

THE BOARD OF REGENTS OF THE MINDANAO STATE UNIVERSITY REPRESENTED BY ITS CHAIRMAN, PETITIONER, VS. ABEDIN LIMPAO OSOP, RESPONDENT.

G.R. No. 172448. February 22, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This Petition for Review under Rule 45 of the Rules of Court assails the Decision[1] dated March 14, 2006 of the Court of Appeals in CA-G.R. SP No. 82052. The Court of Appeals dismissed the Petition for Certiorari filed by therein petitioner Dr. Macapado A. Muslim (Muslim) and declared the Motion for Intervention of the Board of Regents of the Mindanao State University (MSU) as a stray pleading proscribed by Rule 19, Section 2 of the Rules of Court.

The instant controversy arose from the following factual background:

Herein respondent Abedin Limpao Osop (Osop) is the former Chancellor of the Mindanao State University-General Santos City (MSU-GSC) campus. Osop retired in 1987 under the Early Retirement Law, but several years after his retirement, he was appointed by Moner M. Bajunaid, then MSU-GSC Chancellor, as a substitute for another professor of the Electrical Engineering Department, College of Engineering, of MSU-GSC, who was on study leave. Osop's appointment took effect on July 1, 1994.[2]

In 1997, Muslim, the succeeding Chancellor of MSU-GSC, renewed Osop's appointment as Assistant Professor IV, effective January 1, 1997 until December 31, 1997. His appointment was duly noted by the MSU Board of Regents during its 166th Meeting held at DECS Conference Room, U.L. Complex, Meralco Avenue, Pasig City, on February 19, 1997.[3]

Muslim allowed Osop to continue teaching at MSU-GSC even after December 31, 1997. On April 17, 1998, Muslim issued Special Order No. 144-98C designating Osop as Chairperson of the Electrical Engineering Department, College of Engineering, of MSU-GSC, with a term of office from April 18, 1998 to April 17, 1999, unless revoked or amended by competent authority.[4]

However, on July 15, 1998, Muslim caused to be served upon the College of Engineering and other offices of MSU-GSC a letter[5] dated July 14, 1998 addressed to Osop that reads in full:

Dear Prof. Osop:

In view of the return to the campus of Prof. Danilo Dadula for whom you have been serving as substitute since July 1, 1994, and considering the expiration of your temporary appointment last December 31, 1997, I regret to inform you that your services with the university will have to end. And since I am not renewing your appointment, you are hereby advised to cease from reporting to duty effective immediately. Moreover, you should clear yourself from monetary and other official accountabilities with the university.

On behalf of MSU-GSC, we thank you for your services.

Very truly yours,

(signed)

MACAPADO A. MUSLIM, Ph. D.

Chancellor

Muslim also issued Memorandum Order No. 010-98C[6] dated July 14, 1998, addressed to Virgilio Ramos (Ramos), Dean of the College of Engineering of MSU-GSC, concerning the expiration and non-renewal of Osop's appointment and directing Ramos to already distribute Osop's teaching load to the remaining faculty members of the College. In the same Memorandum Order, Muslim asked Ramos to explain the latter's failure to include Osop in the list of substitute faculty members which he submitted to the Office of the Chancellor before the start of the 1st semester of 1998.

In compliance with Memorandum Order No. 010-98C, Ramos explained in his letter dated July 16, 1998 that there was no request for the appointment of a substitute for Prof. Danilo Dadula (Dadula) when the latter went on a study leave. He explained:

Basing on our records, there was no request for substitute of Engr. Danilo P. Dadula when he went on study leave in June 1994.

On 17 June 1994, Engr. Noel S. Gunay, then the Chairman of the Electrical Engineering Department, recommended the hiring of Prof. Abedin Limpao Osop in view of the study leave of Julito G. Fuerzas, PEE. Chancellor Moner M. Bajunaid, in his letter dated 30 June 1994, informed Dean Carlos B. Cuanan of the approval of the higher management to hire Prof. Abedin Limpao Osop as substitute of Engr. Julito G. Fuerzas effective 1 July 1994. After more than a semester, Engr. Fuerzas stopped schooling but did not return to this campus. Since then, Prof. Abedin Limpao Osop went on teaching with the College of Engineering and his appointment was renewable yearly as those on probationary status.

Per DBM Plantilla of Personnel, page 336 of 444 pages, Prof. Abedin Limpao Osop has an item. For this, I presumed Prof. A.L. Osop was not a contractual or substitute faculty of the college.

x x x x

Regarding the distribution of Prof. A. L. Osop's teaching load to appropriate faculty members at this time poses some problems. He is handling major courses in electrical engineering and the electrical engineers have excessive overload.

x x x x

It has been noted and experienced that real excessive overload is more on the number of preparations than on overload teaching units. For the interest of our students and with much concern on the efficient delivery of instruction, the faculty of the Electrical Engineering Department could not absorb the load of Prof. A. L. Osop. Since his load are major EE courses, the same could not be handled by any of the faculty in the other departments.

In view thereof, may we request for the reconsideration of your decision to terminate the services of Prof. Abedin Limpao Osop.[7]

Muslim responded by issuing handwritten Memorandum Order No. 012-98C[8] dated July 17, 1998, in which he reiterated his earlier order to Ramos to already distribute Osop's teaching load.

On July 21, 1998, Osop filed before the Regional Trial Court (RTC) of General Santos City, Branch 22, a Complaint for Injunction with Prayer for Writ of Preliminary Injunction/Temporary Restraining Order (TRO), Damages and Attorney's Fees against Muslim and Ramos. The Complaint was docketed as Civil Case No.

6381.[9]

Osop filed two days later, on July 23, 1998, an Urgent Motion for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order. At the hearing held the very next day, on July 24, 1998, the RTC issued an Order in which it noted the absence of Muslim, and to give chance for the possibility of an amicable settlement, it reset the hearing for the issuance of a TRO to July 27, 1998. Nevertheless, in the same Order, the RTC already directed Osop to submit a bond of P20,000.00 to answer for damages that Muslim and Ramos might suffer if it turns out that Osop was not entitled to an injunction/TRO. Osop filed his injunction/TRO bond on July 27, 1998.

At the hearing of Osop's application for the issuance of a TRO on July 27, 1998, the RTC issued an Order,[10] whereby, in consideration of the principle of exhaustion of administrative remedies, it suggested that Osop first write Muslim to seek reconsideration of Muslim's letter and Memorandum Order No. 010-98C both dated July 14, 1998. Osop accordingly wrote Muslim such a letter dated July 27, 1998.[11]

Muslim endorsed Osop's letter dated July 27, 1998 to Emily Marohombsar (Marohombsar), then MSU President. In a letter[12] dated August 7, 1998, Marohombsar wrote:

Based on the meticulous study made, the management is not legally nor morally under obligation to retain Prof. Osop in the service or liable for the non-renewal of his appointment the nature of which was temporary and contingent on the return of Prof. Danilo Dadula. With the return of Prof. Dadula, the renewal of the appointment of Prof. Osop would have been an unjustifiable superfluity.

This Office, concurring with the opinion of Director Imam, upholds your position on the case of Prof. Osop.

Marohombsar's aforequoted decision was based on the Brief from the MSU Human Resources Development Office dated August 6, 1998, signed by Director Lomala O. Imam, stating that "[t]he issue is not one of termination or dismissal but an expiration of an appointment which is not permanent in nature" and that "[t]he renewal or non-renewal of a temporary or probationary appointment is a management prerogative." [13]

On August 6, 1998, Muslim and Ramos filed before the RTC a Motion to Dismiss Civil Case No. 6381 citing the following grounds: (1) lack of cause of action due to non-exhaustion of administrative remedies and non-inclusion of indispensable parties; (2) appointment in a temporary character; (3) presumption of regularity; and (4) forum shopping.[14]

The RTC issued an Omnibus Order on September 10, 1998, dismissing Civil Case No. 6381, for the following reasons:

The complaint is essentially one for illegal dismissal filed by [herein respondent] Abedin Limpao Osop, a faculty member of the Mindanao State University (MSU), against defendant Macapagal A. Muslim, Chancellor of the MSU, and Virgilio Ramos, Dean of the College of Engineering of the same university. A party aggrieved by a decision, ruling, order or action of an agency of the government involving termination of services may appeal to the Civil Service Commission. Regional Trial Courts have no jurisdiction to entertain cases involving dismissal of officers and employees covered by the Civil Service Law. (Mateo v. C.A., 247 SCRA 284). The Civil Service Commission is the sole arbiter of all controversies pertaining to the Civil Service. (Dario v. Mison, 176 SCRA 84).[15]

Thus, the RTC decreed:

WHEREFORE, in view of the foregoing, the instant complaint is hereby DISMISSED for lack of jurisdiction. Accordingly, [Osop's] application for preliminary injunction, being merely ancillary to the principal action is also hereby dismissed without prejudice. The injunction bond is cancelled ipso facto.[16]

The RTC denied Osop's Motion for Reconsideration in an Order[17] dated September 25, 1998, prompting him

to file with the Court of Appeals a Petition for Certiorari and Mandamus, [18] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 49966, in which he argued, inter alia, that:

2) The issue of removal from office of [Osop], who is faculty member of a state university, is beyond the jurisdiction of the Civil Service Commission;

x x x x

4) In Civil Case No. 6381 [Osop] is suing [Muslim and Ramos] also for damages, a subject matter that is beyond the jurisdiction of the Civil Service Commission.[19]

In the meantime, concerned students of MSU-GSC filed before the Civil Service Commission (CSC) Regional Office No. 11 a Complaint for the illegal termination of Osop by Muslim. CSC Regional Office No. 11 issued an Order dated November 27, 1998 finding that Osop's termination was in order given that his appointment as a substitute was good only until the return of the person being substituted.[20]

Eventually, on June 7, 1999, the Court of Appeals rendered a Decision[21] in CA-G.R. SP No. 49966, granting Osop's Petition for Certiorari, based on the following ratiocination:

Anent the order of the Civil Service Commission Regional Office dated November 27, 1998 holding the termination of [Osop] as legal, we agree with [Osop] that this finding should not be legally binding upon him because he is not a party to the complaint apparently initiated by alleged concerned students of MSU-GSC.

Secondly, [Osop's] side of the issue was never heard because only Muslim was allowed to adduce evidence hence a denial of due process on the part of [Osop].

Coming now to the issue of whether or not [Osop's] complaint was correctly dismissed by the trial court for having failed to exhaust administrative remedies and that consequently this case falls with the Civil Service Commission, we answer in the negative.

[Osop] cites Sections 4, 5 and 6(e)(h) of the MSU charter R.A. 1387 as amended by R.A. Nos. 1893, 3791, 3868, to wit:

Sec. 4. The government of said University is vested in a board of regents to be known as the Board of Regents of the Mindanao State University. (R.A. 1893)

Sec. 5. The Mindanao State University shall have the general powers set out in Section thirteen of Act Numbered Fourteen hundred and fifty-nine and the administration of said university and the exercise of its corporate powers are hereby vested exclusively in the Board of Regents and in the President of the University, insofar as authorized by said Board.

Sec. 6. The Board of Regents shall have the following powers of administration and the exercise of the powers of the corporation.

x x x x

(e) To appoint, on the recommendation of the President of the University, professors, instructors, lecturers, and other employees of the University; to fix their compensation, hours of service, and such other duties and conditions as it may deem proper; to grant to them in its discretion leave of absence under such regulations as it may promulgate, any provisions of law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had; and to extend with their consent the tenure of faculty members of the University beyond the age of sixty-five, any other provision of law to the contrary notwithstanding, on recommendation of the President of the University, whenever in his opinion their services are specially needed; Provided, however, that no extension of service shall be made beyond the age of seventy.

x x x x

(h) To prescribe rules for its own government, and to enact for the government of the University such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the University as defined in Section 2 of this Act.

Moreover, Article 152 of the Code of MSU provides:

Art. 152. Terms and Conditions of Appointment. – The precise terms and conditions of every appointment shall be stated in writing. In case of a non-renewal of a probationary appointment the person so concerned shall be so informed in writing at least sixty days before the termination date.

Proceeding from all the foregoing, it appears clearly that the authority to remove is vested in the Board of Regents and only after an investigation and hearing.

Due process was clearly not observed in the removal of [Osop]. First of all, only the Board of Regents have the power of removal which must be for cause and after an investigation and hearing shall have been had. Secondly, even a mere probationary appointment requires that in case of non-renewal the person so concerned shall be informed in writing at least sixty (60) days before termination date. These basic requisites were not at all observed in the termination of [Osop].

Therefore, we agree with [Osop] that his non-referral of the matter of his removal to the Board of Regents before he resorted to court action is accepted as an exception to the doctrine of exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies admits of several exception[s], to wit:

1. When there is a violation of due process.

x x x x

On another point, the two grounds relied upon by Muslim for terminating [Osop] to wit: (1) that Prof. Danilo Dadula for whom [Osop] has been serving as substitute since July 1, 1997 had already returned to MSU, and: (2) [Osop's] temporary appointment expired on December 31, 1997, clearly appears to be without basis.

[Osop] contends and respondent Muslim does not deny that the notation "vice Danilo Dadula on study grant" contained in [Osop's] appointment is erroneous because [Osop] was recruited as a substitute for Engineer Julito Fuerzas.

Assuming that [Osop] merely substituted for Dadula, [Muslim] does not deny that Danilo Dadula returned to MSU General Santos from his study grant in June 1996 and has taught in the Department of Mechanical Engineering of the College of Engineering since then up to April 1998. During the said period, [Osop] was also teaching in the said University and before the letter of July 15, 1998 advising [Osop] of his termination, he was teaching at the same time as Dadula for which he was never asked to leave contrary to Muslim's claim that [Osop] merely acted as a substitute of Dadula. Meanwhile Dadula has filed a leave of absence and has not reported for duty for the first semester of SY 1998-1999. To repeat, from June 1996 up to April 1998, Dadula and [Osop] taught together in the College of Engineering of MSU. Hence, if [Osop] was merely a substitute for Dadula, he should have been required to leave as early as June 1996, upon Dadula's return.

Further, contradicting Muslim's claim that [Osop] is a mere substitute of Dadula on April 17, 1998, Muslim issued Special Order 144-98C designating [Osop] as Chairperson of the Electrical Engineering Department of the College of Engineering with a term of office from April 18, 1998 up to April 17, 1999. Clearly, therefore, when [Osop] continued teaching up to July 15, 1998 and even his appointment as Chairperson of the Electrical

Engineering Department until April 17, 1999 by Muslim himself, his appointment has ceased to be probationary in character.[22]

In the end, the Court of Appeals decreed:

WHEREFORE, premises considered, the petition for certiorari is GRANTED. The Omnibus Order of the RTC of General Santos City, Branch 22 dated September 10, 1998 is hereby SET ASIDE. The RTC is directed to hear and try Civil Case No. 6381 with utmost dispatch.[23]

The Motion for Reconsideration of Muslim and Ramos was denied by the Court of Appeal in its Resolution dated November 11, 1999.[24]

Muslim then appealed the foregoing judgment of the Court of Appeals in CA-G.R. SP No. 49966 by way of a Petition for Review before this Court, docketed as G.R. No. 141276. However, in a Resolution dated July 3, 2000, the Court denied Muslim's Petition for Review; and in a Resolution dated April 4, 2001, the Court likewise denied Muslim's Motion for Reconsideration.[25]

On June 26, 2001, Osop filed an Amended Complaint[26] before the RTC impleading MSU as a defendant in Civil Case No. 6381. Despite the opposition of Muslim and Ramos, the RTC admitted the Amended Complaint in its Order[27] dated July 11, 2001, which reads:

Considering that no responsive pleading has yet been filed by [Muslim and Ramos], the amended complaint is hereby ADMITTED.

WHEREFORE, the defendants Macapado Muslim and Virgilio Ramos are ordered to file their answers within ten (10) days from today, and as prayed for by the counsel of [Osop], issue the corresponding summons to newly impleaded defendant Mindanao State University (MSU) at its main office in Marawi City. The summons to defendant MSU, Marawi City shall be sent via registered mail to the Clerk of Court of Marawi City who is requested to serve the same and thereafter to make a return to this court.

The Solicitor General is hereby ordered to enter his appearance as counsel for defendant Macapado A. Muslim and Virgilio Ramos, who were both sued in their official and personal capacities and defendant MSU.

Muslim and Ramos, through counsel, Atty. Emmanuel C. Fontanilla, filed their Answer to Amended Complaint on July 20, 2001.[28]

On July 27, 2001, RTC Clerk of Court Asuncion de Leon Omila served summons upon MSU at its main campus in Marawi City which required the university to enter its appearance in Civil Case No. 6381 and to answer Osop's Amended Complaint within 15 days after service of said summons.[29]

The Office of the Solicitor General (OSG) entered its appearance before the RTC in Civil Case No. 6381 on September 14, 2001 as counsel for Muslim, Ramos, and MSU (Muslim, et al.). The OSG requested that it be furnished with a copy of the Amended Complaint and that the period to file the answer be suspended until receipt of said Amended Complaint.[30] In its Order[31] dated September 26, 2001, the RTC granted the OSG a period of 15 days from receipt of a copy of the Amended Complaint from Osop within which to file a responsive pleading.

For failure of MSU to file an answer to the Amended Complaint within the given period, Osop filed a Motion to Declare Defendant MSU in Default.[32] Osop's Motion was denied by the RTC in its Order[33] dated February 1, 2002 since there was no proof as to when the OSG received a copy of the Amended Complaint from Osop.

The OSG filed a Manifestation on February 14, 2002 which stated that upon verification with its Record Section, it discovered that Atty. Fontanilla, counsel for Muslim and Ramos, was actually deputized by the OSG to handle

Civil Case No. 6381; and that MSU is adopting the Answer to the Amended Complaint already filed by Ramos and Muslim, as all the defendants in said case were in the same position.[34]

Osop filed a Motion for Reconsideration of the RTC Order dated February 1, 2002 denying his Motion to Declare Defendant MSU in Default. In another Order[35] dated June 21, 2002, the RTC denied Osop's Motion for Reconsideration for being moot and academic in light of the Manifestation of the OSG that MSU was adopting the Answer to the Amended Complaint of Muslim and Ramos.

Meanwhile, Osop filed on January 11, 2002 a Motion for Summary Judgment[36] in Civil Case No. 6381, to which Muslim and Ramos filed on January 16, 2002 an Opposition.[37]

In an Order[38] dated October 21, 2002, Judge Antonio Lubao of RTC-Branch 22 voluntarily inhibited himself from further hearing Civil Case No. 6381 to avoid conflict of interest considering that he was a faculty member at the MSU College of Law. Thus, the case was re-raffled to RTC-Branch 37, presided over by Judge Eddie R. Rojas.

After an exchange of pleadings among the parties, the RTC issued an Order[39] dated March 20, 2003, which granted Osop's Motion for Summary Judgment in Civil Case No. 6381 pursuant to Rule 35, Section 1 of the Rules of Court. The RTC explicated that:

The law itself determines when a summary judgment is proper. Under the rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleading appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensure as a matter of law. What is crucial for determination, therefore, is the presence of a genuine issue as to any material fact.

A "genuine issue" is an issue of fact which require (sic) the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue of trial.

Applying these (sic) principle to the present case, it can be said that [Osop] has clearly demonstrate (sic) the absence of any genuine issue of fact, as well as the issue posed by [Muslim, et al.] that [Osop] is a contractual employee is patently unsubstantial so as not to constitute a genuine issue for a full-blown trial.

From the decision rendered by the Seventeenth Division Court of Appeals concerning the petition for Certiorari and Mandamus filed by [Osop], in this case it ruled that the appointment of [Osop] by [Muslim] ceases to be probationary in character when the former was allowed to continue teaching up to July 15, 1998 (sic) and even appointed as Chairperson of the Electrical Engineering Department. The issue raised by [Muslim, et al.] in their answer that [Osop] is a contractual employee is indeed patently unsubstantial as to constitute a genuine issue in this case for trial. Once and for all, such an issue has already been settled by the honorable Court of Appeals whose decision has become final and executory. Thus, there was no more genuine issue that was left to be tried except the amount of damages and attorney's fees.

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After having been taken into account the foregoing premises and pleadings of the parties in support of their respective stand on the matter under consideration as well as from the implied admissions arising from the failure of [Muslim, et al.] to set forth reasons why [they] could not truthfully either admit or deny those matters alleged in the amended complaint, and having concluded from the attendant circumstances that [Osop] is entitled to judgment as a matter of law for such amount as may be found to be due him in damages.

Consequently, the RTC disposed:

WHEREFORE, a summary judgment is hereby rendered in favor of [Osop] by ordering [Muslim and Ramos] or their successors, and defendant Mindanao State University to give teaching loads to [Osop] and to pay such amount as may be found to be due him in damages.

For the meantime, let this case be called for trial to resolve the sole issue of damages that may be awarded in favor of [Osop] on May 30, 2003, at 2:00 o'clock in the afternoon.[40]

Muslim, et al. filed a Motion for Reconsideration of the aforementioned Order on April 1, 2003, which Osop opposed.

Osop, for his part, filed a Motion for Execution Pending Appeal, and Muslim, et al. filed a Comment thereon.

In an Order[41] dated August 21, 2003, the RTC denied the Motion for Reconsideration of the Order dated March 20, 2003 filed by Muslim, et al., thus:

In resolving [Muslim, et al.'s] Motion for Reconsideration, the Court casts doubt on the veracity of [Muslim, et al.'s] claim that the findings of the Court of Appeals as to the appointment of [Osop] was a mere opinion and that there could be no final determination on the matters not principally raised before it. It was emphasized in the ruling of the Honorable Supreme Court in the case of Padua vs. Robles, G.R. No. 127930, December 15, 2000, which lays down the rules in construing judgments. It was held that the sufficiency and efficacy of a judgment must be tested by its substance rather than its form. In construing a judgment, its legal effects including such effects that necessarily follows because of legal implications, rather than the language used, govern. Also, its meaning, operations, and consequences must be ascertained like any other written instrument. If the record shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusions and upon which such conclusion is based is as effectually passed upon as the ultimate question which is solved. Thus a judgment rest on the intent of the court as gathered from every part thereof, including the situation to which it applies and attendant circumstances.

[Muslim, et al.] lost sight of the fact that the court gave due course to [Osop's] Motion for Summary Judgment only after finding that the issue raised by them in their answer was patently unsubstantial as to constitute a genuine issue. Inasmuch as [Muslim, et al.] failed to show a plausible ground of defense something fairly arguable and of substantial character, they cannot therefore further insist that they have a genuine issue to warrant this Court to hear and try the above-entitled case.

Hence, in the present recourse, [Muslim, et al.'s] Motion for Reconsideration is hereby denied due course for bereft of any merit.

In the same Order, the RTC granted Osop's Motion for Execution Pending Appeal, to wit:

Anent [Osop's] Motion for Execution Pending Appeal, it alleged that [Osop] has been unemployed for almost five (5) years and if [Muslim, et al.'s] appeal on the resolution of this Court, it will be just for the purpose of delaying the termination of the case and to cause further misery to [Osop].

Section 2, Rule 39 of the 1997 Rules of Civil Procedure, lays down the rule for execution pending appeal, categorized as discretionary execution. It is evident from the said provision that a primary consideration for allowing execution pending appeal would be the existence of good reasons. In turn, "good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reason must constitute superior circumstances demanding urgency which will outweigh the

injury or damages should the losing party secure a reversal of the resolution issued by this Court.

After weighing the reasons presented, the Court deemed it wise to give due course to [Osop's] Motion for Execution Pending Appeal. The effective and efficient administration of justice requires that the prevailing party should not be deprived of the fruits of the verdict rendered in his favor. The system of judicial review should not be misused and abused to evade the decision/order from attaining finality.

With the foregoing reasons, [Osop's] Motion for Execution Pending Appeal is hereby given due course, but insofar as to the giving of teaching loads to [Osop] only inasmuch as no amount of damages could be ascertained at this moment.

Let therefore a Writ of Execution Pending Appeal be issued in this case directing [Muslim and Ramos] or their successors and defendant Mindanao State University to give teaching loads to [Osop] with a bond fix at Five Thousand (P5,000.00) Pesos.[42]

Muslim, et al., filed a Motion for Reconsideration[43] of the Order dated August 21, 2003, which Osop again opposed.[44]

On October 1, 2003, Osop filed a Motion for Partial Execution (Based on a Final Executory Judgment) praying that a writ of execution be issued ordering Muslim, et al. to give him teaching loads.[45]

Two days after, on October 3, 2003, Muslim, et al. filed a Second Motion for Reconsideration and Supplement to the Opposition (also Reply to Motion for Partial Execution).[46]

In an Order[47] dated October 9, 2003 the RTC denied Muslim, et al.'s Second Motion for Reconsideration and Supplement to the Opposition (also Reply to Motion for Partial Execution) for being a pro forma motion.

Subsequently, the RTC issued an Order[48] dated November 10, 2003 granting Osop's Motion for Partial Execution and ordering the issuance of a writ for the partial execution of the Order dated March 20, 2003, particularly, for its directive that Muslim, et al. give Osop teaching load.

RTC Clerk of Court Fulgar issued the Writ of Execution[49] the next day, November 11, 2003. As shown in the Sheriff's Return[50] dated November 17, 2003, original copies of RTC Order dated November 10, 2003 and Writ of Execution dated November 11, 2003 were duly served upon Muslim, et al. on November 12, 2003.

Aggrieved, Muslim, in his personal capacity,[51] filed on January 12, 2004, with the Court of Appeals, a Petition for Certiorari and Prohibition with Prayer for a Writ of Preliminary and Instant Issuance of Temporary Restraining Order, which was docketed as CA-G.R. SP No. 82052.[52] Muslim averred that in issuing the Order dated November 10, 2003, the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction as it:

- Consider[ed] the Decision of the Court of Appeals in a Certiorari as a judgment on the merit.
- Plac[ed] the action in the lower court within the purview of summary procedure.
- Grant[ed] partial execution.
- Consider[ed] the order of finding no genuine issue as a final order.[53]

After the parties filed their respective Memorandum, the Court of Appeals issued a Resolution dated October 6, 2004 considering the case submitted for decision.[54]

On January 14, 2005, MSU, through the OSG, filed before the Court of Appeals a Motion to Intervene (with Motion to Admit Memorandum) in CA-G.R. SP No. 82052.[55] Osop opposed the intervention of MSU.[56]

The Court of Appeals rendered its Decision in CA-G.R. SP No. 82052 on March 14, 2006, dismissing Muslim's Petition for Certiorari and Prohibition.[57] It held that:

In the instant case, it is indubitably shown that the main issue that needs to be resolved is whether or not [Osop] was a probationary employee. In CA-G.R. SP No. 49966, the appellate court, despite the fact that the issue brought therein was whether or not public respondent gravely abused his discretion in dismissing the case for lack of jurisdiction, nevertheless ruled that the appointment of [Osop] ceased to be probationary in character. Respondent judge merely took judicial notice of the appellate court's findings that [Osop] had indeed ceased to be a probationary employee. To Our assessment, what respondent judge may have had on his mind was that even if he decided otherwise, the case would still be appealed to the Court of Appeals which, as adverted to, already made a finding that [Osop] was a permanent employee. Moreover, the appellate court's decision was also binding between the parties; it was deemed to be the "law of the case," hence, it was only proper for public respondent to conform to this Court's decision.

x x x x

A trial court which has jurisdiction over the person and subject matter of the case, can grant a motion for summary judgment, and such is within its power or authority in law to perform. Its propriety rests on its sound exercise of discretion and judgment. In the event that it errs in finding that there is no genuine issue to thus call for the rendition of a summary judgment, the resulting decision may not be set aside either directly or indirectly by petition for certiorari, but may only be corrected on appeal or other direct review. The court a quo categorically stated that its March 20, 2003 [Order] had become final and executory as quoted hereunder:

"A review of the records of the case will show that the [Muslim, et al.] received the Order dated [20] March 2003, granting the summary judgment, on March 25, 2003. On that date, the fifteen (15) days prescriptive period within which to file an appeal began to run. Instead of preparing an appeal, [Muslim, et al.] filed their Motion for Reconsideration on April 1, 2003. The filing of the said Motion interrupted the reglementary period to appeal. By that time, however, eight (8) days had already lapsed; thus, from their receipt of the Order dated August 21, 2003, denying their Motion for Reconsideration, on September 2, 2003, they had only seven (7) days left or until September 9, 2003 within which to file a notice of appeal. However, on said date, [Muslim, et al.] filed another Motion for Reconsideration praying that the order for execution pending appeal be recalled. On October 9, 2003, an Order had been issued denying [Muslim, et al.'s] Motion for Reconsideration, copy of which was received by [Muslim, et al.] on that same day.

Again, carefully going over the records, the Court finds that the Orders issued were already final and executory. [Muslim, et al.] received the Order granting the summary judgment of [Osop] dated March 20, 2003. Hence, they had until September 9, 2003 within which to file its appeal. [Muslim, et al.] filed a Motion for Reconsideration and the Court on its Order dated August 21, 2003 denied the same. [Muslim, et al.] received a copy of the denial of its Motion for Reconsideration, which was considered pro-forma, was likewise denied on October 9, 2003, [Muslim, et al.] received copy of the order of denial on that very same day. Such second motion for reconsideration filed by [Muslim, et al.], being a pro-forma, does (sic) not toll the running of the period to perfect an appeal or any remedy provided by law. Thus, it can be concluded that the subject orders issued by this Court are now final and executory. Now, once a judgment attains finality it becomes the ministerial duty of the trial court to order its execution."

Indeed, it bears stressing that the right to appeal is not a natural right or a part of due process. It is a procedural remedy of statutory origin and, as such, may be exercised only in the manner and within the time frame provided by the provisions of law authorizing its exercise. Failure of a party to perfect an appeal within the period fixed by law renders the decision sought to be appealed final and executory. After a decision is declared final and executory, vested rights are acquired by the winning party who has the right to enjoy the finality of the case.

To determine whether a judgment or order is final or interlocutory, the test is: Does it leave something to be done

in the trial court with respect to the merits of the case? If it does, it is interlocutory, if it does not, it is final. A final judgment is one that disposes of a case in a manner that leaves nothing more to be done by the court in respect thereto. A summary judgment is one which is final as it already adjudicated the issues and determined the rights of the parties. It is only interlocutory when the court denies a motion for summary judgment or renders a partial summary judgment as there would still be issues left to be determined by the court. In the instant case, the March 20, 2003 Order was unequivocal, other than setting a hearing to determine the amount of damages, but had, on the other hand, already disposed of the case. As such, the issuance of the November 10, 2003 Order granting the motion for partial execution was proper as the summary judgment already became final and executory as adverted to.

In a petition for certiorari, even if, in the greater interest of substantial justice, certiorari may be availed of, it must be shown that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, that is, that the trial court exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostilities, so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.” We find that such abuse is not extant in the instant case.[58]

Muslim filed a Motion for Reconsideration of the foregoing judgment on May 9, 2006[59] and a Supplemental Motion for Reconsideration on June 23, 2006.[60]

On July 11, 2006, the Court of Appeals issued a Resolution stating that it received on June 8, 2006 a copy of the instant Petition (G.R. No. 172448) filed by MSU; and since said Petition assails its Decision dated March 14, 2006 in CA-G.R. SP No. 82052, it was constrained to await the ruling of the Supreme Court in G.R. No. 172448. Hence, the Court of Appeals opted to hold in abeyance the resolution of Muslim’s Motion for Reconsideration and Supplemental Motion for Reconsideration of the Decision dated March 14, 2006 in CA-G.R. SP No. 82052.

The issue relevant to the Petition at bar insofar as MSU is concerned arises from the pronouncement of the Court of Appeals in the same Decision dated March 14, 2006 in CA-G.R. SP No. 82052 quoted hereunder:

At the outset this case was deemed submitted for decision on October 6, 2004. On January 10, 2005, this Court received a Motion to Intervene (with Motion to Admit Memorandum) filed by Mindanao State University (MSU) through the Office of the Solicitor General (OSG). However, Section 2, Rule 19 of the Rules of Court, allows intervention only at any time before rendition of judgment by the trial court, and We hold the motion to intervene is a stray pleading and is deemed not filed.[61]

The instant Petition of MSU presented the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER’S MOTION FOR INTERVENTION WAS IMPROVIDENTLY FILED.

II

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT’S MOTION FOR SUMMARY JUDGMENT WAS PROPER ALTHOUGH PETITIONER PRESENTED DEFENSES IN THEIR ANSWER TO AMENDED COMPLAINT TENDERING FACTUAL ISSUES WHICH REQUIRE TRIAL ON THE MERITS.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT ACQUIRED PERMANENT STATUS.

IV

THE COURT OF APPEALS GRAVELY ERRED UPHOLDING THE TRIAL COURT'S ORDER GRANTING RESPONDENT MOTION FOR ISSUANCE OF PARTIAL WRIT OF EXECUTION.[62]

MSU anchors its right to intervene on Rule 19, Section 1 of the Rules of Court. MSU stresses that it has a legal interest in the controversy considering that, ultimately, it will be the one liable for the relief Osop prays for, particularly, Osop's reinstatement at MSU-GSC.

Rule 19, Section 1 of the Rules of Court provides:

Section 1. Who may intervene. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Alfelor v. Halasan*,[63] the Court held that:

Under this Rule, intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof.[64]

Jurisprudence describes intervention as “a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings.”[65] “The right to intervene is not an absolute right; it may only be permitted by the court when the movant establishes facts which satisfy the requirements of the law authorizing it.”[66]

While undoubtedly, MSU has a legal interest in the outcome of the case, it may not avail itself of the remedy of intervention in CA-G.R. SP No. 82052 simply because MSU is not a third party in the proceedings herein.

In Osop's Amended Complaint before the RTC, MSU was already impleaded as one of the defendants in Civil Case No. 6381. MSU came under the jurisdiction of the RTC when it was served with summons. It participated in Civil Case No. 6381, where it was represented by Atty. Fontanilla, counsel for Muslim and Ramos, who was deputized by the OSG as counsel for MSU. MSU adopted the Answer to the Amended Complaint of its co-defendants, Muslim and Ramos, and also joined Muslim and Ramos in subsequent pleadings filed before the RTC in Civil Case No. 6381. Evidently, the rights and interests of MSU were duly presented before the RTC in Civil Case No. 6381. Unfortunately, the RTC issued the Orders dated March 20, 2003 and August 21, 2003 in Civil Case No. 6381 adverse to MSU and its co-defendants, Muslim and Ramos.

The Orders dated March 20, 2003 and August 21, 2003 of the RTC in Civil Case No. 6381 granted summary judgment in Osop's favor. Muslim filed his Petition for Certiorari and Prohibition in CA-G.R. SP No. 82052 which is still pending before the Court of Appeals (which has yet to resolve Muslim's Motion for Reconsideration and Supplemental Motion for Reconsideration). Consequently, we are careful not to make any declarations herein that will prematurely judge the merits of CA-G.R. SP No. 82052.

MSU, on its part, neither filed an appeal nor a Petition for Certiorari before the Court of Appeals to challenge the adverse RTC Orders. MSU sat on its rights. Despite receiving on September 2, 2003[67] a copy of the RTC Order dated August 21, 2003 (denying the Motion for Reconsideration of the RTC Order dated March 20, 2003 filed by MSU, together with Muslim and Ramos) in Civil Case No. 6381, MSU did not act until it filed its Motion for

Intervention on January 14, 2005[68] in CA-G.R. SP No. 82052, after an interval of 16 months. Evidently, it was already way beyond the reglementary period for MSU to file an appeal (15 days)[69] or a Petition for Certiorari (60 days).[70] The RTC Orders dated March 20, 2003 and August 21, 2003 had already become final and executory as to MSU. It cannot now circumvent the finality of the RTC Orders by seeking to intervene in CA-G.R. SP No. 82052 and thereby, to unduly benefit from the timely action taken by Muslim, who alone, filed the Petition in CA-G.R. SP No. 82052.

In view of the foregoing, the Court finds no further need to address the other assignment of errors of MSU. Given that the Court of Appeals did not allow MSU to intervene in CA-G.R. SP No. 82052, it has no personality to question the judgment of the appellate court in this case.

WHEREFORE, the instant Petition for Review is hereby DENIED.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Villarama, Jr., and Perlas-Bernabe,[*] JJ., concur.

[*] Per Special Order No. 1203 dated February 17, 2012.

[1] Rollo, pp. 54-65; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, concurring.

[2] Records, Vol. 1, p. 49.

[3] Id. at 21-56.

[4] Id. at 56.

[5] Id. at 61.

[6] Id. at 62.

[7] Id. at 64-65.

[8] Id. at 63.

[9] Id. at 5-14.

[10] Id. at 110.

[11] Id. at 119.

[12] Rollo, p. 81.

[13] Id. at 82.

[14] Records, Vol. I, p. 201.

[15] Id. at 264.

[16] Id. at 265.

[17] Id. at 343-344.

[18] Id. at 347-370.

- [19] Id. at 356-357.
- [20] Id. at 418-420.
- [21] Id. at 426-434.
- [22] Id. at 429-434.
- [23] Id. at 434.
- [24] Id. at 478.
- [25] Id. at 507.
- [26] Id. at 508-517.
- [27] Id. at 589.
- [28] Id. at 632-642.
- [29] Id. at 660.
- [30] Id. at 664-668.
- [31] Id. at 670.
- [32] Id. at 751.
- [33] Records, Vol. II, p. 23.
- [34] Id. at 46-48.
- [35] Id. at 101.
- [36] Records, Vol. I, pp. 759-782.
- [37] Records, Vol. II, pp. 1-7.
- [38] Id. at 111-112.
- [39] Id. at 121-123.
- [40] Id. at 123.
- [41] Id. at 241-243.
- [42] Id. at 242-243.
- [43] Id. at 263-266.
- [44] Id. at 280-281.
- [45] Id. at 290-291.
- [46] Id. at 309-314.
- [47] Id. at 328.
- [48] Id. at 366-372.
- [49] Id. at 382-383.

[50] Id. at 384.

[51] In the Amended Complaint, Muslim was sued not only in his official capacity but also in his personal capacity.

[52] Records, Vol. II, pp. 418-438.

[53] Id. at 430.

[54] Id. at 669.

[55] Id. at 681-718.

[56] Id. at 944-946.

[57] Muslim's Motion for Reconsideration is still pending in court.

[58] Rollo, pp. 60-65.

[59] CA rollo, pp. 575-586.

[60] Id. at 886-904.

[61] Records, Vol. II, pp. 951-952.

[62] Rollo, pp. 24-25.

[63] G.R. No. 165987, March 31, 2006, 486 SCRA 451.

[64] Id. at 460.

[65] Asia's Emerging Dragon Corporation v. Department of Transportation and Communications, G.R. No. 169914, March 24, 2008, 549 SCRA 44, 48.

[66] Id. at 51.

[67] Records, Vol. II, p. 368.

[68] Id. at 681-718.

[69] Rules of Court, Rule 41, Sec. 3.

[70] Id., Rule 65, Sec. 4.

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