

**AMADO J. LANSANG, PETITIONER, VS. COURT OF APPEALS,
GENERAL ASSEMBLY OF THE BLIND, INC., AND JOSE IGLESIAS,
RESPONDENTS.***G.R. No. 102667. February 23, 2000*

Ponente: QUISUMBING, J.

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Before us is a petition to review the decision of the Court of Appeals in C.A. G.R. CV No. 27244, which set aside the ruling of the Regional Trial Court, Manila, Branch 8, in Civil Case No. 88-43887, and ordered petitioner Amado J. Lansang to pay private respondent Jose Iglesias P50,000.00 in moral damages, P10,000.00 in exemplary damages and P5,000.00 in attorney's fees.

Like public streets, public parks are beyond the commerce of man. However, private respondents were allegedly awarded a "verbal contract of lease" in 1970 by the National Parks Development Committee (NPDC), a government initiated civic body engaged in the development of national parks, including Rizal Park,[1] but actually administered by high profile civic leaders and journalists. Whoever in NPDC gave such "verbal" accommodation to private respondents was unclear, for indeed no document or instrument appears on record to show the grantor of the verbal license to private respondents to occupy a portion of the government park dedicated to the national hero's memory.

Private respondents were allegedly given office and library space as well as kiosks area selling food and drinks. One such kiosk was located along T.M. Kalaw St., in front of the Army and Navy Club. Private respondent General Assembly of the Blind, Inc. (GABI) was to remit to NPDC, 40 percent of the profits derived from operating the kiosks,[2] without again anything shown in the record who received the share of the profits or how they were used or spent.

With the change of government after the EDSA Revolution, the new Chairman of the NPDC, herein petitioner, sought to clean up Rizal Park. In a written notice dated February 23, 1988 and received by private respondents on February 29, 1988, petitioner terminated the so-called verbal agreement with GABI and demanded that the latter vacate the premises and the kiosks it ran privately within the public park.[3] In another notice dated March 5, 1988, respondents were given until March 8, 1988 to vacate.[4]

The latter notice was signed by private respondent Iglesias, GABI president, allegedly to indicate his conformity to its contents. However, Iglesias, who is totally blind, claims that he was deceived into signing the notice. He was allegedly told by Ricardo Villanueva, then chief warden of Rizal Park, that he was merely acknowledging receipt of the notice. Although blind, Iglesias as president was knowledgeable enough to run GABI as well as its business.

On the day of the supposed eviction, GABI filed an action for damages and injunction in the Regional Trial Court against petitioner, Villanueva, and "all persons acting on their behalf".[5] The trial court issued a temporary restraining order on the same day.[6]

The TRO expired on March 28, 1988. The following day, GABI was finally evicted by NPDC.

GABI's action for damages and injunction was subsequently dismissed by the RTC, ruling that the complaint was actually directed against the State which could not be sued without its consent. Moreover, the trial court ruled that GABI could not claim damages under the alleged oral lease agreement since GABI was a mere accommodation concessionaire. As such, it could only recover damages upon proof of the profits it could realize from the concession. The trial court noted that no such proof was presented.

On appeal, the Court of Appeals reversed the decision of the trial court.

The Court of Appeals ruled that the mere allegation that a government official is being sued in his official capacity is not enough to protect such official from liability for acts done without or in excess of his authority.[7] Granting that petitioner had the authority to evict GABI from Rizal Park, "the abusive and capricious manner in which that authority was exercised amounted to a legal wrong for which he must now be held liable for damages"[8] according to the Court of Appeals.

The Court of Appeals noted that, as the trial court observed, the eviction of GABI came at the heels of two significant incidents. First, after private respondent Iglesias extended monetary support to striking workers of the NPDC, and second, after Iglesias sent the Tanodbayan, a letter on November 26, 1987, denouncing alleged graft and corruption in the NPDC.[9] These, according to the Court of Appeals, should not have been taken against GABI, which had been occupying Rizal Park for nearly 20 years. GABI was evicted purportedly for violating its verbal agreement with NPDC.[10] However, the Court of Appeals pointed out that NPDC failed to present proof of such violation.[11]

The Court of Appeals found petitioner liable for damages under Articles 19, 21, and 24 of the Civil Code.[12]

The Court of Appeals absolved from liability all other persons impleaded in GABI's complaint since it appeared that they were merely acting under the orders of petitioner. The new officers of NPDC, additionally impleaded by GABI, were likewise absolved from liability, absent any showing that they participated in the acts complained of. Petitioner was ordered to pay private respondent Iglesias moral and exemplary damages and attorney's fees.

Hence, this petition, in which petitioner raises the following issues:

- WHETHER OR NOT RESPONDENT COURT ERRED IN NOT HOLDING THAT PRIVATE RESPONDENTS' COMPLAINT AGAINST PETITIONER, AS CHAIRMAN OF NPDC, AND HIS CO-DEFENDANTS IN CIVIL CASE NO. 88-43887, IS IN EFFECT A SUIT AGAINST THE STATE WHICH CANNOT BE SUED WITHOUT ITS CONSENT.
- WHETHER OR NOT RESPONDENT COURT ERRED IN NOT HOLDING THAT PETITIONER'S ACT OF TERMINATING RESPONDENT GABI'S CONCESSION IS VALID AND DONE IN THE LAWFUL PERFORMANCE OF OFFICIAL DUTY.[13]

Petitioner insists that the complaint filed against him is in reality a complaint against the State, which could not prosper without the latter's consent. He anchors his argument on the fact that NPDC is a government agency, and that when he ordered the eviction of GABI, he was acting in his capacity as chairman of NPDC. Petitioner avers that the mere allegation that he was being sued in his personal capacity did not remove the case from the coverage of the law of public officers and the doctrine of state immunity.

Petitioner points out that Iglesias signed the notice of eviction to indicate his conformity thereto. He contends that as evidence of private respondents' bad faith, they sued petitioner instead of complying with their undertaking to vacate their library and kiosk at Rizal Park.

Petitioner adds that during the actual eviction, no untoward incident occurred. GABI's properties were properly inventoried and stored.

According to petitioner, the Court of Appeals' observation that the eviction was prompted by Iglesias' support for striking NPDC workers and the letter-complaint sent to the Tanodbayan is merely conjectural.

Finally, petitioner avers that the move to evict GABI and award the spaces it occupied to another group was an executive policy decision within the discretion of NPDC. GABI's possession of the kiosks as concessionaire was by mere tolerance of NPDC and, thus, such possession may be withdrawn at any time, with or without cause.

On the other hand, private respondents aver that petitioner acted beyond the scope of his authority when he showed malice and bad faith in ordering GABI's ejectment from Rizal Park. Quoting from the decision of the Court of Appeals, private respondents argue that petitioner is liable for damages for performing acts "to injure an individual rather than to discharge a public duty." [14]

While private respondents recognize the authority of petitioner to terminate the agreement with GABI "if [the contract] is prejudicial to the interest of the NPDC," [15] they maintain that petitioner's personal interest, and not that of the NPDC, was the root cause of GABI's ejectment.

The doctrine of state immunity from suit applies to complaints filed against public officials for acts done in the performance of their duties. The rule is that the suit must be regarded as one against the state where satisfaction of the judgment against the public official concerned will require the state itself to perform a positive act, such as appropriation of the amount necessary to pay the damages awarded to the plaintiff. [16]

The rule does not apply where the public official is charged in his official capacity for acts that are unlawful and injurious to the rights of others. [17] Public officials are not exempt, in their personal capacity, from liability arising from acts committed in bad faith. [18]

Neither does it apply where the public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position.

We are convinced that petitioner is being sued not in his capacity as NPDC chairman but in his personal capacity. The complaint filed by private respondents in the RTC merely identified petitioner as chairman of the NPDC, but did not categorically state that he is being sued in that capacity. [19] Also, it is evident from paragraph 4 of said complaint that petitioner was sued allegedly for having personal motives in ordering the ejectment of GABI from Rizal Park.

"4. Defendant AMADO J. LANSANG, JR., the Chairman of the National Parks Development Committee, acting under the spirit of revenge, ill-will, evil motive and personal resentment against plaintiff JOSE IGLESIAS, served on the plaintiff corporation a letter, dated February 23, 1988 terminating plaintiff's lease agreement with a demand for the plaintiff corporation to vacate its office premises..." [20] (Italics supplied.)

The parties do not dispute that it was petitioner who ordered the ejectment of GABI from their office and kiosk at Rizal Park. There is also no dispute that petitioner, as chairman of the NPDC which was the agency tasked to administer Rizal Park, had the authority to terminate the agreement with GABI [21] and order the organization's ejectment. The question now is whether or not petitioner abused his authority in ordering the ejectment of private respondents.

We find, however, no evidence of such abuse of authority on record. As earlier stated, Rizal Park is beyond the commerce of man and, thus, could not be the subject of a lease contract. Admittedly, there was no written contract. That private respondents were allowed to occupy office and kiosk spaces in the park was only a matter

of accommodation by the previous administrator. This being so, also admittedly, petitioner may validly discontinue the accommodation extended to private respondents, who may be ejected from the park when necessary. Private respondents cannot and does not claim a vested right to continue to occupy Rizal Park.

The Court of Appeals awarded private respondent Iglesias moral and exemplary damages and attorney's fees. However, we find no evidence on record to support Iglesias' claim that he suffered moral injury as a result of GABI's ejectment from Rizal Park. Absent any satisfactory proof upon which the Court may base the amount of damages suffered, the award of moral damages cannot be sustained.[22]

Neither can we sustain the award of exemplary damages, which may only be awarded in addition to moral, temperate, liquidated, or compensatory damages.[23] We also disallow the award for attorney's fees, which can only be recovered per stipulation of the parties, which is absent in this case. There is no showing that any of the exceptions justifying the award of attorney's fees absent a stipulation is present in this case.[24]

WHEREFORE, the instant petition is GRANTED. The decision of the Court of Appeals in CA-G.R. CV No. 27244 is hereby SET ASIDE, and the DISMISSAL of the complaint for damages by the trial court for want of merit is AFFIRMED. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on leave.

[1] Rollo, p. 24.

[2] Id. at 10.

[3] Records, p. 10.

[4] Id. at 11.

[5] Id. at 1.

[6] Id. at 14.

[7] Rollo, p. 27.

[8] Id. at 28.

[9] Supra, note 7; Records, pp. 7-8.

[10] Records, p. 10.

[11] Rollo, p. 26.

[12] "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."

"Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

"Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

[13] Rollo, pp. 12-13.

[14] Id. at 63.

[15] Id. at 67.

[16] *Shauf v. Court of Appeals*, 191 SCRA 713, 726 (1990).

[17] Id. at 727.

[18] *City of Angeles v. Court of Appeals*, 261 SCRA 90, 110 (1996).

[19] Records, pp. 1-2.

[20] Id. at 2.

[21] Private respondents recognize this authority. Rollo, p. 67.

[22] *Marquez v. Court of Appeals*, 300 SCRA 653, 660 (1998); *Fule v. Court of Appeals*, 286 SCRA 698, 718 (1998).

[23] CIVIL CODE, Art. 2229.

[24] CIVIL CODE, Art. 2208.

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