

SERVANDA ENECILLA, PETITIONER, VS. LUZ MAGSAYSAY, RESPONDENT.

G.R. No. 21568. May 19, 1966

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On March 2, 1959, petitioner impleaded respondent before the Court of First Instance of Manila to recover certain amount of money as unpaid salaries, damages and attorney's fees.

Respondent, in her answer, denied the important allegations of the complaint but did not interpose any counterclaim for damages nor for attorney's fees. She merely pleaded that the complaint be dismissed, with costs.

In due time, the court a quo dismissed the complaint as prayed for by respondent, whereupon petitioner brought the case to the Court of Appeals, and on June 24, 1963, the latter in a well-written decision affirmed the judgment of dismissal but awarded to respondent the sum of P2,000.00 as counsel fee. The Court of Appeals likewise sentenced petitioner to pay double costs.

Hence the present petition for review.

The facts of this case, as found by the Court of Appeals, are:

"Plaintiff below, appellant here, Servanda P. Enecilla, a beautician, and defendant below, appellee here, Lux B. Magsaysay widow of a great President, Ramon Magsaysay, were old friends. Their friendship began when they were neighbors in Singalong when Magsaysay was still Congressman for Zambales. When Magsaysay became Secretary of National Defense and transferred the family to Camp Murphy, Servanda went with the Magsaysays and lived in their house for a few months. Servanda gave Mrs. Magsaysay occasional beauty treatments, and Mrs. Magsaysay reciprocated by doing her favors.

"After Magsaysay became President on January 1, 1953, apparently sensing an opportunity to advance her own interest as beautician Servanda voluntarily gave Mrs. Magsaysay occasional beauty treatments in Malacanang. It would be great, she must have thought, to be known by the society matrons frequenting Malacanang as a beautician of the First Lady. These occasional beauty treatments were unsolicited because Mrs. Magsaysay had a regular beautician. Cresencia Lim, from the Daisy Beauty Parlor, owned by a sister-in-law of J. V. Cruz, whose services were free of charge, Servanda's beauty treatments were allowed or tolerated by Mrs. Magsaysay out of courtesy and so as not to hurt the feelings of an old friend. Neither thought of any salary or compensation for Servanda for these beauty treatments. In return Mrs. Magsaysay did Servanda many favors.

"The tragic death of President Magsaysay in an airplane crash on March 17, 1957, deprived the widow of the honors of the husband and made her leave Malacanang when Vice-President Garcia succeeded to, and assumed the Presidency on the following day. Having lost the honors of the husband and her glamour as First Lady, the widow, as usually happens, began to lose some of her good weather friends. Servanda, apparently, was one of them.

"Two years later, on March 2, 1959, Servanda brought the present action against the widow in the Court of

First Instance of Manila to recover P36,900.00 as alleged unpaid salaries as the defendant's beautician at the rate of P900.00 a month from April 1954 to August, 1957, P15,000.00 as actual and moral damages, and P3,00.00 as counsel fees."

In justifying the award of the sum of P2,000.00 as counsel fee, the Court of Appeals said: "The appellant has brought a clearly unfounded civil action, in view of which she should be made to answer for reasonable counsel fee although the appellee out of her well known goodness and charity for all, did not file a counterclaim." But counsel for petitioner now disputes this finding as bereft of any basis in law considering that respondent neither set up a counterclaim for damages or for attorney's fees in the court a quo nor she did make any plea therefor in the brief submitted by her counsel before the Court of Appeals. In short, counsel contends that because of such failure to make any claim for counsel fee in either court she must be deemed to have waived it to the extent that the award made by the Court of Appeals to such counsel fee has no leg to stand on.

We find merit in this contention, indeed, the appellee in this litigation can only advance any argument that she, may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed and can even assign any error if such is necessary to strengthen the views expressed by the court a quo, but cannot be given any relief not invoked by her in the appellate court.[1] To deserve such relief she must herself appeal. And this is the rule even if the appellate court may find appellants' appeal unmeritorious or utterly frivolous.

It is true that in the case of *Fores vs. Miranda*, cited by respondent,[2] the Court of Appeals awarded attorney's fees even if the defendant did not appeal from the decision, but such award was justified because defendant asked for damages in his answer and said Court considered said attorney's fees as included in the concept of damages under the Civil Code. It is only in this concept that the award was justified. In the instant case, however, respondent did not set up any claim for damages either in the court a quo or in the Court of Appeals- Such case is, therefore, no authority in the present.

With regard to the double, costs imposed upon petitioner by the Court of Appeals, we find it justified considering that said Court found the appeal frivolous. Moreover, it found the theory entertained by petitioner "preposterous and absurd", after carefully considering the evidence she has presented. This is a question of fact we cannot now look into.

We are, therefore, constrained to modify the decision of the Court of Appeals by removing the amount awarded to respondent by way of counsel fee.

Wherefore, with the modification of the decision appealed from in the sense above indicated, the same is affirmed in all other respects.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Savchez, JJ., concur.

Decision affirmed with modification.

[1] *Maria Dy, et al. vs. Kuizon*, L-16654, November 30, 1961; *Batangas Transportation Company vs. Perez, et al.*, L-19522, August 81, 1964; *Central Azucarera Don Pedro vs. Agno, et al.*, L-20424, October 22, 1964.

[2] G. R. No. L-12163, March 4, 1959.

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