

**RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI),
PETITIONER, VS. HON. JAIME M. LANTIN, THE SHERIFF OF THE
COURT OF FIRST INSTANCE OF QUEZON CITY AND RUFUS B.
RODRIGUEZ, RES...**

G.R. No. 59311. January 31, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In these interrelated petitions for review on certiorari, the Radio Communications of the Philippines, Inc. (RCPI) and Globe Mackay Cable and Radio/Corporation (GLOBE) question the decision of the Court of Appeals, now Intermediate Appellate Court, which refused to set aside the orders of the Court of First Instance of Rizal directing execution pending appeal of an award of P213,148.00 damages in favor of private respondent Rufus B. Rodriguez.

On September 8, 1978, Rufus B. Rodriguez, as President of the World Association of Law Students (WALS), sent two cablegrams overseas through RCPI, one addressed to Mohamed Elsir Taha in Khartoum, Sudan Socialist Union, and the other to Diane Merger in Athens, Georgia, United States. The cablegrams were, in turn, relayed to GLOBE for transmission to their foreign destinations. The telegram to Taha advised him of Rodriguez's pending arrival in Khartoum on September 18, 1978, while the telegram to Merger advised her of the scheduled WALS conference in Khartoum. Rodriguez left the Philippines on September 15, 1978. On September 18, 1978, he arrived in Khartoum, Sudan at 9:30 in the evening. Nobody was at the airport to meet him. Due to the lateness of the hour, he was forced to sleep at the airport. He lined up five (5) chairs together and lay down with his luggages near him. Because of the non-receipt of the cablegram, Taha was not able to meet him. Worse all preparations for the international conference had to be cancelled. Furthermore, Fernando Barros, the Vice-President, arrived the next day from Chile, followed by the other officers from other countries except Diane Merger, the organization's secretary. It turned out that the wire sent by Rodriguez to Merger was delivered to the address on the message but the person who delivered it was told that the addressee was no longer staying there. This fact was not accordingly reported to Rodriguez in Metro Manila. The undelivered cablegram was not returned by the correspondent abroad to Globe for disposition in the Philippines.

On December 8, 1978, Rodriguez filed a complaint for compensatory damages in the amount of P45,147.00, moral damages in the amount of P250,000.00, and exemplary damages in the amount of P50,000.00 against RCPI and GLOBE.

On March 17, 1980, the then Presiding Judge Lino L. Añoover of the Court of First Instance of Rizal rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendants jointly and severally to pay the plaintiff the total sum of TWO HUNDRED THIRTEEN THOUSAND ONE HUNDRED FORTY EIGHT PESOS (P213,148.00) by way of damages and to pay the costs of this suit."

The above amount is broken down as follows by the trial court:

"Moral damages consequent to the humiliation and embarrassment that the plaintiff suffered under the two causes of action in the amount of P100,000.00 are adequate. Exemplary damages under both counts are fixed reasonably at P50,000.00. On the actual damages, the court accepts plaintiff's expenses for the preparation of the trip at P10,000.00; plane fare at P20,000.00; stay in transit in Pakistan at P5,000.00; his hotel bills in Khartoum at P4,000.00; his meals in Khartoum at P4,000.00 and the telegraphic toll at P78.00. The court refuses the sum spent for the dinner that he allegedly tendered as not established by sufficient proof.

"With respect to the telegram sent to Diane Merger, the court finds that the actual damages amount to P70.00 representing the cost of the cablegram. As for attorney's fees, the court finds that the amount of P20,000.00 including litigation of expenses are reasonable."

On May 26, 1980, Rodriguez filed a "Motion for Execution Before Expiration of Time to Appeal" relying on Rule 39, Section 2 of the Revised Rules of Court alleging that the appeal is clearly dilatory and that the lapse of time would make the ultimate judgment illusory and ineffective. An opposition to the motion was filed by RCPI on June 3, 1980 and by GLOBE on November 18, 1980.

On January 21, 1981, the respondent court of first instance granted the said motion in an order which reads as follows:

"Upon consideration of the Motion for execution pending appeal, the opposition thereto and the arguments in open court by the parties, and finding that:

- the appeal was for the purpose of delay, there being breach of contract, and defendants' evidence being weak or feeble;
- plaintiff is willing to put up a bond in the amount of P213,148.00 to answer for damages if the decision is reversed on appeal,

"the Court grants the motion. Let writ of execution pending appeal be issued upon the filing of a bond by plaintiff in the sum of P213,148.00. Said bond should be filed within ten (10) days from receipt of this order."

On February 5, 1981, the same court issued another order which reads as follows:

"The bond pursuant to the order of January 21, 1981, is approved. Let writ of execution of judgment pending appeal be issued forthwith."

On February 10, 1981, GLOBE filed a motion for reconsideration of the above order and expressed its desire to put up a supersedeas bond to stay immediate execution. This motion was denied in an order dated February 17, 1981. Even before the issuance of this order denying petitioner's motion for reconsideration, the respondent Sheriff, on February 13, 1981, insisted on levying on the funds and assets of petitioners RCPI and GLOBE, prompting them to file an "Urgent Motion to Recall Writ of Execution." This urgent motion was likewise denied.

On February 17, 1981, RCPI and GLOBE filed with the Court of Appeals a petition for certiorari, mandamus, and prohibition with a prayer for the issuance of a writ of preliminary injunction. On February 20, 1981, the Court of Appeals issued a restraining order enjoin-ing the lower court from further proceeding with the civil case and from enforcing the writ of execution until further orders. On November 10, 1981, the Court of Appeals rendered a decision. The dispositive portion reads as follows:

"WHEREFORE, the herein petition is hereby dismissed for lack of merit and the questioned orders of January 21, 1981, February 5, 1981 and February 20, 1981 are hereby declared valid and legal. Consequently, the restraining order issued earlier on February 2, 1981 is hereby lifted.

"With costs against the petitioners."

Within fifteen (15) days from receipt of the above quoted decision, the petitioners filed with the respondent Court of Appeals a motion for reconsideration. On December 28, 1981, petitioners received a resolution of the Court of Appeals denying their motion for reconsideration.

On January 18, 1982, this petition entitled appeal by certiorari was filed.

The petitioners' arguments revolve around the alleged grave abuse of discretion committed by the Court of Appeals when it declined to disturb the judgment of the trial court on the issuance of the writ of execution pending appeal.

Section 2, Rule 39 of the Revised Rules of Court provides:

"On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

The rule specifically vests the court with the exercise of discretionary power. The requisites for the court's valid exercise of the discretion to order execution pending appeal are: (1) there must be a motion by the prevailing party with notice to the adverse party; 2) there must be good reasons for issuing the execution, and (3) the good reasons must be stated in a special order.

Considering the nature of the wrongful acts found by the trial court and the amount of damages adjudicated as recoverable, both of which are stated in detail in the decisions and various orders of the trial court and the appellate court, we are constrained to sustain the respondent courts insofar as the award for actual or compensatory damages are concerned but to postpone the execution of the awards for moral and exemplary damages until such time as the merits of the cases now on regular appeal before the Court of Appeals are finally determined. The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced. (See *Radio Communications of the Philippines, Inc. v. Intermediate Appellate Court, et al.*, G.R. No. 67034, December 3, 1984)

In its questioned decision, the Court of Appeals acknowledged the nature of execution pending appeal as an exceptional remedy which must be interpreted restrictively, citing the many ruling cases on this point. At the same time, what was before the appellate court was not the application of a general rule but the exception thereto, the special reasons or circumstances warranting execution pending appeal. The Court of Appeals quoted with approval the trial court's findings:

xxx xxx xxx

"2. Execution pending appeal is discretionary.- Execution pending appeal is a matter of sound discretion on the part of the trial court. (*National Marketing Corporation v. Tan*, L-17768, March 31, 1962; *Ong Sit v. Piccio*, 78 Phil. 232; *Go Changjo v. Roldan Sy-Changjo*, 18 Phil. 405). The appellate court will not interfere, control or inquire into the exercise of this discretion, unless it is shown that there has been an abuse thereof. *Asturias v. Victoriano*, 98 Phil. 581; *Naredo v. Yatco*, 80 Phil. 220; *Federal Fils, Inc. v. Ocampo*, 78 Phil. 479; *Ong Sit v.*

Piccio, *supra*; Buenaventura v. Pena, 78 Phil. 798; Presbitero v. Rodas, 73 Phil. 300; Iloilo Trading and Exchange v. Rodas, 73 Phil. 327; Hacienda Navarra, Inc. v. Labrador, 65 Phil. 536; Lusk v. Stevens, 64 Phil. 154; Gamay v. Gutierrez David, 48 Phil. 768; Gutierrez Hermanos v. Orias Hermanos & Co., 39 Phil. 92; Case v. Metropole Hotel, 5 Phil. 49; Macke v. Camps, 5 Phil. 185; Calvo v. De Gutierrez, 4 Phil. 203)

"3. Requirement of good reasons. - The requirement that execution pending appeal must be supported by good reasons, to be stated in a special order, should be complied with because the existence of good reasons is the element that gives validity to an order of execution (Alcasid v. Samson, 102 Phil. 735; De la Rosa v. City of Baguio, 90 Phil. 720) (sic) Unless the reasons are made known, it would be difficult to determine whether judicial discretion has been properly exercised in the case (Asturias v. Victoriano, *supra*). If the discretionary power of the court is to have any meaning, the sufficiency of the reasons for ordering such execution is naturally to be determined by the court. (Buenaventura v. Peña, *supra*; Lusk v. Steven, *supra*.)

"Whether the reasons are so urgent and compelling as to justify execution pending appeal depends upon the circumstances of the case. The filing of a bond by the prevailing party, as required by the court in its order of execution, constitutes good reason for the issuance of a writ of execution pending appeal (Rodriguez v. Court of Appeals, L-12554, May 23, 1959; Hacienda Navarra, Inc. v. Labrador, *supra*; People's Bank & Trust Co. v. San. Jose, 96 Phil. 895)."

The court likewise noted that the questioned order made reference to the reasons averred in the motion which appeared to it to be good and which it found to be sufficient compliance with the law (Joven v. Boncan, 67 Phil. 252). It noted the finding of the trial court that the appeal interposed by the petitioners was not based on strong ground, which finding is again a good reason for execution pending appeal. (Presbitero v. Rodas, 73 Phil. 300; Iloilo Trading Center and Exchange v. Rodas, 78 Phil. 789)

The petitioners pit their arguments against the conclusions of the Court of Appeals and the Court of First Instance on the special nature of the circumstances warranting the exercise of discretionary power, the weak defenses at trial and weak reasons on appeal, and the nature of the evidence upon which the decision is based. Insofar as actual and compensatory damages are concerned, we find insufficient cause to restrain the exercise of discretionary power.

The petitioners question the findings of the Court of Appeals that:

"The respondent court had to look back at the sworn complaint that; the private respondent in the aforesaid complaint had to sleep at the airport left alone to himself throughout the night with nobody to talk to because in Khartoum, Sudan, only a few people if at all, could speak English and because our country has no consulate in the said place, language barrier was a big problem in looking for a taxicab to the hotel. To repeat, he had to sleep on the 5 chairs put together; he is a respectable man in the country who had to go to Khartoum as President of the World Association of Law Students in the Philippines and had to make the trip to Sudan for a conference; that he was a third year law student of the College of Law in the University of the Philippines and the Cagayan de Oro Sangguniang Panglunsod City where he is from, even passed a Resolution congratulating him for having been chosen or selected the President of the World Association of Law Students or WALs, invited by the Sudanese government for the conference on September 18, 1978; arriving at the airport at 9:30 in the evening; as he could not talk in Arabic, he was left alone to himself to repeat until he had to wait for the next morning to have somebody to translate in Arabic language how to find the place of Mohammed Elsir Taha who invited him as per telegrams exchanged between him and the plaintiff, now private respondent that the latter's residence was found to be 20 kilometers away (Office of the Secretary of the African Youth Committee, Sudan Socialist Union); that because the telegram sent by him in Manila, Philippines on September 8, 1978 was not delivered to Mohammed Taha, the latter was not able to meet him at the airport; on the other hand, the telegram sent to Diane Merger as Secretary of the conference committee having been delivered to the address given by him but the person who delivered was told that the said addressee was no

longer staying there and moved out a year ago but this fact was not informed/reported accordingly to him in Metro Manila, Philippines where the cablegram was sent and which cablegram was not returned by the receiver abroad to Globe for disposition in the Philippines. Evidently, there was a breach of contractual obligation committed against him by the defendants, now private respondent Globe Mackay and RCPI, and therefore, he is entitled to such damages which he has claimed for the humiliation, suffering, mental anguish and besmirched reputation as a result of the non-delivery of the cables, which damages amounted to P213,148.00.

The merits of the main case are not to be determined in a petition questioning execution pending appeal (City of Manila v. Court of Appeals, 72 SCRA 98). However, the facts and circumstances clearly brought out during trial cannot help but influence whether or not an appeal appears to be dilatory and whether or not there are sufficient reasons including considerations of justice and equity to justify a departure from the regular procedures regarding execution.

Petitioners question the alleged presence of superior circumstances demanding urgency of execution pending appeal. Any delay in final adjudication on the merits will be the fault of the courts and not theirs, according to them.

Petitioner GLOBE states:

"In the light of the peculiar circumstances obtaining in the case at bar, among which are that:

- The judgment creditor does not even have a cause of action against herein petitioner;
- The greater portion of the amount awarded in the judgment of the trial court cannot be legally given; and
- Herein petitioner's defenses are legal and valid and the evidence submitted to prove them, positive and convincing.

any bond which the prevailing party might have posted cannot fully compensate for the inconvenience and damages which petitioner will suffer by reason of such hasty execution for the reason that the said execution will be morally, legally, equitably and outrageously incorrect. x x x"

The respondent introduced evidence to show that he suffered mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation. The petitioners question the extent of these sufferings and further aver that their acts claimed to have caused the injury were not wrongful, deliberate, wanton, and tainted with bad faith or fraud.

Our review of the records constrains us to allow execution pending appeal of actual but not the moral and exemplary damages which must await the final determination of the main cases.

WHEREFORE, the petition is GRANTED PARTIAL DUE COURSE. The November 10, 1981 decision and December 22, 1981 resolution of the appellate court are SET ASIDE and a new ORDER is ENTERED authorizing execution pending appeal of P43,148.00 actual damages upon the private respondent's filing of a bond in the same amount. The execution of any award for moral damages, exemplary damages, and attorney's fees is enjoined until after final resolution of the issues in the main case.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.
Alampay, J., no part.

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