

**MAGDALA MULTIPURPOSE & LIVELIHOOD COOPERATIVE AND
SANLOR MOTORS CORP., PETITIONERS, VS. KILUSANG
MANGGAGAWA NG LGS, MAGDALA MULTIPURPOSE &
LIVELIHOOD CORPERATIVE (KMLMS) AND UNI...**

G.R. Nos. 191138-39. October 19, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Petitioners Magdala Multipurpose & Livelihood Cooperative and Sanlor Motors Corp. assail and seek the modification of the June 30, 2009 Decision[1] and January 28, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 88614 and 88645, which affirmed in toto the October 15, 2004 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC CA No. 040560-04 (NLRC RAB IV-9-1265-02-R).

The Facts

Respondent Kilusang Manggagawa ng LGS, Magdala Multipurpose and Livelihood Cooperative (KMLMS) is the union operating in Magdala Multipurpose & Livelihood Cooperative and Sanlor Motors Corp.

KMLMS filed a notice of strike on March 5, 2002 and conducted its strike-vote on April 8, 2002. However, KMLMS only acquired legal personality when its registration as an independent labor organization was granted on April 9, 2002 by the Department of Labor and Employment under Registration No. RO-400-200204-UR-002.[4] On April 19, 2002, it became officially affiliated as a local chapter of the Pambansang Kaisahan ng Manggagawang Pilipino when its application was granted by the Bureau of Labor Relations.[5]

Thereafter, on May 6, 2002, KMLMS--now a legitimate labor organization (LLO)--staged a strike where several prohibited and illegal acts were committed by its participating members.

On the ground of lack of valid notice of strike, ineffective conduct of a strike-vote and commission of prohibited and illegal acts, petitioners filed their Petition to Declare the Strike of May 6, 2002 Illegal[6] before the NLRC Regional Arbitration Board (RAB) No. IV in Quezon City, docketed as NLRC RAB IV-9-1265-02-R. In their petition, as well as their Position Paper,[7] petitioners prayed, inter alia, that the officers and members of respondent KMLMS who participated in the illegal strike and who knowingly committed prohibited and illegal activities, respectively, be declared to have lost or forfeited their employment status.

The Ruling of the Labor Arbiter

In her March 26, 2004 Decision,[8] Executive Labor Arbiter Lita V. Aglibut (LA Aglibut) found the May 6, 2002 strike illegal and declared 41 workers to have lost their employment, the dispositive portion reading:

WHEREFORE, this Office finds the strike conducted by the Kilusang Manggagawa ng LGS, Magdala / Sanlor Motors-KMLMS, now known and registered as Kilusang [Manggagawa] Ng LGS/Magdala Sanlor Motors Corporation - PKMP, illegal and the employment status of the following workers are hereby declared forfeited:

x x x.

All other claims are dismissed for lack of merit.

SO ORDERED.[9]

On the ground of non-compliance with the strict and mandatory requirements for a valid conduct of a strike under Article 263(c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code, LA Aglibut found the May 6, 2002 strike illegal and accordingly dismissed all the 14 union officers of KMLMS. LA Aglibut likewise found 27 identified members of KMLMS to have committed prohibited and illegal acts proscribed under Art. 264 of the Labor Code and accordingly declared them to have forfeited their employment.

Both parties appealed the Decision of LA Aglibut before the NLRC.

The Ruling of the NLRC

On October 15, 2004, the NLRC rendered its Decision affirming with modification LA Aglibut's Decision by declaring an additional seven (7) union members to have forfeited their employment status. The decretal portion reads:

WHEREFORE, premises considered, the decision appealed from is affirmed with modification in that [said seven union members] are also declared to have lost their employment status for having committed prohibited acts.

SO ORDERED.[10]

Unsatisfied, both parties again filed their respective appeals before the CA.

The Ruling of the CA

The CA rendered the assailed Decision on June 30, 2009 affirming in toto the NLRC Decision, the fallo reading:

WHEREFORE, in view of the following disquisition, the respective petitions for certiorari in CA-G.R. SP. No. 88614 and CA-G.R. SP. No. 88645 are hereby DISMISSED for lack of merit. Accordingly, the assailed Decision, dated 15 October 2004, of the National Labor Relations Commission (NLRC) in NLRC CA No. 040560-04 (NLRC RAB IV-9-1265-02-R) is hereby AFFIRMED in toto.

SO ORDERED.[11]

Thus, petitioners have come to Us, praying for a partial modification of the assailed CA Decision by declaring additional 73[12] similarly erring KMLMS members to have lost their employment.

The Issues

A

THE COURT OF APPEALS ERRED IN REFUSING TO SIMILARLY DECLARE AS HAVING LOST THEIR EMPLOYMENT STATUS THE REST OF THE UNION STRIKERS WHO HAVE PARTICIPATED IN THE ILLEGAL STRIKE AND COMMITTED PROHIBITED/ILLEGAL ACTS, TO THE PREJUDICE OF PETITIONERS['] BUSINESS OPERATIONS.

B

THE COURT OF APPEALS ERRED IN REFUSING TO AWARD DAMAGES AND ATTORNEY'S FEES AS A RESULT OF THE ILLEGAL STRIKE THAT NEARLY CRIPPLED THE BUSINESS OPERATIONS OF PETITIONERS.[13]

The Court's Ruling

The petition is partly meritorious.

First Issue: The May 6, 2002 Strike Was Illegal

There is no question that the May 6, 2002 strike was illegal, first, because when KMLMS filed the notice of strike on March 5 or 14, 2002, it had not yet acquired legal personality and, thus, could not legally represent the eventual union and its members. And second, similarly when KMLMS conducted the strike-vote on April 8, 2002, there was still no union to speak of, since KMLMS only acquired legal personality as an independent LLO only on April 9, 2002 or the day after it conducted the strike-vote. These factual findings are undisputed and borne out by the records.

Consequently, the mandatory notice of strike and the conduct of the strike-vote report were ineffective for having been filed and conducted before KMLMS acquired legal personality as an LLO, violating Art. 263(c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code. The Labor Code provisos pertinently provide:

ART. 263. Strikes, Picketing and Lockouts. -- (a) x x x

(c) In case of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In case of unfair labor practice, the period of notice shall be 15 days and in absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately. (As amended by Executive Order No. 111, December 24, 1986.)

(d) The notice must be in accordance with such implementing rules and regulations as the Ministry of Labor and Employment may promulgate.

x x x x

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. (As amended by Batas Pambansa Bilang 130, August 21, 1981 and further amended by Executive Order No. 111, December 24, 1986.)

On the other hand, Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code likewise pertinently provides:

RULE XXII

CONCILIATION, STRIKES AND LOCKOUTS

x x x x

SEC. 6. Who may declare a strike or lockout. -- Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practice. (Emphasis supplied.)

It is, thus, clear that the filing of the notice of strike and the conduct of the strike-vote by KMLMS did not comply with the aforementioned mandatory requirements of law and its implementing rules. Consequently, the May 6, 2002 strike is illegal. As the Court held in *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*,^[14] these requirements are mandatory and failure of a union to comply renders the strike illegal.

Striking KMLMS Members Committed Prohibited Acts

There is likewise no dispute that when the May 6, 2002 illegal strike was conducted, the members of respondent KMLMS committed prohibited and illegal acts which doubly constituted the strike illegal. This is the unanimous factual finding of the courts a quo which the Court accords finality, as supported by evidence on record.

The proscribed acts during a strike are provided under Art. 264 of the Labor Code, thus:

ART. 264. Prohibited Activities. -- (a) No Labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of case involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

x x x x

(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares. (As amended by Batas Pambansa Bilang 227, June 1, 1982).

Here, the striking workers committed acts of (1) interference by obstructing the free ingress to or egress from petitioners' compound and (2) coercion and intimidation. As aptly pointed out by the appellate court:

This is clear from the Police Blotter Certifications, including a Complaint for Grave Coercion, Affidavits from several workers, including one from a proprietor, all of whom were prevented from entering the company premises and doing their work or conducting their business, and the countless photographs which show the striking workers blocking the gates of the company premises which became the basis of the judgment of the

Labor Arbiter and NLRC.[15]

Thus, We agree with the CA that the arguments of respondent KMLMS are bereft of merit as the May 6, 2002 strike was properly declared an illegal strike and the prohibited and illegal acts committed by union members during said strike were duly proved by substantial evidence on record. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[16]

Proper Sanctions for the Illegal Strike

We now come to the proper sanctions for the conduct of union officers in an illegal strike and for union members who committed illegal acts during a strike. The above-cited Art. 264 of the Code presents a substantial distinction of the consequences of an illegal strike between union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment. But for union members who participated in a strike, their employment may be terminated only if they committed prohibited and illegal acts during the strike and there is substantial evidence or proof of their participation, i.e., that they are clearly identified to have committed such prohibited and illegal acts.

As earlier explained, the May 6, 2002 strike is illegal for non-compliance with provisions of law and its implementing rules. Consequently, the termination of employment of the 14 union officers is proper.

In the case of union members who participated in the May 6, 2002 strike and committed prohibited and illegal acts of interference by obstructing the free ingress to or egress from petitioners' compound, coercion and intimidation, the forfeiture of their employment is also proper.

LA Aglibut found 27 union members to have committed the illegal acts and properly declared the forfeiture of their employment status. The NLRC found additional seven (7) union members committing illegal acts and likewise declared the forfeiture of their employment status. Thus, a total of 34 union members have been declared to have lost their employment due to their commission of prohibited and illegal acts during the illegal strike of May 6, 2002. Petitioners, however, take umbrage for the non-declaration of the forfeiture of employment of 72 other union members who were similarly situated as the 34 union members whose employment was declared forfeited in committing prohibited and illegal acts during the May 6, 2002 strike.

In affirming the NLRC Decision and refusing to declare the other strikers as dismissed, the appellate court found that not all of the photographs in evidence sufficiently show the strikers committing illegal acts and that the identification of said strikers is questionable considering that some were still identified even when their faces were indiscernible from the photographs.

We, however, cannot agree with the appellate court's view that there is no substantial proof of the identity of the other 72 striking union members who committed prohibited and illegal activities. The prohibited and illegal acts are undisputed. It is only the identity of the striking union workers who committed said acts that is the crux of the partial modification prayed for by petitioners.

In the instant case, We have pored over the attachments to the pleadings of the parties and We find that petitioners have substantially proved the identity of 72 other union members who committed prohibited and illegal acts during the May 6, 2002 illegal strike, thus:

First, the photographs[17] submitted by petitioners graphically depict and show the identities of the union members who committed prohibited and illegal acts. Second, the identities of these union members were substantially proved through the eyewitnesses[18] of petitioners who personally knew and recognized them as those who committed the prohibited and illegal acts. Thus, the identities of these 72 other union members who participated in the strike and committed prohibited and illegal acts are not only shown through the photographs,

but are also sufficiently supported, as earlier cited, by police blotter certifications,[19] a criminal complaint for grave coercion,[20] and affidavits of several workers[21] and a proprietor.[22] As aptly pointed out by petitioners, while several union members were penalized, other union members with them who are identifiable in the photographs and attested to by witnesses were not so penalized. This must be corrected, for these other unpenalized union members were similarly situated with those penalized in that they all committed the same prohibited and illegal acts during the strike. Absent any exculpatory circumstance, they must all suffer the same fate with the statutorily provided consequence of termination of employment.

Thus, We find that there was patent misappreciation of evidence both by the LA and the NLRC, but it was not corrected by the CA.

Second Issue: Damages and Attorney's Fees

Anent the issue of the award of damages and attorney's fees, We affirm the courts a quo's uniform findings and rulings that while petitioners prayed for damages and attorney's fees, they failed to substantiate their claims.

Indeed, the grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[23] Petitioners simply bank their claims on the Affidavit[24] of Julito Sioson. The claim for actual damages for losses of PhP 10,000 daily or PhP 260,000 a month, as averred by Sioson, cannot be sustained by a mere affidavit of the owner without being buttressed by other documentary evidence or unassailable substantiation. Even if attested to in an affidavit, the amount claimed for actual damages is merely speculative at most. To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. The Court cannot simply rely on speculation, conjecture, or guesswork in determining the amount of damages.[25] Without any factual basis, it cannot be granted.

That petitioners had to litigate on the occasion of the illegal strike does not necessarily mean that attorney's fees will automatically be granted. On one hand, in labor cases, attorney's fees granted under Art. 111[26] of the Labor Code apply to unlawful withholding of wages, which indubitably does not apply to the instant case. On the other hand, Art. 2208(2) of the Civil Code does not ipso facto grant the award of damages in the form of attorney's fees to a winning party, for the exercise of protection of one's right is not compensable.

Besides, jurisprudence instructs that for the award of attorney's fees to be granted, there must be factual, legal and equitable justification.[27] As the Court held in *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*:

It is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of attorney's fees.[28]

The fact that the courts a quo did not award attorney's fees to petitioners persuasively shows that they found no factual, legal and equitable justification for it. Neither do We find any.

WHEREFORE, the instant petition is hereby **PARTIALLY GRANTED**. The assailed June 30, 2009 CA Decision in CA-G.R. SP Nos. 88614 and 88645 is **AFFIRMED** with **MODIFICATION** in that the following additional 72 union members who committed prohibited and illegal acts during the May 6, 2002 strike are also declared to have forfeited their employment: Thomas Padullon, Herbert Bautista, Ariel Dadia, Avelino Parnas, Dennis Montealegre, Sonny Constantino, Shandy Constantino, Joseph Pernia, Peter Alcoy, Edilberto Cerille, Fernando Leonor, Teotimar Reginio, Alberto Bajeta, Allan Meneses, Ronel Fabul, Jesus Comendador, Jerry Pernia, Oscar

Rivera, Leo Melgar, Enrico Laygo, Ricky Palmero, Rowell Garcia, Leopito Merano, Alejandro de Lara, Joel Garcia, Bonifacio Pereda, Remegio Constantino, Dickson Pilapil, Randy Cordano, Aurelio Taguinod, Oscar Taguinod, Dewell Pilapil, Joel Mas-ing, Eduardo Lopez, Glicerio Reanzarez, Joseph Flores, Buenato Casas, Romeo Azagra, Alfredo Rosales, Estelito Bajeta, Pedy Gemina, Fernando Velasco, Alberto Caneza, Alejandro Cervantes, Erick Carvajal, Ronaldo Bernadez, Jerry Corosa, Jayson Corosa, Jayson Juanson, Shelly Narez, Alexander Bajeta, Edgardo Garcia, Ariel Llosala, Rommel Ilaya, Rodrigo Paulete, Mervin Paquinto, Marvin Senatin, Jayson Rillora, Darius Pilapil, Venice Lucero, Gregorio Reanzares, Eulogio Reginio, Michael Javier, Dennis Mosquera, Freddie Azores, Rogelio Cabrera, Rafael Sarmiento, Frederick Permejo, Nicolas Bernardo, Leoncio Paz de Leon, Edward Dennis Manahan and Antonio Baldago.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 60-84. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok.

[2] Id. at 86-87.

[3] Id. at 198-223. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[4] CA rollo (CA-G.R. SP No. 88645), p. 238.

[5] Rollo, p. 363, Certificate of Creation of Local/Chapter No. PKMP-05.

[6] Id. at 258-264, dated September 23, 2002.

[7] Id. at 265-270, dated January 12, 2003.

[8] Id. at 384-404.

[9] Id. at 404.

[10] Id. at 222.

[11] Id. at 83.

[12] Only 72, for the name of Alexander Bajeta was indicated twice (nos. 59 and 73) in petitioners' Prayer (1), id. at 51-52.

[13] Id. at 27.

[14] G.R. No. 165756, June 5, 2009, 588 SCRA 497.

[15] Rollo, pp. 77-78.

[16] *Formantes v. Duncan Pharmaceuticals, Phils., Inc.*, G.R. No. 170661, December 4, 2009, 607 SCRA 268, 281; citing *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331. Notably the Court held that:

The findings of facts of quasi-judicial agencies, which have acquired expertise in the specific matters entrusted

to their jurisdiction, are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court, provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[17] Rollo, pp. 277-302, 319, 322, 324, 327, 331.

[18] Id. at 271-273 (Julito G. Sioson), at 278 (William Poblete), at 280 (Bernardo Montealegre), at 305-306 (Raul P. Olaya), at 313 (Angel Vidanes), at 316-317 (Nelson Abueg), at 318 and 320 (Alvin A. Catuira, Mario C. Pendon and Gaudencio N. Olea), at 323 (Elena Orseno), at 326 (Leoncio Anievas), at 329-330 (Renato Bracamonte).

[19] Id. at 275-276 (dated May 11, 2002), at 325 (dated September 9, 2002), at 328 (dated September 9, 2002).

[20] Id. at 314, Complaint for Grave Coercion, dated May 8, 2002.

[21] Supra note 18.

[22] Supra note 18, at 271-273, Affidavit of Julito G. Sioson.

[23] Dutch Boy Philippines, Inc. v. Seniel, G.R. No. 170008, January 19, 2009, 576 SCRA 231, 241; citing Pang-Oden v. Leonen, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102 and Ranola v. Court of Appeals, G.R. No. 123951, January 10, 2000, 322 SCRA 1, 11.

[24] Rollo, pp. 271-273, dated January 14, 2003.

[25] Dueñas v. Guce-Africa, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 21-22.

[26] ART. 111. Attorney's Fees. -- (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[27] Siga-an v. Villanueva, G.R. No. 173227, January 20, 2009, 576 SCRA 696, 710-711.

[28] G.R. No. 141994, January 17, 2005, 448 SCRA 413, 438.

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