

EDGARDO MANCENIDO FOR HIMSELF AND OTHER TEACHERS OF CAMARINES NORTE HIGH SCHOOL, PETITIONERS, VS. COURT OF APPEALS, THE PROVINCIAL BOARD, PROVINCIAL SCHOOL BOARD, PROVINCIAL GOV...

G.R. No. 118605. April 12, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review of the decision dated October 17, 1994, by the Court of Appeals in CA-G.R. SP No. 34331, enjoining the partial execution of the judgment dated December 20, 1993, of the Regional Trial Court (RTC) of Camarines Norte, Branch 38 in Civil Case No. 5864 entitled "Edgardo Mancenido, et al. v. The Provincial Board, et al. for mandamus and damages.

The antecedent facts as summarized by the Court of Appeals are as follows:

"On September 6, 1990 private respondent [herein petitioner] Eduardo Mancenido filed an action for mandamus and damages with the Regional Trial of Camarines Norte, Branch 38, Daet (docketed as Civil Case No. 5864), against the petitioners provincial board of Camarines Norte, the school board, provincial governor, provincial treasurer, and provincial auditor to pay the teacher's claim for unpaid salary increases.

"On December 19, 1990, petitioners [herein co-respondents] filed their answer to the complaint.

"On December 20, 1993, the lower court rendered a decision ordering the Provincial School Board to appropriate and satisfy plaintiffs' claim in the amount of P268,800.00, as unpaid salary increases.

"On February 21, 1994, petitioners [herein co-respondents] filed a notice of appeal.

"On February 24, 1994, respondent judge issued an order giving due course to petitioners' appeal.

"On March 1, 1994, private respondents filed a notice of appeal.

"On the same date, private respondents filed an opposition to petitioners' notice of appeal and a motion for partial execution of judgment.

"On April 8, 1994, respondent judge issued an order (1) recalling the order of February 23, 1994, granting the appeal of petitioners; (2) approving the appeal of private respondents; and (3) granting their motion for partial execution

"On April 14, 1994, petitioners filed a motion for reconsideration of the order of April 8, 1994

"On June 1, 1994, respondent judge denied the motion for reconsideration.".[1]

Dissatisfied with the denial, respondents herein filed a petition for mandamus, prohibition, and injunction with the Court of Appeals with the prayer, among others, that their notice of appeal be given due course and the trial court be prohibited from enforcing the partial execution of its judgment. Said petition was docketed as CA-G.R. SP No.

34331.

Subsequently, the appellate court rendered its decision of October 17, 1994, the dispositive portion of which reads:

"WHEREFORE, the Court GRANTS the petition for prohibition and mandamus and hereby orders respondent judge: (1) to elevate the original record of Civil Case No. 5864 to the Court of Appeals in due course of appeal; and (2) to desist from the partial execution of the decision in the case.

"No costs.

"SO ORDERED.".[2]

Petitioners then filed a motion to reconsider the appellate court's decision, which motion was denied by the Court of Appeals in its resolution dated December 21, 1994.

Hence, the instant petition anchored on the following assignment of errors:

"a. The Court of Appeals has erred in recognizing the authority of Atty. Jose Lapak to file the subject Notice of Appeal.

"b. The Court of Appeals has erred in recognizing that the service of a copy of the subject Notice of Appeal upon Petitioners themselves is valid.

"c. The Court of Appeals has erred in enjoining the partial execution of the Decision dated December 20, 1993 rendered by the Trial Court.".[3]

For our resolution now are the following issues: (1) Whether a private counsel may represent municipal officials sued in their official capacities; and (2) Whether a Notice of Appeal filed through private counsel and with notice to petitioners and not to their counsel is valid.

Anent the first issue, petitioners contend that Atty. Jose Lapak could not represent the respondents Provincial Treasurer and Provincial School Board, because both are instrumentalities of the National Government and may be represented only by the Office of the Solicitor General pursuant to Section 35, Chapter 12, Title 3, Book 4 of the Administrative Code of 1987. Only the Provincial Prosecutor of Camarines Norte may represent the Provincial Governor and the Provincial Board in accordance with Section 481 [1], par. B of the Local Government Code of 1991. Petitioners cite *Province of Cebu v. IAC*, 147 SCRA 447 (1987), where we held that:

"The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it (*De Guia v. The Auditor General*, 44 SCRA 169; *Municipality of Bocaue, et al. v. Manotok*, 93 Phil. 173; *Enriquez, Sr., v. Honorable Gimenez*, 107 Phil. 932) as when he represents the province against a municipality.

"The lawmaker, in requiring that the local government should be represented in its court cases by a government lawyer, like its municipal attorney and the provincial fiscal, intended that the local government should not be burdened with the expenses of hiring a private lawyer. The lawmaker also assumed that the interests of the municipal corporation would be best protected if a government lawyer handles its litigations.".[4]

Petitioners also pray that the Notice of Appeal filed by respondents dated February 18, 1994, be deemed a mere scrap of paper. They claim that it was filed by a lawyer not authorized to do so. Even granting that Atty. Lapak could represent respondents in filing the Notice of Appeal, they add, it was not properly served since its copy was sent to petitioners and not to their counsel of record. They conclude that this error is fatal to their appeal. For in *Riego v. Riego*, 18 SCRA 91 (1966), we held:

"[W]here a party appears by attorney in an action or proceeding in a court of record, all notices thereafter required to be given therein must be given to the attorney and not to the client, and a notice given to the client and not to his attorney is not a notice in law.".[5]

Finally, petitioners point out, since the questioned Notice of Appeal had fatal defects, its filing did not toll the running of the period for the finality of judgment and petitioners could still file a motion for partial execution of the judgment.

After considering petitioners' arguments, however, we find their contentions far from persuasive. *xä law*

Section 481, Article 11, Title V of the Local Government Code (R.A. No. 7160) provides for the appointment of a legal officer, whose function is:

"(I) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;"

The Court has previously ruled on the representation of a local government unit by a private attorney. In *Municipality of Bocaue v. Manotok*, 93 Phil, 173 (1953), and succeeding cases, we held that only when the provincial fiscal is disqualified may the municipal council be authorized to hire the services of a special attorney. We reiterated this in *De Guia v. Auditor General*, 44 SCRA 169 (1972)..[6] In *Enriquez, Sr. v. Gimenez*, 107 Phil 932 (1960), we enumerated the instances when the provincial public prosecutor is disqualified from representing a particular municipality, i.e., when the jurisdiction of a case involving the municipality lies with the Supreme Court, when the municipality is a party adverse to the provincial government or to some other municipality in the same province, and when in a case involving the municipality, the provincial prosecutor, his spouse, or his child is involved as a creditor, heir, legatee, or otherwise.

But do these rulings equally apply to local government officials? In *Alinsug v. RTC*, Br. 58, San Carlos City, Negros Occidental, 225 SCRA 559 (1993), we laid down the rule that, in resolving whether a local government official may secure the services of private counsel in an action filed against him in his official capacity, the nature of the action and the relief sought are to be considered. In *Albuera v. Torres*, 102 Phil. 211 (1957), we approved the representation by private counsel of a provincial governor sued in his official capacity, where the complaint contained other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity. In *Province of Cebu v. Intermediate Appellate Court*, *supra*, we declared that where rigid adherence to the law on representation would deprive a party of his right to redress for a valid grievance, the hiring of private counsel would be proper.

The present case had its origins in Civil Case No. 5864 filed before the RTC of Camarines Norte, Branch 38, for mandamus and damages. Notwithstanding the fact that the trial court granted mandamus, petitioners appealed to the Court of Appeals since the trial court did not award damages. In view of the damages sought which, if granted, could result in personal liability, respondents could not be deemed to have been improperly represented by private counsel. No error may thus be attributed to the appellate court when it recognized the right of respondents to be represented by private counsel.

On the second issue, petitioners argue that respondents failed to perfect their appeal since respondents served a copy of their Notice of Appeal upon petitioners, and not upon their counsel of record. It is settled that the right to appeal is a mere statutory privilege and may be exercised only in accordance with the Rules of Court..[7]

Section 1, Rule 49 of the Rules of Court provides:

"Section 1. Pleadings, motions, service of papers and proof thereof. - Pleadings, motions, filing and service of papers, and proof thereof, except as otherwise provided, shall be governed by Rules 7, 8, 9, 13, and 15, in so far as they are not inconsistent with the provisions of this rule."

Section 2, Rule 13 of the Rules of Court states:

"Section 2. Papers to be filed and served. - Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall be entitled only to one copy of any paper served upon him by the opposite side." (Underscoring supplied).

Pursuant to the aforecited Rules, service of notice when a party is represented by counsel should be made upon counsel, and not upon the party. The purpose of the rule is to maintain a uniform procedure calculated to place in competent hands the prosecution of a party's case..[8] We find petitioners' reliance on Riego proper and to the point..[9]

We find, however, that no error was committed by the Court of Appeals when it ordered the trial court (a) to elevate the original record of Civil Case No. 5864 and (b) to desist from any further proceedings in said case. Petitioners did appeal the decision of the trial court to the appellate court within the reglementary period to perfect an appeal. Once a written notice of appeal is filed, appeal is perfected and the trial court loses jurisdiction over the case, both over the record and subject of the case..[10]

With respect to the trial court's order of partial execution pending appeal, our view is that it was properly challenged by respondents in a special civil action..[11] We have held that the execution of a judgment before becoming final by reason of appeal is allowed, but only in exceptional cases and only if firmly founded upon good reasons for such execution..[12] In other words, a judge should state in his special order granting a writ of execution pending appeal "good reasons" justifying the issuance of said writ..[13] The Court of Appeals found the order of the judge bereft of such "good reasons." In the absence of good reasons which would justify execution pending appeal, it became incumbent upon the reviewing court, to order the elevation of the records of the case in due course, for its appropriate consideration, otherwise failure to do so might constitute grave abuse of discretion on its part..[14] To attribute error to the Court of Appeals when it rendered the assailed decision is to misunderstand the rationale for the action it had taken.

ACCORDINGLY, the instant petition is hereby DENIED and the decision of the Court of Appeals in CA-G.R. SP No. 34331 AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 29-30.

[2] Id. at 32.

[3] Id. at 20.

[4] 147 SCRA 455 [1987]

[5] 18 SCRA 93 (1966)

[6] Ramos v. Court of Appeals, 108 SCRA 728 (1981); Province of Cebu v. Intermediate Appellate Court, et al.,

147 SCRA 447 (1987); cf. Municipality of Pililla, Rizal v. Court of Appeals, 233 SCRA 484 (1994)

[7] Republic v. Register of Deeds of Quezon, 244 SCRA 537 (1995)

[8] National Investment and Development Corporation v. Court of Appeals, 270 SCRA 497 (1997)

[9] See Note 5.

[10] Obosa v. Court of Appeals, 266 SCRA 281 (1997)

[11] Nazareno v. COMELEC, 279 SCRA 89 (1997).

[12] David v. Court of Appeals, 276 SCRA 424 (1997)

[13] Del Callar v. Salvador, 268 SCRA 320 (1997)

[14] Philippine Bank of Communications v. Court of Appeals, 279 SCRA 364 (1997)

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