

HON. LOPE DAMASOO AS PROVINCIAL GOVERNOR OF BUKIDNON AND IN HIS PRIVATE CAPACITY, PETITIONER, VS. HON. ABUNDIO Z. ARRIETA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BUKIDNON, P...

G. R. No. 18879. January 31, 1963

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This is an appeal from the decision of the Court of Appeals in CA-G.R. No. 28869-R, dismissing a petition for certiorari, mandamus and prohibition against a decision of the Court of First Instance of Bukidnon ordering petitioner Damasco and the provincial treasurer of Bukidnon to reinstate Teodorico C. Avisado, Lumances C. Libertad and Leonardo C. Artianza in their respective positions and pay their salaries.

In Special Civil Case No. 182 instituted in the Court of First Instance of Bukidnon, petitioner-appellant Lope Damasco was sued both in his official capacity as provincial governor and as a private citizen by the respondents Teodorico C. Avisado, Lumances C. Libertad and Leonardo C. Artianza, the latter claiming that they were illegally and arbitrarily refused payment of their salaries. In said petition they sought for reinstatement to their respective positions. In the trial court, Governor Damasco was represented by the provincial fiscal Hemerio Garcia, Senator Estanislao Fernandez and Congressman Felicisimo Ocampo. Senator Fernandez did not personally appear in court while Congressman Ocampo appeared in collaboration with the provincial fiscal. Before the petitioners (now respondents herein) had rested their case, Congressman Ocampo left for Manila, leaving the provincial fiscal to continue the entire proceedings. On December 2, 1960, the trial court rendered its decision against the herein petitioner. A copy of the said decision was receipted by Fiscal Garcia as only for the provincial treasurer (another respondent in the lower court) on December 12, 1960. Fiscal Garcia did not appeal from said decision of the trial court, instead, he addressed a letter to the Clerk of Court requesting that a copy of the decision be furnished to the Manila lawyers of Governor Damasco. On December 15, 1960, a copy of said decision was received by Congressman Ocampo in Manila and on January 3, 1961, Atty. Abelardo Subido deposited with the Manila Post Office, a notice of appeal and appeal bond for Governor Damasco. On January 13, 1961, counsel for the petitioners (now respondents) filed a motion for execution of the decision alleging that the receipt of Fiscal Garcia on December 12, 1960 of the decision, the same was already final and executory, which motion was granted by the lower court in an order dated January 16, 1961. On January 17, Fiscal Garcia filed a motion for a reconsideration of the order granting the motion for execution and dismissing the appeal, but said motion was denied by the trial court. From this order, Governor Damasco instituted an action for certiorari, prohibition and injunction with the Court of Appeals. The Court of Appeals in a resolution dated June 16, 1961 sustained the ruling of the lower court to the effect that the decision of the trial court dated December 2, 1960 and received by Fiscal Garcia on December 12, 1960 was already final and executory, hence, the present appeal on certiorari.

In his petition with the Supreme Court, petitioner argues that since he was sued in his official and private capacity, he may be represented by a private counsel instead by the Provincial Fiscal, his appeal filed by his private counsel should have been given due course, as it was filed within the reglementary period. Respondents argue that notice to one counsel on record is equivalent to notice of all counsel regardless of whether or not said

counsel belong to the same law office or are practicing one independently from the other; that the first notice of the trial court's decision which was receipted by Fiscal Garcia on December 12, 1960 must be the starting point of the running of the period within which to appeal.

The issue at bar is whether the judgment became final upon the lapse of 15 days from December 12, 1960 when Fiscal Garcia received a copy of the decision or upon the lapse of 15 days from December 15, 1960 when Congressman Felicisimo Ocampo received a copy of the same decision.

The Court of Appeals in resolving this issue, denied the standing of Fiscal Garcia, Senator Fernandez and Congressman Ocampo in relation to the case and concluded that Fiscal Garcia was the principal counsel for the herein petitioner, whose official duty is to represent the province and the Governor and his request for the clerk to notify Congressman Ocampo did not have the effect of substituting Congressman Ocampo for himself. It therefore held that the period within which to appeal should be counted from the receipt of the decision by the Fiscal.

It is not necessary to discuss the question as to who the principal counsel was, for we find merit in the contention of respondents that there being no proof on record that the fiscal was withdrawn as counsel for the governor, he is still a counsel for the latter, and further, that notice to any one of the several counsel on record is equivalent to notice to all the counsel. In support of this, the following are the digests of the decision of the Supreme Court on this point:

"Where none of the requirements for substitution of attorneys are shown to have been met, notice of decision sent to the original counsel of record for defendants starts the time running for appeal, notwithstanding a different attorney has subsequently filed a notice of appearance for defendants, and the original attorney to whom the copy of the decision is sent fails to notify his clients thereof, such attorney being still attorney of record." (Olivares vs. Leola, 97 Phil., 253; 51 Off. Gaz. 3450, No. L-6156, June 30, 1955.)

"The withdrawal as counsel of a client in a case, or the dismissal by the client of his counsel, must be made in a formal petition filed in the case, and where no such petition had been accomplished, Notice of the judgment rendered in the case served on counsel of record is, for all legal purposes, notice to his client, the date of Receipt of which is considered the starting point from which the Period for appeal prescribed by law shall begin to run." (Baquiran vs. Court of Appeals, et al., G.R. No. L-14551, July 31, 1961.)

Regardless of the foregoing, as the action in the Court of First Instance was for mandamus, the period within which to appeal the decision of the lower court dated December 2, 1960 had long expired on January 3, 1961, even assuming that the period to appeal should be reckoned from the date of its receipt by Congressman Ocampo. From December 16, 1960 to January 3, 1961 is 19 days, 4 days beyond the reglementary period of 15 days, as provided in Sec. 17, Rule 41 of the Rules of Court.

Wherefore, the appeal is hereby dismissed and the decision of the Court of Appeals affirmed. With costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Conception, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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