

**THE SHELL COMPANY OF THE PHILIPPINES LIMITED, PETITIONER,
VS. HON. MANUEL LOPEZ ENAGE, AS PRESIDING JUDGE OF THE
COURT OF FIRST INSTANCE OF AGUSAN, BRANCH II, FRANCISCA
TIMOSA, ...**

G.R. Nos. L-30111-12. February 27, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The lack of fealty to the requirements of procedural due process is the basis of these certiorari proceedings to set aside two decisions of respondent Judge Manuel Lopez Enage. Petitioner Shell Company of the Philippines,[1] and petitioners Numeriano Jacob Ernesto Dedel and Jacinto Monoy[2] were defendants in an action for damages filed in the Court of First Instance of Agusan in the branch presided by respondent Judge with the other respondents Francisca Timosa and Chiveniano Go as plaintiffs. The two decisions in favor of private respondents, respectively issued on August 26, 1968 and September 30, 1968, are now assailed as having been rendered with-out hearing petitioners in defiance of and contrary to the due process clause of the Constitution.[3] The case for petitioner Shell Company of the Philippines appears to be invulnerable, for at no time was their counsel of record, after the filing of its answer, subsequently notified of the proceedings had. The stand of petitioners Numeriano Jacolo, Ernesto Dedel and Jacinto Monoy, while, on its face, not impressed with the same degree of conclusiveness, gains strength from what appears to be the arbitrary actuation of respondent Judge in refusing a postponement thus resulting in a decision against parties who should be, but were not heard, again in disregard of the due process mandate. Moreover, as a remand of the case insofar as petitioner Shell Company is concerned, would, at any rate, lead to a new hearing, the cause of justice would be better served if on that occasion the other three petitioners are likewise granted the opportunity of presenting their defense, especially so as the damages awarded by respondent Judge in the decisions complained of appear to be the product of excessive and indiscriminate generosity. So we rule.

After the filing of the civil cases for damages by respondents Francisca Timosa and Chiveniano Go, summons was served on petitioner Shell Company of the Philippines, Ltd. at Cebu City. Within the reglementary period, it filed its answer with counter-claim through its counsel, Attorney Alfred P. Deen of the Deen Law Offices at the Deen Building, Cebu City. The other petitioners, as defendants, were represented by the law firm of Deen, Mercado and Cataluña of Butuan City. The counsel surnamed Deen of such law firm is not Attorney Alfred P. Deen, who appears for Shell, but Attorney Nicolas Deen. That must have been the cause of the mistake, for thereafter, only such law firm in Butuan City was served with court notices. It does not admit of doubt, then, that all subsequent proceedings in the two above cases, insofar as petitioner Shell Company is concerned, took place without such counsel of record at Cebu City being notified.

As far as petitioners Jacobo, Dedel and Monoy are concerned, their contention as to the denial of due process is premised on an order of respondent Judge of July 8, 1968 which considered the two cases against them as submitted for decision, notwithstanding the fact that they had not as yet presented their evidence. The reason they

could not do so, according to their petition, was that no notification was made that the hearing would be held on such a date.[4] This allegation is denied in the answer of respondents.[5] What is not denied, however, is the succeeding paragraph of their petition. It reads thus: "On the said fateful day, July 8, 1968, Atty. Lydio J. Cataluña of the Mercado & Cataluña Law Office, counsel for defendants-petitioners, appeared and manifested in court that he had just separated from the law firm handling the cases for defendants-petitioners and that the records of the cases were with Atty. Eduardo Deza Mercado who was left in the law office bearing his name, and that the defendants-petitioners were not notified of the hearing for that day; hence, their absence. Atty. Cataluña accordingly moved to have the hearing postponed to another date, as he intended to withdraw from the case." [6] What is equally indisputable is that then and there, respondent Judge considered the matter submitted, resulting, as in the case of petitioner Shell Company of the Philippines, Ltd., in two decisions against petitioners Jacolo, Dedel and Monoy, now assailed.

The impress of a denial of the fundamental right of due process is thus apparent. The jurisdictional defect is quite marked. The decisions of respondent Judge now sought to be nullified thus suffer from congenital infirmity. It is much too late in the day for this Court, or any court for that matter, to dignify a proceeding as having been conducted in a judicial manner if there be, as in these cases, so flagrant a disregard of the right to be heard. The writs of certiorari prayed for must be granted.

- It does not admit of doubt that as counsel of petitioner Shell Company was not notified of the proceedings had, a failure attributed to the mistaken assumption that the Deen, Mercado and Cataluña law office in Butuan City, and not Alfred Deen of Cebu City, was retained by it, the denial of procedural due process was quite obvious. Such a constitutional guarantee, to quote from a relatively recent decision, *Florendo v. Florendo*, [7] "is satisfied if there be a competent court, not susceptible to the reproach that its actuation is tainted by bias and partiality, possessed of jurisdiction to hear the matter before it, with the parties therein being accorded the right to be heard at every stage of the proceeding * * *." [8] That was to restate what was set forth in the leading case of *Banco Español-Filipino v. Palanca*: [9] "(1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered after lawful hearing." [10] It is merely to emphasize what had been so tersely and comprehensively put by Daniel Webster that by the law of the land, which is an equivalent phrase of due process, is meant "a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." [11]

Respondent Judge failed to have counsel for petitioner Shell Company notified. What is indispensable in law was rendered nugatory in fact. [12] For it would render such a right conspicuously futile if counsel were not given notice of the proceedings to be had. If sanction could therefore be given to what was done by respondent Judge, or, more appropriately, what he failed to do, then this guarantee, insofar as its procedural aspect is concerned, is reduced to a barren form of words. What use is an attorney of record, whose services are precisely sought so that one's interests may receive the protection to which they are entitled under the law, if he is kept ignorant as to when the hearings will be held. Whatever sound advice may be offered will go for naught. Whatever appropriate legal steps he may have in mind cannot be undertaken if he were not present at the trial, not because he did not care to be there but because he did not know as to when it was to be conducted. The post prejudicial testimony against the client, even if contrary to truth, may be accorded acceptance, as its veracity could not be tested in the crucible of cross-examination. One might as well say, if the respondent Judge were to be upheld, that the right to a hearing, far from being of the every essence of procedural due process, is just a useless formality. What ought to have been in the mind of the lower court is this succinct summary, from the pen of Justice J. B. L. Reyes, of the importance of the right to counsel: "A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure." [13] In law; as in life, a little common sense does

help. Had its promptings been heeded, then there would have been no need for these pleas for certiorari so rightfully invoked by petitioner Shell Company.

- As for petitioners Jacolo Dedel and Monoy, who likewise feel aggrieved at this arbitrary actuation of respondent Judge, it is equally an undeniable fact that they were not given the right to be heard. As noted at the outset, however, their position may not be considered as impregnable because such an opportunity was vouchsafed them, but they did not avail themselves of it as, previously, their counsel sought for postponement, which was not granted. It is well-settled that continuance or adjournment is discretionary with a court of justice.^[14] As early as 1916, however, in *Lino Luna v. Arcenas*,^[15] Justice Carson, for this Court, warned that "a sound discretion in this regard should be exercised by the trial judge, and the highly commendable desire for the dispatch of business should not be permitted to turn the scales of justice rather than accede to a reasonable request for a continuance."^[16] Then, subsequently, in a 1929 decision, *Cing Hong So v. Tan Boon Kong*,^[17] Justice Romualdez, as ponente, stated: "In cases like the present, where a party litigant, without malice, fault, or inexcusable neglect, is not prepared for the trial of a case, the court exceeds the discretion conferred upon it by law in denying to said litigant a reasonable opportunity to prepare for the trial and to obtain due process of law and proper protection under the law."^[18] It has been noted that the reason for postponement sought by petitioners on July 8, 1968 was that Attorney Cataluña had just separated from the law firm and the records of the case were with the other counsel, Attorney Mercado. Moreover, in the memorandum for petitioners Jacolo, Dedel and Monoy, which remained unanswered by respondents, there is this relevant recital of the circumstances that ought to have moved respondent Judge to grant the postponement sought: "To show conclusively the manifest abuse of discretion by respondent Judge, we beg to recount the scheduled hearings of the subject cases. After the plaintiffs-respondents presented their evidence, the defendants-petitioners immediately commenced presenting theirs on July 21, 1967. This was, however, cut short by respondent Judge due to lack of material time and the next hearing was set on August 16, 17 and 18, 1967. On these dates, all the petitioners were in court (defendants Jacob and Dedel came from Iloilo City where they were working) ready to present their evidence, but they were not able to do so because there were no court sessions on those three (3) days for reasons known only to the court. The next hearing was then set for November 2 and 3, 1967, but this was cancelled and again re-set to November 27, 28 and 29, 1967. On two other subsequent occasions the hearings were cancelled and again set on March 19, 1968. On March 19, 1968, all the petitioners were present and ready to present their evidence but they were again prevented from so doing because again on that date there was no court session. Finally, the hearings were set on July 8, 1968. On such date the defendants-petitioners failed to appear due to lack of notice to them. In such case, the respondent Judge should not have been too harsh in holding the lapse of literal observance of the rule of procedure as to deny defendants substantial justice."^[19] This is another occasion, then, as was apparent in the *Lino Luna* and *Cing Hong So* decisions, where the language of Justice Alex Reyes in *Capitol Subdivisions, Inc. v. Province of Negros Occidental*,^[20] is apposite: "Liberality should be exercised in granting postponements of trial to obtain presence of material evidence and to prevent miscarriage of justice."^[21] As was categorically set forth by him in the same decision: "While the granting or refusal of motions for continuance is discretionary, that discretion must be exercised wisely with a view to substantial justice."^[22] It would be to accord deference to the above doctrines then, if the remedy sought by petitioners Jacolo, Dedel and Monoy were granted.

- There is need, it would seem again, for respondent Judge and other judges as well, to bear in mind that so essential a right as that of being heard cannot be disregarded without its actuation suffering from a fatal infirmity. As so emphatically expressed by Chief Justice Concepcion in *Vda. de Cuaycong v. Vda. de Sengbengco*:^[23] "Indeed, acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding."^[24] It follows that the due process requirement, as set forth in a recent decision, *Luzon Surety Co., Inc. v. Beson*,^[25] "is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern. It is a constitutional safeguard of the highest order. It is a response to man's innate sense of justice. It demands that governmental acts, more specially so in the case

of the judiciary, be not infected with arbitrariness. It cannot be satisfied unless the elementary requirements of fairness are met." [26] It is thus clear why the outcome of these petitions for certiorari was so predictable, not to say inevitable.

- Nor is this all. There is an element in these proceedings noted in the petition of Shell Company as well as its memorandum, to which no reply was made by respondents, that reinforces the conclusion reached. The cases for damages against petitioners arose from a levy on execution filed by petitioner Shell Company to satisfy a final judgment for P82,785.97 against the couple Go See Gawa and Eustaquia Sastre. It was returned unsatisfied as their personal and real property had "been transferred to third persons." [27] Nevertheless, the rights of Eustaquia Sastre as licensee of a certain lumber yard in Butuan City was levied upon. That started the subsequent trouble of the petitioner. For thereafter, one Francisca Timosa, a relative, and one Chiveniano Go, son of Go See Gawa, filed the above suits for damages alleging losses suffered for such levy, in the case of the former with reference to the lumber business and the latter of a weapon carrier. On the evidence offered by them, the petitioners as seen not having been heard, the former was awarded damages in the sum of P420,400.00 as of January 29, 1969 and the latter P123, 640. 00 as of July 21, 1969 on a vehicle valued at P5, 000.00.

It would thus appear that respondent Judge was called upon to exercise the utmost caution and circumspection before rendering what in effect was an ex parte judgment. [28] Certainly, these were actions that demanded full hearing. Without it, there could have resulted, as petitioners now contend, a travesty on justice. This is not to accept such a view. It is merely to emphasize that respondent Judge was remiss in the fulfillment of his obligation. Any occupant of the judicial chair is vested with a responsibility of the most exacting character. A public office is a public trust runs a truism of the law. Nowhere is such a characterization more accurate than when the position held is that of a judge. He must as conscientiously and as ably as he can ascertain the facts and apply the law. There is to be nothing of the arbitrary or capricious in his actuations. The respect to which he is entitled becomes diminished, at times may even disappear, if the suspicion is legitimately entertained that whether by ignorance, sloth, or plain stubbornness, he acts contrary to what the law dictates. That is to deny a party that to which he is entitled. Centuries of both the civil law and common law tradition, to which this country is heir, warn impressively against such a manifestation of judicial conduct at its least commendable. Respondent Judge unfortunately paid no heed. It should not have been the case at all.

WHEREFORE, the writs of certiorari prayed for are granted, and the decision of August 26, 1968 in Civil Case No. 1071, Francisca Timosa v. Shell Company of the Philippines, et al., and the decision of September 30, 1968 in Civil Case No. 1073, Chiveniano Go v. Shell Company of the Philippines, et al., are nullified, set aside and declared without force and effect, and the aforesaid Civil Cases Nos. 1071 and 1073 in the Court of First Instance of Agusan, 15th Judicial District, Branch II, are remanded for appropriate hearing in accordance with law, with full respect accorded to all the procedural rights of petitioner Shell Company of the Philippines and petitioners Jacolo, Dedel and Monoy. Costs against private respondents.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] In cases G.R. No. L-30111-12.

[2] In cases G.R. No. L-30365-66.

[3] According to Art. III, Sec. 1, par. 1 of the Constitution: "No person shall be deprived of life, liberty and property without due process of law, * * *."

[4] Petition in G.R. No. L-30365-66, par. 15.

[5] Answer in G.R. No. L-30365-66, par. 8.

[6] Petition in G.R. No. L-30365-66, par. 16.

[7] G.R. No. L-24982, March 28, 1969, 27 SCRA 432.

[8] Ibid, 435-436.

[9] 37 Phil. 921 (1918).

[10] Ibid, 934. This decision has been cited with approval in the following cases: In re Estate of Johnson, 39 Phil. 156 (1918); Riera v. Palmaroli, 40 Phil. 105 (1919); Phil. Manufacturing Co. v. Imperial, 47 Phil. 810 (1925); Rivero v. Rivero, 59 Phil. 15 (1933); Perkins v. Dizon, 69 Phil. 186 (1939); Co Tiamco v. Diaz, 75 Phil. 672 (1946); People v. Lopez, 78 Phil. 286 (1947); Mabanag v. Gallemore, 81 Phil. 254 (1948); Sandejas v. Robles, 81 Phil. 421 (1948); Joson v. Nable, 87 Phil. 337 (1950); Dizon v. Leal, 105 Phil. 729 (1959); Pantaleon v. Asuncion, 105 Phil. 761 (1959); Koppel Phil. v. Magallanes, 107 Phil. 926 (1960); Rojas v. Papa, 107 Phil. 983 (1960); Florendo v. Florendo, G.R. No. L-24982, March 28, 1969, 27 SCRA 432.

[11] Cf. Lopez v. Director of Lands, 47 Phil. 23 (1924); Garcia v. The Executive Secretary, G.R. No. L-19748, Sept. 13, 1962, 6 SCRA 1.

[12] Cf. Govt. of P.I. v. La Asociacion Cooperativa de Credito Agricola, 69 Phil. 130 (1939); Sandejas v. Robles, 81 Phil. 421 (1948); Siojo v. Tecson, 88 Phil. 531 (1951); Halili v. Public Service Commission, 92 Phil. 1036 (1953); Villar v. Javier de Paderanga, 97 Phil. 604 (1955); Siochi v. Tirona, 99 Phil. 460 (1956); Capitol Subdivision, Inc. v. Prov. of Negros Occidental, 99 Phil. 633 (1956); Correa v. Pascual, 99 Phil. 696 (1956); Valencia, Jr. v. Mabilangan, 105 Phil. 162 (1959); Wack Wack Golf & Country Club, Inc. v. Court of Appeals, 106 Phil. 501 (1959); Rojas v. Papa, 107 Phil. 983 (1960); Lacdoro v. Arcenas, 110 Phil. 222 (1960); Elli v. Ditan, G.R. No. L-17444, June 30, 1962, 5 SCRA 503; Garcia v. The Executive Secretary, G.R. No. L-19748, Sept. 13, 1962, 6 SCRA 1; Mata v. Rita Legarda, Inc., G.R. No. L-18941, Jan. 31, 1963, 7 SCRA 227; Tolentino v. Ongsiako, G.R. No. L-17938, April 30, 1963, 7 SCRA 1001; Ledesma v. Villaseñor, G.R. No. L-18725, March 31, 1965, 13 SCRA 494; Manila Railroad Co. v. Moya, G.R. No. L-17913, June 22, 1965, 14 SCRA 358; Ongcoco v. Judge, Court of First Instance, G.R. No. L-20941, Sept. 17, 1965, 15 SCRA 30; Macabingkil v. Yatco, G.R. No. L-23174, Sept. 18, 1967, 21 SCRA 150; Pabiling v. Parinacio, G.R. No. L-22682, July 23, 1968, 24 SCRA 100; J. M. Javier Logging Corp. v. Mardo, G.R. No. L-28188, Aug. 27, 1968, 24 SCRA 776; Tiglao v. Comelec, G.R. No. L-31566, Aug. 31, 1970, 34 SCRA 456.

[13] J. M. Javier Logging Corporation v. Mardo, G.R. No. L-28188, Aug. 27, 1968, 24 SCRA 776, 779.

[14] Cf. Pellicena Camacho v. Gonzalez Lique, 6 Phil. 50 (1906); Lichauco v. Lim, 6 Phil. 271 (1906); Go Changjo v. Roldan Sy-Changjo, 18 Phil. 405 (1911); Perez v. Melliza, 18 Phil. 411 (1911); Lino Luna v. Arcenas, 34 Phil. 80 (1916); Olsen and Beaumont v. Fressel & Co., 37 Phil. 121 (1917); Samson v. Naval, 41 Phil. 838 (1918); Fabillo v. Tionko, 43 Phil. 317 (1922); Phil. Guaranty Co. v. Belando, 53 Phil. 410 (1929); Cing Hong So v. Tan Boon Kong, 53 Phil. 437 (1929); Linis v. Rovira, 61 Phil. 137 (1935); Siojo v. Tecson, 88 Phil. 531 (1951); Villar v. Javier de Paderanga, 97 Phil. 604 (1955); Capitol Subdivision, Inc. v. Province of Negros Occidental, 99 Phil. 633 (1956); Siochi v. Tirona, 99 Phil. 460 (1956).

[15] 34 Phil. 80.

[16] Ibid, 99.

[17] 53 Phil. 437.

[18] Ibid, 441-442.

[19] Memorandum for Petitioners, 12-13.

[20] 99 Phil. 633 (1956).

[21] Ibid, 636-637.

[22] Ibid, 637. Cf. Olsen and Beaumont v. Fressel & Co., 37 Phil. 121 (1917).

[23] 110 Phil. 113 (1960).

[24] Ibid, 118.

[25] G.R. No. L-26865-66, Jan. 30, 1970, 31 SCRA 313.

[26] Ibid, 318.

[27] Petition of Shell Company, 2-3 and Memorandum, 2-3.

[28] Memorandum for Petitioners, 11.

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