

**HON. AMADO M. CALDERON IN HIS CAPACITY AS ACTING
PRESIDING JUDGE, RTC, BRANCH 11, MALOLOS, BULACAN,
PETITIONER, VS. THE SOLICITOR GENERAL AND MAURO DIONISIO,
RESPONDENTS.**

G.R. Nos. 103752-53. November 25, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This is a joint petition for certiorari (G.R. No. 103753) and mandamus (G.R. No. 103752).

In G.R. No. 103753, petitioner seeks the review of the decision dated December 17, 1991 and the resolution dated January 28, 1992 of the Court of Appeals declaring null and void petitioner's orders dated April 29, 1991 and August 23, 1991 which *motu proprio* increased the bail bonds posted by private respondent who was accused of violating Batas Pambansa Blg. 22 (CA - G.R. SP No. 25801) without citing any justifiable reason therefor.

On the other hand, in G.R. No. 103752, petitioner prays for judgment commanding respondent Solicitor General to forthwith represent him by filing a petition before this Court by way of appeal from the decision of the Appellate Court in CA - G.R. SP No. 25801.

The undisputed facts are as follows:

On January 29, 1990, the Office of the Provincial Prosecutor filed three separate informations for violation of Batas Pambansa Bilang 22 with the Regional Trial Court of Bulacan (Malolos) against accused-private respondent involving the following amounts: P114,902.00 (Criminal Case 240-M-90), P141,710.00 (Criminal Case 241-M-90) and P110,923.00 (Criminal Case 242-M-90). These three informations were assigned to different salas.

Subsequently, the Provincial Prosecutor recommended bail of P1,000.00 for each case, and conformably with the recommendation, private respondent filed three separate bail bonds of P1,000.00 for his provisional liberty.

On petition of private respondent, the aforementioned cases were consolidated in the sala of petitioner.

On April 29, 1991, "after noting from the records that the bonds posted by the private respondent was only P1,000.00 for each of the three cases," petitioner issued an order increasing the bail bond to P25,000.00 (Criminal Case No. 240-M-90); P35,000.00 (Criminal Case No. 241-M-90) and P25,000.00 (Criminal Case No. 242-M-90).[1]

On May 9, 1991, private respondent filed an Urgent Motion for Reconsideration of said order contending that the recommended bail in the amount of P1,000.00 was in accordance with the Bail Bond Guide for the National Prosecution Service pursuant to Ministry of Justice Circular No. 36 dated September 1, 1981.[2] But on August 23, 1991, petitioner denied the motion and directed the issuance of a warrant of arrest against private respondent.[3]

On August 27, 1991, private respondent filed with the Court of Appeals a petition for certiorari and prohibition with an urgent prayer for preliminary injunction to nullify and set aside the orders dated April 29, 1991 and August 23, 1991 issued by petitioner, reiterating that the recommended bail bonds were in accordance with the guidelines on bail bonds issued by the then Ministry of Justice and that the increase of the bail bond was violative of his constitutional right against excessive bail.[4]

On September 4, 1991, the Court of Appeals required the Solicitor General representing the People of the Philippines to comment on the petition and show cause why a preliminary injunction should not be issued within ten days from receipt.[5]

On December 17, 1991, the Appellate Court nullified the questioned orders issued by petitioner for failure to show the reasons for the increase of the bail bonds as required by Section 17 of Rule 114 of the 1985 Rules on Criminal Procedure as amended. Moreover, the Court of Appeals added that the unwarranted increase of amount violated private respondent's constitutional right against excessive bail.[6]

On January 13, 1992, petitioner filed a motion for reconsideration after he was refused representation by the Office of the Solicitor General.[7] On January 28, 1992, the Court of Appeals denied petitioner's motion for reconsideration.[8]

Hence, this joint special civil action for certiorari and mandamus.

The two issues to be resolved in this case are whether or not petitioner has standing to file this instant petition for certiorari and whether or not a writ of mandamus may issue commanding the Solicitor General to appear in behalf of petitioner.

This joint petition for certiorari and mandamus must fail. We see no necessity in discussing the merits of petitioner's order dated April 29, 1991 which *motu proprio* increased the bail bond of private respondent because this joint petition for certiorari and mandamus suffers from a procedural infirmity.

To recall, this case originally started as "People of the Philippines v. Mauro Dionisio," in three separate informations for violation of Batas Pambansa Blg. 22. After petitioner raised the bail bonds of accused, the latter elevated his case before the Appellate Court entitled; "Mauro Dionisio v. Hon. Amado Calderon, Presiding Judge, RTC, Malolos, Bulacan Branch II." Subsequently, petitioner believing that he was a real party in interest filed this instant petition for certiorari and mandamus against the Solicitor General and the accused Mauro Dionisio.

Petitioner, with his years of experience in the judiciary, should have known that he has no standing to file this instant petition because he is merely a nominal party as gleaned from Section 5 of Rule 65 of the Revised Rules of Court which states that:

"Defendants and costs in certain cases. - When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, and costs awarded in such proceedings in favor of the petitioner shall be against the person or persons in interest only and not against the court or judge." (Underscoring supplied).

Accordingly, a judge whose order is being assailed is merely a nominal or formal party. In such capacity, therefore, he should not appear as a party seeking the reversal of a decision that is unfavorable to the action taken by him. [9]

In the case at bar, private complainant being the real party interested in upholding petitioner's questioned orders

increasing the bail bonds, had the legal personality to file the instant case. Since he did not even bother to assail the decision of the Court of Appeals holding petitioner's actuations as having been issued with grave abuse of discretion, then much less should petitioner go out of his way to file this joint petition for certiorari and mandamus.

Judge Calderon should be reminded of the well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'être* for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and for the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way ceased to be judicial and has become adversarial instead.[10]

Considering that petitioner has no standing to file this certiorari proceeding, then logically his petition for mandamus also deserves scant consideration. Nonetheless, we feel that we would be making a significant contribution to jurisprudence if we definitely settled the question of whether mandamus will lie to compel the Solicitor General to represent a judge whose decision has been nullified by the Court of Appeals. It is our considered opinion that petitioner cannot compel the Solicitor General to defend his unwarranted act of increasing the private respondent's bail. As a special civil action, mandamus lies only to compel an officer to perform a ministerial duty but not to compel the performance of a discretionary duty.[11]

In the case at bar, petitioner contends that pursuant to paragraph (1) of Section 35, Chapter 12 of Book IV of the Administrative Code of 1987, it is the specific legal duty of the Solicitor General "to represent the government and its officers before the Supreme Court, the Court of Appeals and other courts or tribunals in all civil actions and special proceedings in which the government or any officer thereof in his official capacity is a party." To buttress his contention, he cites our recent case *Ramon A. Gonzales v. Francisco Chavez*. [12]

Petitioner has not read carefully our decision. In the *Gonzales* case, we held that the Solicitor General may not just drop a case without any legal and valid reason because his discretion is not unlimited. To quote, "(L)ike the Attorney General who has absolute discretion in choosing whether to prosecute or not to prosecute or to abandon a prosecution already started, our own Solicitor General may even dismiss, abandon, discontinue or compromise suits either with or without stipulation with the other party." We added that, "upon receipt of a case certified to him, the Solicitor General exercises his discretion in the management of the case. He may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand."

On the basis of the aforequoted jurisprudence, it is evident that since the Solicitor General has the right to decide when and how to defend or prosecute a case, his duty, therefore, is discretionary and not ministerial. A duty is ministerial when the discharge of the same requires neither the exercise of official discretion nor judgment.[13]

What would be the consequence if the Solicitor General were compelled to appear and defend petitioner's act of increasing private respondent's bail? Obviously, he would be acting contrary to the bail bond guidelines of the Executive Department, specifically the Department of Justice. Taking up the cudgels for the petitioner would place him at cross purposes with the avowed policies of the Executive Department of which he is undeniably a part, as expressed in the different circulars issued by said agency.

Clearly, the pleadings show that petitioner is not entitled to the mandamus he seeks from this Court, for he has neither shown a clear legal right to the thing demanded nor demonstrated that it is the Solicitor General's imperative duty to defend him on the sole ground that he is a public officer.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED and the writ of mandamus applied for is hereby DENIED.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

[1] Rollo of G.R. No. 103753, p. 14.

[2] Ibid., p. 16.

[3] Ibid., p. 15.

[4] Ibid., pp. 9-13.

[5] Ibid., p. 17.

[6] Ibid., pp. 7-10.

[7] Rollo of G.R. No. 103752, pp. 32-39.

[8] Ibid., p. 40.

[9] Maguan v. Court of Appeals, L- 45101, November 28, 1986, 146 SCRA 107; Lim Se v. Angel, L-42800, April 7, 1975, 70 SCRA 378; Tarona v. Sayo, L-37296, October 30, 1975, 67 SCRA 524, and Hon. Alcasid v. Samson, 102 Phil. 735-736.

[10] Hon. Santiago v. Court of Appeals, G. R. No. 46845, April 27, 1990, 184 SCRA 590, 693.

[11] Mateo v. Court of Appeals, G.R. No. 83354, April 25, 1991, 196 SCRA 280; Cruz v. Major General Montano, G.R. No. 92066, June 5, 1990, En Banc, Minute Resolution; Marcelo v. Tantuico, Jr., G.R. No. 60074, July 7, 1986, 142 SCRA 439; Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations, G.R. No. L-28472, April 30, 1968, 23 SCRA 492; Llanto v. Dimaporo, G.R. No. L-21905, March 31, 1966, 16 SCRA 599.

[12] G.R. No. 97371, February 4, 1992, 205 SCRA 816.

[13] Lemi v. Valencia, L-20768, November 29, 1968, 26 SCRA 203.

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