

FRANCISCO I. CHAVEZ, IN HIS CAPACITY AS SOLICITOR GENERAL, PETITIONER, VS. THE HON. SANDIGANBAYAN (FIRST DIVISION) AND JUAN PONCE ENRILE, RESPONDENTS.

G.R. No. 91391. January 24, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner challenges the resolutions dated June 8, 1989 and November 2, 1989 of the Sandiganbayan issued in Civil Case No. 0033 which granted the motion of private respondent Juan Ponce Enrile, one of the defendants in the civil case, to implead the petitioner as additional party defendant in Enrile's counterclaim in the same civil case and denied the petitioner's motion for reconsideration.

On July 31, 1987, the Republic of the Philippines, through the Presidential Commission on Good Government (PCGG) with the assistance of Solicitor General Francisco Chavez filed with the respondent Sandiganbayan a complaint docketed as Civil Case No. 0033 against Eduardo Cojuangco, Jr. and Juan Ponce Enrile, among others, for reconveyance, reversion and accounting, restitution and damages.

After the denial of his motion to dismiss, respondent Enrile filed his answer with compulsory counterclaim and cross-claim with damages.

The Republic filed its reply to the answer and motion to dismiss the counterclaim. The motion was opposed by respondent Enrile.

On January 30, 1989, respondent Sandiganbayan issued a resolution, to wit:

"The resolution of the Motion to Dismiss the Counterclaim against the Plaintiff government is deferred until after trial, the grounds relied upon not appearing to be indubitable.

On The matter of the additional parties (Solicitor General Chavez, Ex-PCGG Chairman Diaz, former Commissioners Doromal, Rodrigo, Romero and Bautista), the propriety of impleading them either under Sec. 14, Rule 6 or even under Sec. 12 as third-party defendant requires leave of Court to determine the propriety thereof. No such leave has been sought. Consideration thereof cannot be entertained at this time nor may therefore, the Motion to Dismiss the same be considered." (Rollo, p. 329; Annex "H", Petition)

Respondent Enrile then requested leave from the Sandiganbayan to implead the petitioner and the PCGG officials as party defendants for lodging this alleged "harassment suit" against him.

The motion was granted in a resolution dated June 8, 1989, to wit:

"In respect to defendant Juan Ponce Enrile's Manifestation and Motion dated February 23, 1989, praying for leave to implead additional parties to his counterclaim, the Court, finding reason in the aforesaid Manifestation and Motion, grants leave to implead the defendants named in the counterclaim and admits defendant Juan Ponce Enrile's answer with counterclaim.

This is without prejudice to the defenses which said defendants may put forth individually or in common, in their personal capacities or otherwise." (Rollo, p. 27)

In a later resolution dated November 2, 1989, respondent Sandiganbayan denied a motion to reconsider the June 8, 1989 resolution. The dispositive portion of the resolution states:

"WHEREFORE, the Motions for Reconsideration of the Solicitor General and former PCGG officials Ramon Diaz, Quintin Doromal, Orlando Romero, Ramon Rodrigo and Mary Concepcion Bautista are denied, but, considering these motions as in the nature of motions to dismiss counterclaim/answers, resolution of these motions is held in abeyance pending trial on the merits." (Rollo, p. 31)

Thereafter, all the PCGG officials filed their answer to the counterclaims invoking their immunity from suits as provided in Section 4 of Executive Order No. 1. Instead of filing an answer, the petitioner comes to this Court assailing the resolutions as rendered with grave abuse discretion amounting to lack of jurisdiction.

The lone issue in this petition is the propriety of impleading the petitioner as additional party defendant in the counterclaim filed by respondent Enrile in Civil Case No. 0033.

It may be noted that the private respondent did not limit himself to general averments of malice, recklessness, and bad faith but filed specific charges that then PCGG Chairman Jovito Salonga had already cleared the respondent and yet, knowing the allegations to be false, the petitioner still filed the complaint. This can be gleaned from excerpts found in respondent Enrile's Answer with Compulsory Counterclaim and Cross-Claim:

x x x x x x x x

"Defendant-in-counterclaim Francisco Chavez was the Solicitor General who assisted the PCGG in filing and maintaining the instant Complaint against Defendant. As the incumbent Solicitor General, he continues to assist the PCGG in prosecuting this case.

"He is sued in his personal and official capacities.

"On or about October 1986, the PCGG, speaking through the then Chairman, now Senate President, Hon. Jovito R. Salonga, found and declared that 'not one of the documents left by then President and Mrs. Ferdinand E. Marcos including the 2,300-page evidence turned over to the PCGG by the US State Department implicates Enrile.' Chairman Salonga stressed that in view of the PCGG's findings, he refused to yield to the 'pressure' exerted on him to prosecute Defendant.

x x x x x x x x

"Notwithstanding the findings of the PCGG that there was absolutely no evidence linking Defendant to the illegal activities of former President and Mrs. Ferdinand E. Marcos, the PCGG, this time composed of Chairman Ramon Diaz, the Commissioners Quintin Doromal, Ramon Rodrigo, Orlando Romero and Mary Concepcion Bautista, filed the Complaint against Defendant, among others, on or about 22 July 1987.

Defendant has reasons to believe, and so alleges that Chairman Diaz, and Commissioners Doromal, Rodrigo, Romero and Bautista ordered, authorized, allowed or tolerated the filing of the utterly baseless complaint against Defendant.

Solicitor General Francisco Chavez assisted or cooperated in, or induced or instigated, the filing of this harassment suit against Defendant.

In so ordering, authorizing, allowing and tolerating the institution of the action against Defendant, all the aforementioned officers, with malice and in evident bad faith, and with grave abuse of power and in excess of their duty and authority, unjustly and unlawfully obstructed, defeated, violated, impeded or impaired the constitutional rights and liberties of Defendant x x x." (Rollo, pp. 260-262)

On the other hand, the petitioner submits that no counterclaim can be filed against him in his capacity as Solicitor General since he is only acting as counsel for the Republic. He cites the case of *Borja v. Borja*, 101 Phil. 911 [1957]) wherein we ruled:

"x x x The appearance of a lawyer as counsel for a party and his participation in a case as such counsel does not make him a party to the action. The fact that he represents the interests of his client or that he acts in their behalf will not hold him liable for or make him entitled to any award that the Court may adjudicate to the parties, other than his professional fees. The principle that a counterclaim cannot be filed against persons who are acting in representation of another--such as trustees--in their individual capacities (*Chambers v. Cameron*, 2 Fed. Rules Service, p. 155; 29 F. Supp. 742) could be applied with more force and effect in the case of a counsel whose participation in the action is merely confined to the preparation of the defense of his client. Appellant, however, asserted that he filed the counterclaim against said lawyer not in his individual capacity but as counsel for the heirs of Quintin de Borja. But as we have already stated that the existence of a lawyer-client relationship does not make the former a party to the action, even this allegation of appellant will not alter the result We have arrived at." (at pp. 924-925)

Thus, the petitioner argues that since he is simply the lawyer in the case, exercising his duty under the law to assist the Government in the filing and prosecution of all cases pursuant to Section 1, Executive Order No. 14, he cannot be sued in a counterclaim in the same case.

Presiding Justice Francis Garchitorena correctly observed that there is no general immunity arising solely from occupying a public office.

The general rule is that public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted *ultra vires* or where there is a showing of bad faith. We ruled in one case:

"A number of cases decided by the Court where the municipal mayor alone was held liable for back salaries of, or damages to dismissed municipal employees, to the exclusion of the municipality, are not applicable in this instance. In *Salcedo v. Court of Appeals* (81 SCRA 408 [1978]) for instance, the municipal mayor was held liable for the back salaries of the Chief of Police he had dismissed, not only because the dismissal was arbitrary but also because the mayor refused to reinstate him in defiance of an order of the Commissioner of Civil Service to reinstate.

In *Nemenzo v. Sabillano* (25 SCRA 1 [1968]), the municipal mayor was held personally liable for dismissing a police corporal who possessed the necessary civil service eligibility, the dismissal being done without justifiable cause and without any administrative investigation.

"In *Rama v. Court of Appeals* (G. R. Nos. L-44484, L-44842, L-44591, L-44894, March 16, 1987), the governor, vice-governor, members of the Sangguniang Panlalawigan, provincial auditor, provincial treasurer and provincial engineer were ordered to pay jointly and severally in their individual and personal capacity damages to some 200 employees of the province of Cebu who were eased out from their positions because of their party affiliations." (*Laganapan v. Asedillo*, 154 SCRA 377 [1987])

Moreover, the petitioner's argument that the immunity proviso under Section 4(a) of Executive Order No. 1 also extends to him is not well-taken. A mere invocation of the immunity clause does not *ipso facto* result in the charges being automatically dropped.

In the case of *Presidential Commission on Good Government v. Peña* (159 SCRA 556 [1988]) then Chief Justice Claudio Teehankee, added a clarification of the immunity accorded PCGG officials under Section 4(a) of Executive Order No. 1 as follows:

"With respect to the qualifications expressed by Mr. Justice Feliciano in his separate opinion, I just wish to

point out two things: First, the main opinion does not claim absolute immunity for the members of the Commission. The cited section of Executive Order No. 1 provides the Commission's members immunity from suit thus: 'No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order.' No absolute immunity like that sought by Mr. Marcos in his Constitution for himself and his subordinates is herein involved. It is understood that the immunity granted the members of the Commission by virtue of the unimaginable magnitude of its task to recover the plundered wealth and the State's exercise of police power was immunity from liability for damages in the official discharge of the task granted the members of the Commission much in the same manner that judges are immune from suit in the official discharge of the functions of their office. x x x" (at pp. 581- 582)

Justice Florentino P. Feliciano stated in the same case:

"It may be further submitted, with equal respect, that Section 4(a) of Executive Order No. 1 was intended merely to restate the general principle of the law of public officers that the PCGG or any member thereof may not be held civilly liable for acts done in the performance of official duty, provided that such member had acted in good faith and within the scope of his lawful authority. It may also be assumed that the Sandiganbayan would have jurisdiction to determine whether the PCGG or any particular official thereof may be held liable in damages to a private person injured by acts of such member. It would seem constitutionally offensive to suppose that a member or staff member of the PCGG could not be required to testify before the Sandiganbayan or that such members were exempted from complying with orders of this Court." (at pp. 586-587)

Immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. (id., at page 586)

Where the petitioner exceeds his authority as Solicitor General, acts in bad faith, or, as contended by the private respondent, "maliciously conspir(es) with the PCGG commissioners in persecuting respondent Enrile by filing against him an evidently baseless suit in derogation of the latter's constitutional rights and liberties" (Rollo, p. 417), there can be no question that a complaint for damages may be filed against him. High position in government does not confer a license to persecute or recklessly injure another. The actions governed by Articles 19, 20, 21, and 32 of the Civil Code on Human Relations may be taken against public officers or private citizens alike. The issue is not the right of respondent Enrile to file an action for damages. He has the right. The issue is whether or not that action must be filed as a compulsory counterclaim in the case filed against him.

Under the circumstances of this case, we rule that the charges pressed by respondent Enrile for damages under Article 32 of the Civil Code arising from the filing of an alleged harassment suit with malice and evident bad faith do not constitute a compulsory counterclaim. To vindicate his rights, Senator Enrile has to file a separate and distinct civil action for damages against the Solicitor General.

In the case of *Tiu Po v. Bautista* (103 SCRA 388 [1981]), We ruled that damages claimed to have been suffered as a consequence of an action filed against the petitioner must be pleaded in the same action as a compulsory counterclaim. We were referring, however, to a case filed by the private respondent against the petitioners or parties in the litigation. In the present case, the counterclaim was filed against the lawyer, not against the party plaintiff itself.

To allow a counterclaim against a lawyer who files a complaint for his clients, who is merely their representative in court and not a plaintiff or complainant in the case would lead to mischievous consequences.

A lawyer owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability. (See *Agpalo*, *Legal Ethics* [1980] p. 147 citing *Javier v. Cornejo*, 63 Phil. 293 [1936]; *In re Tionko*, 43 Phil. 191 [1922]; *In re: Atty. C. T. Oliva*, 103 Phil. 312 [1958]; *Lualhati v. Albert*, 57 Phil. 86 [1932]; *Toguib v. Tomol, Jr.*, G. R. Adm. Case No. 554, Jan. 3, 1969; *People v.*

Macellones, 49 SCRA 529 [1973]; Tan Kui v. Court of Appeals, 54 SCRA 199 [1973]) A lawyer cannot properly attend to his duties towards his client if, in the same case, he is kept busy defending himself.

The problem is particularly perplexing for the Solicitor General. As counsel of the Republic, the Solicitor General has to appear in controversial and politically charged cases. It is not unusual for high officials of the Government to unwittingly use shortcuts in the zealous desire to expedite executive programs or reforms. The Solicitor General cannot look at these cases with indifferent neutrality. His perception of national interest and obedience to instructions from above may compel him to take a stance which to a respondent may appear too personal and biased. It is likewise unreasonable to require Government Prosecutors to defend themselves against counterclaims in the very same cases they are prosecuting.

As earlier stated, we do not suggest that a lawyer enjoys a special immunity from damage suits. However, when he acts in the name of a client, he should not be sued on a counterclaim in the very same case he has filed only as counsel and not as a party. Any claim for alleged damages or other causes of action should be filed in an entirely separate and distinct civil action.

WHEREFORE, the present petition is GRANTED. The questioned resolutions of the Sandiganbayan are SET ASIDE insofar as they allow the counterclaim filed against the petitioner.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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