

**MANILA RAILROAD COMPANY AND MANILA PORT SERVICE,
PETITIONERS, VS. THE HONORABLE CARMELINO ALVENDIA, JUDGE,
COURT OF FIRST INSTANCE OF MANILA AND BATAAN REFINING
CORPORATION, RES...**

G.R. No. 22137. May 19, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The Manila Railroad Company and the Manila Port Service petition for a writ of mandamus to compel the Court of First Instance of Manila to give due course to petitioner's appeal in its case No. 49831.

Reversing a decision of the Municipal Court of Manila duly appealed to it, the Court of First Instance, Branch XVI, with Judge Carmelino Alvendia presiding, on March 21, 1963 sentenced the defendants (petitioners herein) to pay the private respondent, Bataan Refining Corporation, the sum of P1,140.24, plus interest at the legal rate from February 11, 1961, and costs. Receiving notice of the decision on April 26, 1963, defendants, through counsel, filed notice of appeal on April 26, 1963 accompanied by an appeal bond in the sum of P60.00, followed by a record on appeal on April 30, 1963. Noticing that the appeal bond (Exh. C, petition) was executed only by "Manila Port Service by (sgd) Julian C. Chaves, Manager", and "Standard Insurance Co., Inc., by (sgd) Primo A. Cruz, Vice-President" the trial court, by order of May 27, 1963, rejected the tendered record on appeal, declaring that the decision had become final as to the Manila Railroad Company for failure to file its appeal bond. Motions for reconsideration having proved unavailing, the present petitioners resorted to this Supreme Court for a writ of mandamus.

No issue exists as to the timeliness of the notice, bond and record of appeal.

It is contended by petitioners that, the Manila Port Service, being a mere subsidiary or department of the Manila Railroad Company, without legal personality of its own, the bond filed by the former (Pet, Exh. C) should be considered as a bond for the Manila Railroad Co., and that the appeal of the latter should have been given due course.

We find no merit in this appeal. The mere recital in the body of the instrument, "We, Manila Railroad Company, et al., as principal and the Standard Insurance Co., Inc., * * * as Surety", does not suffice to make the contract binding on the Manila Railroad Company unless it is shown that the same was authorized by it; and neither the signature nor the acknowledgment indicates that the act was that of the Railroad Company, or that the latter had empowered Julian C. Chaves or the Manila Port Service to execute the bond in its behalf. But there is something worse. Since the signature to the bond are only those of the Manila Port Service and the Surety Company, and, according to paragraph 13 of the petition for mandamus—

"Manila Port Service being only the name and style by which it is conducted its arrastre service with no legal personality of its own to be sued, and for the purposes of the suit can not be considered a juridical person under Art. 41 of the Civil Code of the Philippines in relation to Section 1, Rule 3",

the result would be that the appeal bond, Annex "C" of the petition, is void and unenforceable for lack of a principal debtor or obligation. While the surety bound itself to pay, jointly and severally, such an undertaking presupposes that the obligation is to be enforceable against someone else besides the surety, and the latter could always claim that it was never its intention to be the sole person obligated thereby.

It follows that the respondent court committed no error in declaring that the judgment had become final against petitioner Manila Railroad Co., because the Hatter, had not filed any appeal bond in due time.

Wherefore, the writ of mandamus applied for should be, and it hereby is, denied. Costs against petitioners.

Bengzon C.J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Zaldivar and Sanchez, JJ., concur.

Writ denied.

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