

**PATRICIO P. DIAZ, PETITIONER, VS. JUDGE SANTOS B. ADIONG, RTC,
BR. 8, MARAWI CITY, SULTAN MACORRO L. MACUMBAL, SULTAN
LINOG M. INDOL, MACABANGKIT LANTO AND MOHAMADALI
ABEDIN, RE...**

G.R. No. 106847. March 05, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

VENUE in the instant civil action for damages arising from libel was improperly laid; nonetheless, the trial court refused to dismiss the complaint. Hence, this Petition for Certiorari, with prayer for the issuance of a temporary restraining order, assailing that order of denial[1] as well as the order denying reconsideration.[2]

The facts: On 16 July 1991, the Mindanao Kris, a newspaper of general circulation in Cotabato City, published in its front page the news article captioned “6-Point Complaint Filed vs. Macumbal,” and in its Publisher’s Notes the editorial, “Toll of Corruption,” which exposed alleged anomalies by key officials in the Regional Office of the Department of Environment and Natural Resources.[3]

On 22 July 1991, the public officers alluded to, namely, private respondents Sultan Macorro L. Macumbal, Sultan Linog M. Indol, Atty. Macabangkit M. Lanto and Atty. Mohamadali Abedin, instituted separate criminal and civil complaints arising from the libel before the City Prosecutor’s Office and the Regional Trial Court in Marawi City. The publisher-editor of the Mindanao Kris, petitioner Patricio P. Diaz, and Mamala B. Pagandaman, who executed a sworn statement attesting to the alleged corruption, were named respondents in both complaints.[4]

On 2 September 1991, the City Prosecutor’s Office dismissed the criminal case thus[5] -

“WHEREFORE x x x this investigation in the light of Agbayani vs. Sayo case finds that it has no jurisdiction handle this case and that the same be filed or instituted in Cotabato City where complainant is officially holding office at the time respondents caused the publication of the complained news item in the Mindanao Kris in Cotabato City, for which reason it is recommended that this charge be dropped for lack of jurisdiction.”

In the interim, the civil complaint for damages, docketed as Civil Case No. 385-91 and raffled to Branch 10 of the Regional Trial Court in Marawi City, was set for Pre-Trial Conference. The defendants therein had already filed their respective Answers with Counterclaim.

On 18 November 1991, petitioner Diaz moved for the dismissal of the action for damages on the ground that the trial court did not have jurisdiction over the subject matter. He vehemently argued that the complaint should have been filed in Cotabato City and not in Marawi City.[6]

Pending action on the motion, the presiding judge of Branch 10 inhibited himself from the case which was thereafter reraffled to the sala of respondent judge.

On 15 June 1991, respondent judge denied petitioner’s Motion to Dismiss for lack of merit. Diaz thereafter

moved for reconsideration of the order of denial. The motion was also denied in the Order of 27 August 1991, prompting petitioner to seek relief therefrom.

Petitioner Diaz contends that the civil action for damages could not be rightfully filed in Marawi City as none of the private respondents, who are all public officers, held office in Marawi City; neither were the alleged libelous news items published in that city. Consequently, it is petitioner's view that the Regional Trial Court in Marawi City has no jurisdiction to entertain the civil action for damages.

The petitioner is correct. Not one of the respondents then held office in Marawi City; respondent Macumbal was the Regional Director for Region XII of the DENR and held office in Cotabato City; respondent Indol was the Provincial Environment and Natural Resources Officer of Lanao del Norte and held office in that province; respondent Lanto was a consultant of the Secretary of the DENR and, as averred in the complaint, was temporarily residing in Quezon City; and, respondent Abedin was the Chief of the Legal Division of the DENR Regional Office in Cotabato City.[7] Indeed, private respondents do not deny that their main place of work was not in Marawi City, although they had sub-offices therein.

Apparently, the claim of private respondents that they maintained sub-offices in Marawi City is a mere afterthought, considering that it was made following the dismissal of their criminal complaint by the City Prosecutor of Marawi City. Significantly, in their complaint in Civil Case No. 385-91 respondents simply alleged that they were residents of Marawi City, except for respondent Lanto who was then temporarily residing in Quezon City, and that they were public officers, nothing more. This averment is not enough to vest jurisdiction upon the Regional Trial Court of Marawi City and may be properly assailed in a motion to dismiss.

The Comment of private respondents that Lanto was at the time of the commission of the offense actually holding office in Marawi City as consultant of LASURECO can neither be given credence because this is inconsistent with their allegation in their complaint that respondent Lanto, as consultant of the Secretary of the DENR, was temporarily residing in Quezon City.

Moreover, it is admitted that the libelous articles were published and printed in Cotabato City. Thus, respondents were limited in their choice of venue for their action for damages only to Cotabato City where Macumbal, Lanto and Abedin had their office and Lanao del Norte where Indol worked. Marawi City is not among those where venue can be laid.

The third paragraph of Art. 360 of the Revised Penal Code, as amended by R.A. No. 4363, specifically requires that -

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance (now Regional Trial Court) of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: Provided, however, That where one of the offended parties is a public officer x x x (who) does not hold office in the City of Manila, the action shall be filed in the Court of First Instance (Regional Trial Court) of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published x x x x"

(underscoring supplied).

From the foregoing provision, it is clear that an offended party who is at the same time a public official can only institute an action arising from libel in two (2) venues: the place where he holds office, and the place where the

alleged libelous articles were printed and first published.

Private respondents thus appear to have misread the provisions of Art. 360 of the Revised Penal Code, as amended, when they filed their criminal and civil complaints in Marawi City. They deemed as sufficient to vest jurisdiction upon the Regional Trial Court of Marawi City the allegation that “plaintiffs are all of legal age, all married, Government officials by occupation and residents of Marawi City.”[8] But they are wrong.

Consequently, it is indubitable that venue was improperly laid. However, unless and until the defendant objects to the venue in a motion to dismiss prior to a responsive pleading, the venue cannot truly be said to have been improperly laid since, for all practical intents and purposes, the venue though technically wrong may yet be considered acceptable to the parties for whose convenience the rules on venue had been devised.[9]

Petitioner Diaz then, as defendant in the court below, should have timely challenged the venue laid in Marawi City in a motion to dismiss, pursuant to Sec. 4, Rule 4, of the Rules of Court. Unfortunately, petitioner had already submitted himself to the jurisdiction of the trial court when he filed his Answer to the Complaint with Counterclaim.[10]

His motion to dismiss was therefore belatedly filed and could no longer deprive the trial court of jurisdiction to hear and decide the instant civil action for damages. Well-settled is the rule that improper venue may be waived and such waiver may occur by laches.[11]

Petitioner was obviously aware of this rule when he anchored his motion to dismiss on lack of cause of action over the subject matter, relying on this Court’s ruling in *Time, Inc. v. Reyes*. [12] Therein, We declared that the Court of First Instance of Rizal was without jurisdiction to take cognizance of Civil Case No. 10403 because the complainants held office in Manila, not in Rizal, while the alleged libelous articles were published abroad.

It may be noted that in *Time, Inc. v. Reyes*, the defendant therein moved to dismiss the case without first submitting to the jurisdiction of the lower court, which is not the case before Us. More, venue in an action arising from libel is only mandatory if it is not waived by defendant. Thus -

“The rule is that where a statute creates a right and provides a remedy for its enforcement, the remedy is exclusive; and where it confers jurisdiction upon a particular court, that jurisdiction is likewise exclusive, unless otherwise provided. Hence, the venue provisions of Republic Act No. 4363 should be deemed mandatory for the party bringing the action, unless the question of venue should be waived by the defendant x x x”[13]

Withal, objections to venue in civil actions arising from libel may be waived; it does not, after all, involve a question of jurisdiction. Indeed, the laying of venue is procedural rather than substantive, relating as it does to jurisdiction of the court over the person rather than the subject matter.[14] Venue relates to trial and not to jurisdiction.

Finally, Sec. 1 of Rule 16 provides that objections to improper venue must be made in a motion to dismiss before any responsive pleading is filed. Responsive pleadings are those which seek affirmative relief and set up defenses. Consequently, having already submitted his person to the jurisdiction of the trial court, petitioner may no longer object to the venue which, although mandatory in the instant case, is nevertheless waivable. As such, improper venue must be seasonably raised, otherwise, it may be deemed waived.

WHEREFORE, for lack of merit, the Petition for Certiorari is DISMISSED and the Temporary Restraining Order heretofore issued is LIFTED.

This case is remanded to the court of origin for further proceedings.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Petition, Annex “G”.

[2] Petition, Annex “H”.

[3] Rollo, p. 5.

[4] Comment, Annex “A”.

[5] See Note 3.

[6] Petition, Annex “C”.

[7] See Note 3, p. 11.

[8] See Note 3, p. 20.

[9] *Dacoycoy v. Intermediate Appellate Court*, G.R. No. 74854, 2 April 1991; 195 SCRA 641.

[10] Comment, p. 7; Rollo, p. 26.

[11] *Uriarte v. CFI of Negros Occidental*, Nos. L-21938-39, 29 October 1970; 33 SCRA 252.

[12] No. L-28882, 31 May 1971; 39 SCRA 303.

[13] *Id.*, p. 314.

[14] *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*, G.R. No. 75017, 3 June 1991; 198 SCRA 34.

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