

AHMAD E. ALONTO, JR., AMILUSSIN JUMAANI AND THE BOARD OF REGENTS OF THE MINDANAO STATE UNIVERSITY, PETITIONERS, VS. THE HON. SALVADOR A. MEMORACION IN HIS CAPACITY AS PRESIDING ...

G.R. No. 83614. May 07, 1990

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FERNAN, C.J.:

In this petition for certiorari, prohibition and mandamus with prayer for a restraining order and/or preliminary injunction, petitioners seek to reverse, annul and set aside the following orders issued by respondent judge in Special Proceeding No. 6-5 of the Regional Trial Court of Tawi-Tawi, to wit:

- a) the order dated February 2, 1988 granting ex-parte the restraining order directing herein petitioners to allow private respondent Gonzales to assume his position as Vice-President of the Mindanao State University, Tawi-Tawi College of Technology and Oceanography (MSU-TCTO) at Bongao, Tawi-Tawi;
- b) the order dated March 14, 1988 making the restraining order dated February 2, 1988 permanent, declaring null and void Resolution No. 2, series of 1988 of the MSU Board of Regents suspending Gonzales from office and ordering that costs be taxed against herein petitioners Ahmad Alonto, Jr. and Amilussin Jumaani; and,
- c) the order dated April 19, 1988 citing petitioners Alonto and Jumaani in contempt of court and imposing a fine of P500.00 each, and denying both their motion to dismiss and their motion for reconsideration of the Order dated March 14, 1988.[1]

The events leading to this petition are as follows:

On February 1, 1988, herein private respondent Eldigario D. Gonzales instituted before the Regional Trial Court of Tawi-Tawi Special Proceeding No. 6-5, a petition for certiorari, mandamus and prohibition with preliminary injunction, to compel herein petitioners Ahmad Alonto, Jr. and the MSU Board of Regents (BOR) to allow him to re-assume his position as Vice-President of the MSU-TCTO, Acting on the petition, the lower court issued on February 2, 1988 a restraining order directing therein respondents to allow Gonzales to assume his position of Vice-President during the pendency of Sp. Proceeding No. 6-5 and to show cause within twenty (20) days why the restraining order should not be made permanent. Gonzales was directed to post a cash bond of Ten Thousand.[2]

On February 24, 1988, therein respondents filed a motion to dismiss Sp. Proceeding No. 6-5 on the grounds of improper venue and abolition of the Office of Vice-President of MSU-TCTO under Memorandum No. 3 dated March 18, 1986 of the Office of the President. The motion was opposed by Gonzales.

Subsequently on March 3, 1988, Gonzales filed a motion to cite Alonto, Jr. and Jumaani in contempt of court for issuing on February 23, 1988 allegedly in defiance of the February 2, 1988 restraining order an unnumbered Special Order designating Prof. Alfredo R. Matolo, AVP for Research and Development as Caretaker of MSU-TCTO, and Alonto, Jr. for his letter likewise dated February 23, 1988 informing the Branch Manager of PNB, Bongao that Regent Jumaani is the recognized regent-in-charge of MSU-TCTO and the only official

authorized to discharge the duties and functions inherent in the head of the College. Accordingly, the lower court directed Alonto, Jr. and Jumaani to show cause within five (5) days from notice why no disciplinary action should be taken against them, which order was complied with in due time.

Meanwhile on March 12, 1988, Gonzales manifested to the lower court that by Resolution No. 2, series of 1988 dated March 1, 1988 of the MSU BOR, he was placed under preventive suspension for a period of ninety (90) days effective upon receipt of said resolution. Alleging that said resolution was issued while the restraining order was still in effect and in circumvention thereof, Gonzales prayed that the restraining order of February 2, 1988 be made permanent.

On March 14, 1988, the lower court issued the second assailed order denying the motion to dismiss; making the restraining order permanent; cancelling the cash bond of Gonzales and ordering its return to him; and, declaring Board Resolution No. 2, series of 1988 null and void insofar as it suspended Gonzales from office, for having been issued "with apparent bad faith for there was knowledge of the respondent of this pending petition and completely disregarded and evaded the order of this Court dated February 2, 1988." [3] The motion to cite Alonto and Jumaani in contempt of court was held in abeyance. Costs were taxed against Alonto and Jumaani. Motions for reconsideration of this Order insofar as it made the restraining order permanent and denied the motion to dismiss were seasonably filed.

On April 19, 1988, the lower court issued the third assailed order finding Alonto and Jumaani guilty of contempt of court and sentencing them to pay a fine of Five Hundred Pesos (P500.00) each. The motions for reconsideration of the aforesaid portions of the order of March 14, 1988 were likewise denied in this order, thereby prompting therein respondents to file their answer to the petition on April 27, 1988 and Alonto and Jumaani to file a notice of appeal dated April 28, 1988; manifesting that they are appealing to the Court of Appeals those portions of the April 19, 1988 Order which denied their motion for reconsideration of the March 14, 1988 Order making the restraining order permanent and finding them guilty of contempt of court and imposing upon them a fine of P500.00 each. [4]

On May 10, 1988, the lower court issued an order directing the Clerk of Court to transmit the records of the case to the Court of Appeals where the appeal was directed.

Despite the action taken on their notice of appeal, Alonto and Jumaani, joined by the MSU BOR, filed the instant petition for certiorari, prohibition, and mandamus with prayer for a restraining order and/or preliminary injunction assailing the orders of February 2, 1988, March 14, 1988 and April 19, 1988.

We issued a temporary restraining order on June 21, 1988 ordering respondent judge and private respondent Gonzales to CEASE and DESIST from executing, enforcing and implementing the assailed orders of February 2, 1988, March 14, 1988 and April 19, 1988. [5]

The matter of Alonto and Jumaani having taken an appeal from portions of the April 19, 1988 Order to the Court of Appeals prior to the filing of this petition was first brought to the Court's attention in private respondent Gonzales' Comment as a ground for dismissing the petition. [6] In their Consolidated Reply filed in this Court on December 29, 1988, petitioners thru the Solicitor General explained that the notice of appeal was a mere *adcautelam* notice of appeal, which should be deemed to have been superseded by the filing of the instant petition since the records of the case have not been elevated to the Court of Appeals and the appeal has not been perfected because no record on appeal, much less a brief for the appellants has been filed. [7] The Court, giving credence to petitioners' explanation, gave due course to the petition on January 10, 1989.

After a careful scrutiny of the records and some inquiries, we find that petitioners have not been candid with the

Court. Extant in the records are documentary evidence belying their pretension that the appeal was not prosecuted, to wit: the Order of the trial court dated May 10, 1988 directing the Clerk of Court to transmit the records of the case to the Court of Appeals[8] and the Resolution of December 8, 1988 issued by the Sixth Division of the Court of Appeals in CA-G.R. SP No. 14962 entitled "Eldigario Gonzales vs. Ahmad Alonto, et al." reading:

"The respective memorandum of the parties having been filed, and the complete records having been forwarded to this Court, this case is now submitted for decision."[9]

It must be noted that this resolution is dated December 8, 1988, meaning that the memoranda of the parties in CA-G.R. SP No. 14962 had been filed earlier. The clear implication is that the explanation contained in petitioners' Consolidated Reply dated December 27, 1988 and filed in this Court on December 29, 1988 is an outright falsehood. This falsehood is obviously a desperate maneuver to conceal from the Court the equally despicable practice of forum-shopping indulged in by Alonto and Jumaani in seeking relief from the assailed orders of the trial court. Anent forum-shopping, we have stated:

"The acts of petitioners constitute a clear case of forum-shopping, an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes. It is improper conduct that tends to degrade the administration of justice. The rule has been formalized in Section 17 of the Interim Rules and Guidelines issued by this Court on January II, 1983 in connection with the implementation of the Judiciary Reorganization Act, specifically with the grant in Section 9 of B. P. Blg. 129 of equal original jurisdiction to the Intermediate Appellate Court to issue writs of mandamus, prohibition, etc. and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction. Thus, the cited Rule provides that no such petition may be filed in the Intermediate Appellate Court if another similar petition has been filed or is still pending in the Supreme Court and vice versa. The Rule orders that 'A violation of this rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.' x x x"[10]

From the foregoing, it is evident that the inevitable fate of this petition is its dismissal. Petitioners Alonto, Jr. and Jumaani and Assistant Solicitors General Ramon S. Desuasido and Zoilo A. Andin, Solicitor Luis F. Simon and Associate Solicitor Alexander G. Gesmundo who signed the Consolidated Reply containing the untruthful statements should be, as they are hereby required to SHOW CAUSE why no disciplinary action should be taken against them for the observed falsehood and lack of candor with the Court.

Even if the petitioners had not been guilty of forum-shopping, this petition would still be dismissed for being moot and academic on account of supervening events, the first of which is the unanimous adoption and approval by the MSU BOR of Resolution No. 139, series of 1988 dated July 21, 1988 inter alia dismissing private respondent Gonzales "for cause from the service of the Mindanao State University System, more particularly the Tawi-Tawi College of Technology and Oceanography, for having been found guilty of dishonesty and misconduct, effective immediately" and directing the filing of criminal and/ or civil action against Gonzales and others who have participated in the financial anomalies in MSU-TCTO.[11] Second is the expiration on March 16, 1989 of private respondent Gonzales' term as Vice-President under Resolution No. 121, series of 1984 dated March 16, 1984 whereby Gonzales was elected Vice-President of TCTO by the MSU BOR for a fixed term of five (5) years. Third is the decision rendered by the Court of Appeals in CA-G.R. SP No. 14962 on December 14, 1989, the dispositive portion of which reads:

"WHEREFORE, the portions of the order dated April 28, 1988 (should be April 19, 1988) appealed from finding respondents (Alonto and Jumaani) guilty of indirect contempt and making the temporary restraining order permanent are hereby SET ASIDE."

This decision, dealing as it does with the main issues raised in this petition, should serve as adequate relief for

petitioners. While technically, CA-G.R. SP No. 34962 should likewise be ordered dismissed for forum-shopping, we allow the proceedings taken and the decision rendered therein to stay to afford petitioners access to the courts[12] as well as relief from what appears to us likewise as arbitrary orders of the trial court.

WHEREFORE, for the reasons above-stated, the instant petition is hereby **DISMISSED**. Petitioners Ahmad Alonto, Jr. and Amilussin Jumaani and Assistant Solicitors General Ramon S. Desuasido and Zoilo A. Andin, Solicitor Luis F. Simon and Associate Solicitor Alexander Gesmundo are required to **SHOW CAUSE** within ten (10) days from notice why no disciplinary action should be taken against them for the above-cited falsehood contained in their Consolidated Reply. Costs against petitioners.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Gancayco, J., on leave.

[1]p. 4. Rollo.

[2] Annex "A", Petition, pp. 39-40, Rollo.

[3] pp. 108-109. Rollo.

[4] pp. 119-120. Rollo.

[5] p. 65. Rollo.

[6] pp. 71-74, Rollo.

[7] pp. 261-262, Rollo.

[8] Annex "9", Comment p. 121, Rollo.

[9] Annex "1", Memorandum for Private Respondent, p. 277, Rollo.

[10] Resolution of July 31, 1986, G.R. No. 75197. E. Razon Inc., et al. vs. Philippine Ports Authority, et al.

[11] p. 258, Rollo.

[12] See E. Razon, Inc., et al. vs. Philippine Ports Authority, et al., G.R. No. 75197, June 22, 1987, 151 SCRA 233.

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