisco German, Lorenzo Arado, Santiago Hayo, Juan Caliso as members of the said Municipal Council and Lucio N. Tan as Municipal Treasurer are hereby ordered to appropriate in the fiscal year of 1959 to 1960 the total amount of P 7,575.20 and to appropriate similar amount every succeeding fiscal year thereafter until the total liability and obligations of the Municipal Government in favor of the herein plaintiffs shall have been liquidated in about five (5) years more or less "

On May 13, 1959 the respondents in the mandamus case asked for a reconsideration of the court's order mainly on the ground that the municipality had no funds to appropriate to comply with the order. While this motion was pending consideration, however, the 1959 provincial and municipal elections were held; in this election the herein appellants were elected, as follows: former vice-mayor Anacleto A. Bandala was elected municipal mayor, Nicasio S. Macoy as vice-mayor, and the following as councilors: Francisco A. German, Constancio M. Ira, Gaudencio Marimon, Teodorico R. Roa, Santos Ma. Delgado, So-fronio Udal, Prudencio Paler and Jose Tan. With the exception of mayor Bandala and councilors German and Ira, all the others were new members of the council and could not, therefore, be named respondents in the mandamus petition filed by the appellees in the court below.

Before the in-coming municipal officials assumed office, however, the outgoing members of the council approved on December 17, 1959, a resolution (Resolution 204), in which the council resolved

" . . . to appropriate the amount of TWENTY SIX THOUSAND FOUR HUNDRED FIFTY EIGHT AND 33/100 PESOS (26, 453. 33) from any fund not otherwise appropriated and expended to cover the entire claim of the petitioners in Civil Case No. 1865, en-titled 'TOMAS AGUADOR, ET AL., PETITIONERS VERSUS MALCOLM S. ENERIO, ET AL., RESPONDENTS' in accordance with the decision of the Honorable Court dated January 30, 1957 in said case."

On January 2, 1960 the appellants who, by then, had assumed the helm of government at Oroquieta, approved another resolution (Resolution 9) requesting the counsel of the appellees to wait until July of the succeeding fiscal year for the council to appropriate funds to pay the obligation in civil case 1865. This resolution also stated, in its declaratory portion, that the council had previously revoked Resolution 204 of the former council by another resolution (Resolution 8).

Pursuant then to their promise, the members of the council appropriated in the FY 1960-61 municipal budget the

sum of P 7, 575. 20 which is equivalent to the annual installment payment ordered by the court in its order of April 4, 1959. This amount was thereafter paid to the appellees.

On June 20, 1962, however, the appellees filed with the court a motion for contempt against the municipal treasurer of Oroquieta and the herein appellants on the ground, mainly, that while in the FY 1961-62 municipal budget of Oroquieta there was an appropriation item of P 7, 575.20 for the payment of the salary differentials of the appellees, a notation had been placed underneath said item which had the effect of modifying the decision and order of the court. This notation reads as follows:

"(The Municipal Treasurer should hold payment of this particular obligation pending the receipt of the copies of the amended appointments of the claimants of this case from the Commissioner of Civil Service decreasing their salaries as per plantilla in 1954-1955)."

On June 23, 1962 the court issued an order requiring the appellants to appear before it on June 30, 1962 and show cause why they should not be dealt with for contempt of court for not complying with its decision and orders. All the members of the council, with the exception of mayor Bandala and councilor Roa, appeared before the said tribunal on the scheduled date. At the hearing, the appellants manifested in open court that they went there involuntarily, that is, only in obedience to the subpoena issued by the court. They also questioned the validity of the appellees' motion for contempt, contending that the same was a mere motion and not a contempt charge under the Rules of Court. The lower court, however, these arguments notwithstanding, ordered the arraignment of the appellants on the contempt motion of the appellees. The appellants pleaded not guilty.

On July 2, 1962 the appellants filed a motion for reconsideration of the court's assumption of jurisdiction on the appellees' motion for contempt, based on the following grounds: (a) the appellants who were new members of the council were not parties to the original petition for mandamus and hence not bound by the decision and orders promulgated therein; (b) they were not furnished any copy of the motion for contempt; (c) the said motion does not constitute a contempt charge; (d) the appearance of the appellants on June 30, 1962 was involuntary; (e) the appellants had no participation in the agreed statement of facts entered into between the appellees and the former members of the council which formed the basis of the lower court's decision and orders in the mandamus case; and (f) since the previous members of the municipal council who were the parties in the mandamus case retired by the expiration of their terms of office on December 31, 1959, with the exception of Bandala, German and Ira, who were re-elected, they could not be declared in contempt as they were not aware of the antecedents of the case upon which the alleged contempt charge was founded.

Aside from the above-mentioned motion, the appellants also filed an answer to the motion for contempt of the appellees. The arguments advanced in their answer were as follows: (a) apart from the fact that they were strangers to the mandamus case, they could not comply with the court's decision in that case since the municipality of Oroquieta had not been made a party to the said petition for mandamus (citing the cases of Bacolod City vs. Enriquez, L-9775, May 29, 1957; Angara vs. Gorospe, L-9230, April 22, 1957; Cabanes vs. Rodriguez, L-9799, May 31, 1957; Kho vs. Rodriguez, L-9052, September 28, 1957; Bacolod City vs. Rodriguez, L-8801, September 30, 1957); (b) due to the non-inclusion of the municipality of Oroquieta in the case, they were, therefore, in good faith in not complying with the court's orders; (c) the decision of the lower court being based solely on a stipulation of facts, it did not become res judicata, but should be considered as a mere administrative proceeding which could be set aside on grounds of fraud or mistake; (d) certain written instruments were recently unearthed by the movants (the herein appellants) which showed that the petitioners (the herein appellees) signed a pledge dated April 14, 1954 wherein they promised to collect their salary differentials only in case revenue collections for 1953-54 of the municipality would exceed the revenue estimates based on the 1952-53 annual budget which condition, as the appellants later attempted to show, was not met; and (e) the appellees were

extended new appointments with reduced salaries, that is, at the old rates.

On July 2, 1982, however, the lower court issued an order declaring the notation appearing in the municipal budget of Oroquieta as in violation of its decision on the mandamus case. Consequently, it ordered the municipal treasurer to ignore the said annotation and immediately pay the salary differentials from the appropriation in the said budget to the appellees. The court also held in abeyance any action on the contempt proceedings initiated by the appellees.

On July 5, 1962 the appellees filed their opposition to the motion for reconsideration of the appellants of July 2, 1962, on the following grounds: (a) the appellants had already pleaded to the contempt charge and, therefore, should be deemed to have waived all objections thereto; (b) the appellants are the successors-in-interest of the members of the council who were cited as parties to the mandamus petition and, hence, are bound by the decision rendered therein; (c) the appellants are estopped from questioning the court's jurisdiction since they already voluntarily submitted themselves to the court's jurisdiction by partly satisfying the appellees' claims; (d) copies of the motion for contempt were furnished the provincial fiscal who had been appearing as counsel for the respondents in the mandamus case; (e) the municipal council was likewise served a copy of their motion which was received by the municipal secretary; (f) on June 30, 1962, at the hearing of the contempt charge, the appellants, with the exception of mayor Bandala and councilor Roa, were furnished each a copy of said motion; and (g) the motion for contempt constitutes a contempt charge, and all that the Rules of Court require is a charge in writing which may therefore, take any form.

On July 6, 1962 some of the appellees filed a "supplemental contempt charge" against vice-mayor Macoy, and councilors German, Marimon, Udal, Delgado, Paler and Tan, averring that even as the lower court in its order of July 2, 1962 declared the annotation in the FY 1961-62 municipal budget null and void, the accused officials, at their session of July 2, 1962, approved a resolution (Resolution 233) reverting the amount of P7,525.20 appropriated in the said budget to the general fund of the municipality for use in defraying the cost of constructing a street and sewerage system inside the municipal market.

Acting on the "supplemental contempt charge" of the appellees, the lower court on July 6, 1962, issued an order, directing the members of the council of Oroquieta to restore or re-appropriate the sum of P 7, 525.20 in the same budget within 48 hours from receipt of the said order.

On July 7, 1962 the appellants filed an answer to the appellees' opposition to their motion for reconsideration, in which they contended that: (a) the appellees promised to collect salary differentials only if the estimated revenue receipts (of P102, 046.00) for FY 1953-54 were actually collected per municipal council Resolution 83 dated August 31, 1953 (and several other resolutions), which promise was expressly borne out by a pledge dated April 14, 1954 signed by the appellees; (b) by virtue of Resolution 84 dated August 15, 1955, the claims of the appellees against the municipality of Oroquieta had already been totally discharged, for at the end of June 30, 1954 the sum of only P87, 480.23 was actually collected, and not the expected P102,046.00; the foregoing documents, the appellants alleged, were not made known by the appellees in their petition for mandamus, thus misleading the court which rendered decision based on the agreed statement of facts between the parties; (c) some of the petitioners in the mandamus case were mere temporary employees and hence their services were good for only three (3) months under section 682 of the Revised Administrative Code, unless their appointments were renewed for another three (3) months with the approval of the Civil Service Commissioner, and consequently are not entitled to salary differentials for a straight period of four (4) years as they claimed; (d) according to section 691 of the Revised Administrative Code, persons employed in the government service contrary to law or the civil service rules are not entitled to compensation; (e) the appellants are not successors-in-office of the respondents in the mandamus petition; and (f) the reason why they appropriated P 7,575.20 was their belief that all the

proceedings were valid and legal as they were not parties to the mandamus case, but that since the discovery of the documents aforementioned, they were of the view that the appellees' claims had already been discharged.

On July 9, 1962 the appellants moved for a reconsideration of the court's order of July 6, 1962, for the following reasons: (a) they were not furnished with any copy of the supplemental contempt charge nor served notice of its date of submission, so they could be heard by the court; (b) the supplemental contempt charge, being criminal in nature and an amendment of the appellees' motion for contempt, cannot be heard ex parte nor submitted to the court for resolution without the movants (the herein appellants) being given their day in court; (c) they were not parties to the mandamus case which was the basis of the supplemental contempt charge; and (d) the said charge, being an amendment to the motion for contempt, cannot be filed without leave of court for that would put them (the appellants) in double jeopardy.

On the same day, that is, July 9, 1962, the lower court issued an order denying the motion for reconsideration of the appellants of its order of July 6, 1962. The lower court also declared that it will proceed with the contempt proceedings in view of the appellants' failure to comply with the order of July 6, 1962.

A petition for certiorari dated July 23, 1962 (C. R. L-20012 entitled "Municipality of Oroquieta vs. Hon. Patricia Ceniza") was subsequently filed by the appellants, but we refused to give it due course on the ground that the proper remedy is an appeal from whatever decision the lower court would render in connection with the contempt charges against the appellants.

On July 31, 1962, pursuant to its order of July 9, 1962, the lower court issued a subpoena to the appellants and the municipal treasurer of Oroquieta, commanding them to appear before it on August 4, 1962.

On August 8, 1962 the appellants filed an answer to the supplemental contempt charge, reiterating their previous arguments on the court's jurisdiction over the contempt charges.

On August 11, 1962 the lower court, being of the opinion that the supplemental contempt charge does not constitute an amendment to the appellees' motion for contempt, ordered the arraignment of the appellants who pleaded not guilty to the said charge. The appellants manifested in open court, however, that their appearance at the said proceedings was involuntary they were as under subpoena by the lower court.

On August 14, 1962 two of the respondents in the contempt proceedings, namely councilors Tan and Ira, manifested their willingness to comply with the lower court's order of July 6, 1962.

On August 22, 1962 eight (8) proposals for admission were submitted by the appellants to the appellees, hereunder summarized as follows:

1. The judgment in civil case 1865 was dated January 30, 1957 and became final and executory on February 23, 1957;
2. The respondents in the said civil case were not the persons named in the contempt charges, with the exception of mayor Anacleto Bandala and councilors German and Ira;
3. The first time the herein appellants appeared before the lower court in the said civil case was on June 30, 1962, in obedience to the court's subpoena;
4. The first time the appellants were furnished a pleading in connection with the contempt case was on June 30, 1962 after they were arraigned before the court on the motion for contempt filed by the appellees;
5. The appellants were never served summons, decision or writ of execution or any other pleading in the mandamus case except the motion for contempt dated June 20, 1962 and subsequent pleadings filed by the

appellees;

6. The municipality of Oroquieta was not made a party in the mandamus case;

7. Of the appellees, 15 were temporary employees whose services were good for only three (3) months pursuant to section 682 of the Revised Administrative Code; and

8. The appellees voluntarily signed a pledge under their oaths of office dated April 14, 1954 to abide by the letter and spirit of Resolution 83, series of 1953.

On August 22, 1962 the appellees filed their answer to the above proposals. This answer, together with the declarations made in open court during the consideration of the above proposals for admission, discloses the following: The appellees admitted proposals 1, 2, and 3, with the qualification, with respect to proposal 3, that the council was furnished a copy of the motion for contempt officially through the provincial fiscal and the municipal secretary, and, that in fact, vice-mayor Macoy even argued in court during the hearing on the motion for contempt; proposal 4 was admitted with the qualification indicated as to proposal 3; proposal 5 was admitted with the qualification that the appellants had complied with the January 30, 1957 decision as implemented by the lower court's order dated April 4, 1959 when they approved, on January 2, 1960, Resolution 9 requesting the plaintiffs (the herein appellees) in civil case 1865, through their counsel, to wait until July of 1961 for the municipal council to appropriate the amount from any available funds of the municipality to cover up the differentials owing to the appellees, followed by Resolution 42 on January 29, 1960, appropriating the sum of P7,575. 20 in the FY 1960-61 municipal budget of Oroquieta for payment to the appellees, which was actually paid to them; proposal 6 was rejected on the ground that under the rulings of the Supreme Court in *Teves vs. Court of Appeals*, L-14776, May 30, 1960, and other cases, a municipality may be considered bound by a court's decision in a mandamus case although not explicitly made a party-respondent; proposals 7 and 8 were likewise rejected on the grounds that to admit them would amount to a re-opening of the mandamus case, and that even if the alleged waiver were admitted in evidence during the trial in the mandamus case, the same would have been denied admission for being null and void as contrary to section 20 of the Minimum Wage Law.

Due to the refusal of the appellees to admit some of the proposals offered by the appellants, the latter, at the hearing that followed on the contempt charges, attempted to introduce in evidence, both documentary and oral testimony, that would prove the facts denied by the appellees, but this attempt was foiled by the appellees whose objections were sustained by the lower court basically on the ground that the said evidences would only serve to revive the mandamus case the judgment in which has long become final and executory.

On August 25, 1962 the court rendered its decision on the contempt charges. It found the appellants guilty of contempt of court, and accordingly sentenced each of them to pay a fine of P25.00, with subsidiary imprisonment in case of insolvency. They were further ordered confined in jail until they shall have complied with the court's decision and implemental order in the mandamus case. However, the effect of the judgment was suspended as to the respondents therein who have filed or may file a written manifestation declaring their willingness to comply with the court's decision and orders in the said mandamus case. Hence, this appeal.

Several assignments of error are made by the appellants in this appeal.

I. The first states that "The lower court erred in declaring appellants guilty of contempt of court in a case where they were not parties and for allegedly disobeying a decision already complied with."

There are, obviously, two assertions made by the appellants in this particular assignment of error. We shall, however, discuss the second assertion first.

As disclosed in their brief, the appellants' argument that the lower court's decision of January 30, 1957 has already been complied with, is based upon the fact that as shown by the appellees' own evidence, the members of the municipal council of Oroquieta (the respondents in the mandamus case) approved, on December 17, 1959, Resolution 204, supra, which appropriated the sum of P 26, 548.33 from any fund of the municipality not otherwise appropriated to cover the entire claim of the petitioners in said mandamus case. Consequently, according to the appellants, the only remaining action to be taken was the implementation of this resolution. We do not think that this conclusion can be sustained on the basis of the evidence of record. It must be noted that on January 2, 1960, only two days after the appellants assumed office as members of the municipal council of Oroquieta, they approved Resolution 9 requesting the counsel of the appellees to wait until July for the council to appropriate the amount necessary to satisfy the appellees' claim in the mandamus case. This resolution proves quite clearly that Resolution 204 was revoked by Resolution 8, series of 1960, which was passed by the appellants themselves. The pertinent portion of Resolution 9 reads as follows:

"WHEREAS, that the honest purpose and intention of the framers of Resolution No. 8, series of 1950, particularly the present Municipal Council, in revoking said Resolution No. 204, series of 1959, is not to deny in complying with the order of the Honorable Court dated January 30, 1957, but rather to request, the plaintiffs of said civil case No. 1865, through its counsel Atty. Paulino Conol, to defer said payment, and wait till July of next fiscal year so the present municipal council will appropriate the amount from any funds available to cover the said obligation in civil case No. 1865;"

We cannot, therefore, in view of this fact, sustain the appellants' argument that the lower court's decision had already been complied with.

We now go to the first assertion of the appellants: that they cannot be adjudged guilty of contempt for disobeying the court's decision inasmuch as they were not parties in the mandamus case and hence must be deemed unaware of its existence. In support of this position, the appellants cite the following: (a) they became members of the council only on January 1, 1960 whereas the lower court's decision in the mandamus case was rendered way back on January 30, 1957, while the writ of execution to enforce this decision was issued on March 19, 1957 and the court's so-called implemental order, on April 4, 1959, all prior to their assumption of office; and (b) this Court's statement in *Ferrer vs. Rodriguez, et al.*,^[1] to wit:

"As a general rule, persons who are not parties to an action or proceedings are not subject to the jurisdiction of a court trying a case, are not supposed to be aware of the court's order and cannot, therefore, be declared guilty of contempt for violating its orders.

* * *

"Nevertheless, persons who are not parties in a proceeding may be declared guilty of contempt for wilful violation of an order issued in the case if said persons are guilty of conspiracy with any of the parties in violating the court's order."

We cannot sustain the appellants' argument. In the first place, it is impossible to believe that the appellants could not have actual knowledge of the existence of civil case 1865 and the decision and orders of the lower court relative thereto, since as one of the appellants himself testified before the court below - and his testimony, incidentally, was adopted in its entirety by the other appellants - the matter of the appellees' claim was an issue during their political campaign in the 1959 elections, the appellants supporting the stand that if the appellees' claims were true and valid, they will have to pay the same. The same witness, while denying any knowledge of the lower court's decision in the mandamus case, also testified, when asked this question: "What was the basis of the appropriation if it was not the decision of this Court?", that "That was the basis of course but it was not on the strength of the decision that we appropriated the amount." The fact that this witness admitted that they

appropriated an amount (which is equivalent to the first installment payment ordered by the lower court) to pay the appellees' claim, based on what the court required, shows that the appellants were fully aware of the court's decision in the mandamus case. In the second place, it must be observed that the appellants approved Resolution 9 mentioned above only two days after they assumed office as the elected officials of Oroquieta. And, in the third place, section 49 of Rule 39 of our Rules of Court (formerly section 44) provides that:

"The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

* * *

"(b) In other cases the judgment so ordered is, in respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

Being the successors in office of the outgoing members of the municipal council of Oroquieta who were the respondents in civil case 1865, the appellants also succeeded to the civil obligations imposed by statute or judicial decision upon the members of the municipal council in their official capacity. An elective officer does not succeed merely to the rights and privileges attached to an elective office; he also assumes, in contemplation of law, the obligations appurtenant hereto as ordained by statutory rule or judicial pronouncement.[2]

We cannot consider *Ferrer vs. Rodriguez*, cited by the appellants, as applicable to the case at bar. Not only were the facts in that case different from those in the present case, but also, as we said there, the lack of jurisdiction of a tribunal over persons not parties to an action or proceeding, is only the general rule. We, in fact, cited in that case one exception -- conspiracy -- but, obviously, we never suggested or implied that this is the only exception.

II. We now turn to the appellants' second assignment of error. The appellants contend "That assuming *arguendo* that appellants are bound by the decision of the lower court, the said court erred in not admitting evidences of appellants to prove circumstances of fraud under which said decision was rendered and the non-availability or insufficiency of funds by reason of which compliance cannot be made. " There are likewise two parts to this assignment of error.

At the trial of the contempt charges, the appellants attempted to adduce evidence which would show that the appellees signed on April 14, 1954 a pledge in which the latter promised "to abide voluntarily with the spirit and purpose of Resolution No. 83, s. 1953 of the Honorable Municipal Council of Oroquieta to the extent of collecting only any amount of salary increase or difference that may be due us proportional to the actual revenue collections made up to June 30, 1954 in excess of the ordinary revenue estimates based from the 1952-53 Annual Budget." The appellants also wanted to prove that the condition contained in this pledge which would have entitled the appellees to collect salary differentials did not happen as tax collections fell short of the expected municipal income. Their attempts to introduce these evidences were, however, foiled each time by the appellees who objected on the ground mainly that their admission would amount to a re-opening of the mandamus case in which there was already a final judgment.

It is our opinion that the lower court acted correctly on this particular aspect of the case at bar. The proper step that the appellants could have taken was either to file a separate action attacking the validity of the lower court's decision or a petition for relief on the ground of fraud, assuming *arguendo* that the evidence in their hands would be sufficient for the purpose of re-opening the court's decision.[3] Nevertheless, it is also our opinion that it would not have availed the appellants any, were the alleged pledge signed by the appellees and the other documents related thereto admitted in evidence. It must be observed that the alleged pledge was signed on April 14, 1954.

The appellees' claim for salary differentials was, however, based upon two resolutions subsequently passed by the municipal council of Oroquieta on December 29, 1955, namely, Resolutions 125 and 126, supra. Thus, the council itself, by its own action, rendered nugatory whatever binding effect the said pledge could have produced against the interest of the appellees. Admittedly, these two resolutions were subsequently revoked on January 14, 1956 by another council resolution. But it was precisely the validity of this latter resolution that was assailed by the appellees in the mandamus case, and which the lower court by virtue of its decision in this case, in effect, rendered null and void. Hence, the situation is that those two resolutions still stand. Moreover, one of the principal reasons that brought about the passage of those two resolutions was to enable the municipality of Oroquieta to comply with the Minimum Wage Law whose provisions fixing the minimum wage of employees in both the private and government sectors are mandatory and cannot be waived. Thus, section 2(b) of R.A. 602 provides: "Employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and government corporations." On the other hand, section 20 of the same law provides: "No worker or organization of workers may voluntarily or otherwise, individually or collectively, waive any rights established under this Act, and no agreement or contract, oral or written, to accept a lower wage or less than any other benefit required under this Act shall be valid."

The appellants argue, however, that the lower court erred in refusing to admit proof of the financial incapacity of the municipality of Oroquieta to pay the appellees. We cannot sustain this argument on the basis of the recital of facts contained in the record of this case. More than any other reason, what impelled the appellees to file the contempt charges against the appellants was the fact that while the latter included an appropriation item in the FY 1961-62 budget for the payment of the second installment on the claim of the appellees, the appellants made a notation therein directing the municipal treasurer to withhold payment of said amount until the respective appointments of the appellees were received. From the evidence adduced in the court below, we gather that the municipal council makes appropriations on the basis of the statements and estimates of income and expenditures submitted by the municipal treasurer. Likewise, from the testimony of the municipal treasurer of Oroquieta, we gather that in the matter of the above-mentioned appropriation in question, he certified to the council the availability of funds, for the fiscal year involved, in the amount of P 7,575.20 as approved in the budget, but that the council later reverted said appropriation to some other purpose. On the face of this testimony of one of the appellants' own witnesses, it is difficult to fend off the truth of the verdict that the municipality had funds to meet the claims of the appellees in FY 1961-62.

We also consider as untenable two other points subsumed by the appellants in their discussion of their second assignment of error, namely, (a) that inasmuch as more than five years have elapsed since the decision in the mandamus case became final and executory, the enforcement of said decision can no longer be had by a mere motion, but through an independent action; and (b) that the lower court erred in refusing to consider the appellants' proof that the appellees were extended subsequent appointments which carried reduced salary rates.

In connection with the appellants' first contention, it must be borne in mind that the case at bar pertains to a contempt proceeding which arose from the fact that the appellants refused or failed to obey the command of a judicial tribunal for the performance of certain specific acts. In other words, the objective of the proceeding below is primarily that of holding the appellants punishable for disobeying the court's command, and, only secondarily, for the enforcement of the rights and interests of the appellees. Hence, it is within the power of the lower court to take cognizance of the contempt charges filed by the appellees.

With respect, in turn, to the argument that the court below should have admitted evidence that the appellees were extended subsequent appointments at reduced salary rates, it is our considered opinion that it is now late in the day to raise this point. This particular issue should have been raised in the mandamus case. Moreover, from the

decision of the lower court in civil case 1865, it appears that except for two of the petitioners[4] in that case, the salary due the rest of the petitioners therein was P120.00 a month under their respective appointments. This monthly salary, at the time the Minimum Wage Law took effect, was, as practiced by the government, the minimum monthly salary that government employees were supposed to receive per month. Hence, even if the appellees were really extended subsequent appointments at reduced salary rates, such a reduction would have been void for being contrary to the provisions of the law.

III. We now proceed to the appellants' third assignment of error. The appellants maintain that "The lower court erred in declaring the municipality of Oroquieta liable under the decision" in civil case 1865.

In *Teves vs. Court of Appeals*,[5] this Court was presented an issue similar to the one now raised by the appellants, and we there held as follows:

"It is an elementary rule of procedure that cases must be prosecuted for and against the real parties in interest, and in an action for recovery of accrued salaries, the appropriation for which had already been expended, the City that would have to provide the needed amount is certainly a necessary party therein. (*Angara vs. Gorospe*, 101 Phil. 79; *City of Bacolod vs. Enriquez*, 101 Phil. 644; *Cabanes vs. Rodriguez*, L-9799, May 31, 1957; *Cabo Kho vs. Rodriguez*, L-9032, September 28, 1957). Petitioner *Teves* cites, however, cases decided by this Court wherein back salaries were awarded despite the fact that the city or municipality concerned were not made parties to the action. (*Uy vs. Rodriguez*, 95 Phil. 493; *Abella vs. Rodriguez*, 95 Phil. 289; vs. *Del Rosario*, 94 Phil. 483; *Covacha vs. Amante*, L-8358, May 25, 1956). The afore-mentioned citations are not controlling in the case at bar, for in those instances, the question of jurisdiction of the court to make the awards was not raised and passed upon. Nor can we apply our ruling in the cases of *Mangubat vs. Osmeña* (G. R. No. L-12837, April 30, 1959) and *Baguio vs. Rodriguez*, (G. R. No. L-11078, May 29, 1959) that petition for mandamus and quo warranto may be entertained and back salaries awarded notwithstanding the non-inclusion of the city as a party, for the reason that in those cases, the action was directed against the mayor, the treasurer, the auditor and the city council -- all represented by the city attorney. The inclusion in the petition of these officials, specifically the city council that would pass the necessary legislation covering the necessary appropriation, the city treasurer and the city auditor who would release the funds, was considered substantial compliance with the law. Differently, in the instant case, the action was directed only against the City Mayor. There is no question that the said respondent Mayor may, by a writ of mandamus, be compelled to reinstate petitioner *Teves*, but, certainly, back salaries cannot be awarded without affording either the City itself or the City Council opportunity to be heard and prepare its defense."

The doctrine which we adhere to, therefore, as rounded out in the above case, is that the express inclusion of a city or municipality in cases involving a demand for payment of unpaid salaries is not mandatory. The thrust of this doctrine applies in full measure to the instant case. Indeed, what really matters in cases of this nature is whether the local government concerned could be justly said to have been given and adequately afforded the opportunity to defend itself. Obviously, under our legal system, the right to act for and in behalf of a city or municipality, unless the statute specifies otherwise, is vested in its elected officials. In the case at bar, the municipal mayor, the members of the municipal council and the municipal treasurer were expressly made parties in the mandamus case and in the contempt proceedings, and they were represented by the provincial fiscal in both cases. We would be unjustly misshaping the doctrine above enunciated and would render nugatory our attempts lately to free rules of procedure from the fetters of inordinate technicality, if, in the face of what transpired in this case, we would hold that the municipality of Oroquieta was not adequately represented in the mandamus case instituted by the appellees in the court below.

IV. We now turn to the fourth and last assignment of error. The appellants contend that "The lower court erred in declaring appellants guilty of contempt of court without due process of law."

As may be inferred from the brief submitted to this Court, the appellants' reference to lack of due process is anchored, apart from the alleged objectionable features of the proceedings in the court below which were mentioned in their first three assignments of error, upon the following premises: (a) that copies of the motion for contempt filed by the appellees were served only upon the provincial fiscal and the municipal secretary of Oroquieta; (b) that no copy of the supplemental charge for contempt was served upon the fiscal or on any of the appellants prior to their arraignment; (c) that on June 23, 1960 the lower court issued without hearing or notice an order requiring the appellants to appear before the said court on June 30, 1962 and show cause why they should not be dealt with in contempt of court for failure to obey the decision of January 30, 1957; and (d) that on June 30, 1962 the lower court immediately arraigned the appellants before they could even be furnished a copy of the motion for contempt, or apprised of the nature of the charges, or could consult with a lawyer of their choice.

We are of the view that the appellants' claim of denial of due process is untenable.

With respect to the appellants' first premise, while it may be true that they were not furnished individually a copy of the motion for contempt by the appellees prior to or at the time of its filing with the court a quo, it must be borne in mind that the said motion actually and substantially constituted a charge for contempt for the reason that there is no particular form prescribed by the Rules of Court in which a contempt charge shall be framed or described. There is also no requirement in the Rules of Court that a copy of the contempt charge shall be served on the respondents named therein when it is filed in court. All that section 3, Rule 71 (formerly Rule 64) requires on this matter is that a charge in writing be filed. The respondent in a contempt proceeding is, of course, entitled to know the nature and cause of the accusation against him, but this right is properly satisfied when the court, after the respondent appears before it, reads to the respondent the complaint or furnishes him a copy thereof. Moreover, the municipal secretary, and the provincial fiscal who under the law is the legal counsel of municipal officials when the latter are sued in their official capacity, were both served with copies of the motion for contempt prior to its hearing. The record also shows that one of the appellants was present during the hearing of the contempt motion on June 23, 1962. Based on what he said below, it may be clearly inferred that the members of the municipal council of Oroquieta had been informed about the said motion. Thus, he said: "This representation have, upon previous agreement with the council, to be one among those to consult with the Fiscal regarding this case, because it is the Fiscal, according to law, who should represent the Municipal Government. Until the Fiscal is disqualified to do so, I cannot make any say in this case." Since there had been a previous agreement among the members of the council to consult with the fiscal first concerning the case, it is, therefore, difficult to accept that the municipal secretary who received the copy of the said motion had not done his duty of forwarding the said copy to the members of the council. Under section 5 of Rule 131 of our Rules of Court, there is a presumption that official duty has been regularly performed. We believe that this has not been sufficiently rebutted by the appellants. Lastly, the uncontradicted evidence on record shows that the appellants, after their arraignment in the court below, were individually given a copy of the motion for contempt, against which the appellants even filed an answer refuting the material allegations made by the appellees therein. The appellants cannot thus be said to have been deprived of their right, under section 3, Rule 71 of the Rules of Court, to be heard.

The foregoing discussion obviously answers the second argument raised by the appellants to support their fourth assignment of error.

We shall then go to the appellants' third assertion that the lower court denied them due process by issuing without hearing or notice its order of June 23, 1962 requiring then to appear before the said court on June 30, 1962 and show cause why they should not be dealt with for contempt for not complying with the court's January 30, 1957 decision on the mandamus case.

The appellants would apparently be correct were it demand-ed by the fundamental rules established by existing conventions that the procedural branch of justice be applied in the purest and most absolute sense ever conceived by man. We all look forward to the inevitable coming into being of such a state in our quest for true justice and we have cause to envy those who will have the good luck in the future to boast of such a state of achievement. But by our standards of today which the public expects shall be fulfilled; we do not think that the court below is required to consult with the appellants first before it issues a formal order for them to appear and show cause why they should not be dealt with for contempt for failing to obey the court's decision. In the proceedings below, the court a quo had before it a complaint for contempt of court filed by the appellees against the appellants, and since the Rules of Court, as a matter of due process of law, expressly require that the accused in a contempt case be afforded the opportunity to be heard by himself or counsel, it stands to reason that the very least that it could have done was to hale the appellants before it so that the court could hear their side in person or by counsel. It is not like-ly that the court below had the intention of depriving the appellants this opportunity when it ordered them to come to court and show cause. Indeed, the case went subsequently to the trial stage after the appellants had filed their answer. We cannot, therefore, sus-tain the appellants' position.

We now turn to the fourth and last point raised by the appel-lants to support their stand that they were denied due process of law. The appellants claim that on June 30, 1962, the lower court immediately arraigned them before they could be (a) furnished a copy of the motion for contempt, or (b) apprised of the nature of the charges, or (c) could consult with a lawyer of their choice. We have already passed upon the first point of the appellants, and con-sequently, we shall hereafter be concerned solely with the latter two.

The appellants' use of the term "arraign" in their assign-ment of error convinces us that the appellants have in mind the provision of section 1, Rule 116 of the Rules of Court on criminal procedure which states that "The arraignment must be made by the judge or clerk, and shall consist in reading the complaint or information to the defendant and delivering to him a copy thereof, including a list of witnesses, and asking him whether he pleads guilty or not guilty as charged. "They had, in fact, argued before the lower court, when the latter ordered their "arraignment" on the supplemental charge for contempt, that the admission of said supplemental charge would put them in double jeopardy inasmuch as the same, according to them, constitutes an amendment of the motion for contempt of the appellees which can no longer be made since they had already entered their plea of not guilty to the con-tempt motion.

The term "arraignment" as understood in the aforemen-tioned section of our Rules of Criminal Procedure cannot, however, be applied in its fullest sense to the case at bar since the appel-lants were not charged with the commission of a crime, but sim-ply with not complying with what the court had ordered them to do, which was to pay and satisfy the claim of the appellees. Section 3 of Rule 71, of course, requires that a person charged with con-tempt be given an opportunity to be heard, and, as we said earlier, it is part of the court's duty, as required by this provision of the rules, that the person charged be informed of the charges against him. While nothing would prevent a court in a contempt case such as the one at bar to follow strictly the provisions of section 1, Rule 116 of the Rules of Court, nevertheless, for purposes of Rule 71 the court adequately fulfills its duty either by reading the complaint to the respondent or furnishing him with a copy of the contempt charges. We have examined the records of this case at length and are satisfied that the requirement of section 3 of Rule 71 was properly accomplished. The appellants, moreover, admit that they were arraigned, and it strikes us as an incomprehensible case of self-contradiction that while they admit they were arraigned, they charge the lower court with not apprising them of the nature of the charges for contempt filed by the appellees.

As to their argument that they were not given the chance to consult with a lawyer of their choice, it must be observed that their appearance on June 30, 1962 was ordered by the court below way back on June 23, 1962 by an

order which specifically required theca "to show cause why they should not be dealt with in contempt of court for not complying with the decision of this Court dated January 30, 1957." The appellants had, therefore, sufficient time to procure a lawyer of their choice if they had so desired. More-over, the law makes it the duty of the provincial fiscal to represent the officials of a municipality in cases in which they are charged in their official capacity, and, consequently, it cannot be said that they were deprived the services of counsel. Furthermore, all the appellants pleaded not guilty to the contempt charges. It cannot, therefore, be rationally argued that there was any actual or legal harm that was inflicted on them as a result of the arraignment. Lastly, in the hearings that subsequently followed, the appellants never showed up with any lawyer of their own choice, but were all represented by the provincial fiscal who was assisted by two of the appellants who are attorneys-at-law.

The foregoing opinion notwithstanding, this Court is aware that provincial and municipal elections in this country are held every four years, and that on account of the passage of time since the instant appeal was brought to us, it is quite possible that as we now render this decision, a new and different set of elective officials administers the affairs of the municipal government of Oroquieta.

ACCORDINGLY, we affirm the judgment of conviction of August 25, 1962 en toto. We are constrained nevertheless to re-mand this case to the court a quo in order that it may order the reception of evidence as to the present legal capability of the ap-pellants to fulfill what the said court ordered to be done. The lower court is likewise directed to order the inclusion of the in-cumbent new members of the municipal council of Oroquieta, plus the municipal mayor and the municipal treasurer, with due notice to the provincial fiscal, as party-respondents, in order that the said officials may be adequately afforded a reasonable opportunity to effectuate with deliberate speed the lower court's decision of January 30, 1957 in the mandamus case (civil case no. 1865). No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., reserve his vote.

[1] L-17507, August 6, 1962.

[2] Cf. *City of Cebu vs. Piccio*, L-13012 and L-14876, December 31, 1960 citing 38 Am. Jur. 727, pp. 431-432 which states, inter alia, "... In so far, at least, as public rights are involved, a successor in office is in privity with his predecessor, and is hence bound by a judgment against the latter. If the latter has been enjoined from doing an act, his successor is equal-ly enjoined, and if, on the contrary, a judgment has been entered against a public officer authorizing the issuance of a writ of mandamus to compel the performance of an act, the duty of performance rests of his successor in office."

[3] See *Ramos vs. Mañalac*, L-2610, June 16, 1951; *Ramos vs. Al-bano*, L-5380, March 25, 1953; and *Picson vs. Lapuz*, L-7198, October 30, 1954.

[4] Lucio L. Catane was given an appointment at a monthly salary of P180.00, while Buenaventura Bandala's appointment was at 200.00 per month.

[5] L-14776, May 30, 1960. This ruling was expressly reiterated in *Arcel vs. Osmeña* L-14956, February 27, 1961. See also *Discanso vs. Gatmaitan*, L-12226, October 31, 1960 and *City Cebu vs. Piccio*, L-13012 & L-14876, December 31, 1960.

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