



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**ROMEO A. GONTANG, IN HIS
OFFICIAL CAPACITY AS
MAYOR OF GAINZA,
CAMARINES SUR,**

Petitioner,

- versus -

ENGR. CECILIA ALAYAN,
Respondent.

G.R. No. 191691

Present:

CARPIO, *J.*, Chairperson,
DEL CASTILLO,

PEREZ,

PERLAS-BERNABE, and
LEONEN, *JJ.**

Promulgated:

JAN 16 2013

MANCABALOG/Perlas

x-----x

DECISION

PERLAS-BERNABE, *J.*:

Before the Court is a petition filed under Rule 45 of the Rules of Court seeking to set aside the May 26, 2009¹ and March 22, 2010² Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 107366 which dismissed the case due to the lack of legal authority of the private attorneys to represent the Municipality of Gainza, Camarines Sur.

* Designated Additional Member per Special Order No. 1408 dated January 15, 2013.

¹ *Rollo*, pp. 25-26. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Arturo G. Tayag, concurring.

² *Id.* at 39-40. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Rosmari D. Carandang and Florito S. Macalino, concurring.

The Facts

Respondent Engr. Cecilia Alayan (respondent) was appointed in 2000 as Municipal Government Department Head (Municipal Assessor) on temporary status. In May 2001, she applied for change of status from temporary to permanent, which the Civil Service Commission-Camarines Sur Field Office (CSC-CSFO) denied for lack of relevant experience. On appeal, the CSC-Regional Office in its August 13, 2001 Order approved her application effective May 22, 2001. Thus, she reported for work and sought recognition of her appointment and the grant of the emoluments of the position from petitioner, then incumbent Mayor Romeo A. Gontang (petitioner). Her requests having been denied, she filed before the Regional Trial Court (RTC) of Naga City on February 5, 2002 a petition for mandamus, docketed as Special Civil Action No. 2002-0019, against petitioner, in his official capacity as Municipal Mayor of Gainza, Camarines Sur. However, the RTC dismissed the petition for having been prematurely filed as the Order of the CSC-Regional Office had not attained finality due to the pendency of the appeal before the CSC. Respondent appealed to the CA which, in its June 20, 2003 decision,³ ruled in her favor holding that the pendency of an appeal is not a justification to prevent her from assuming office. Said decision attained finality on August 10, 2007⁴ with the denial of petitioner's petition before the Supreme Court.⁵ However, prior to the CA decision, the CSC set aside the August 13, 2001 Order of the CSC-Regional Office on May 8, 2003⁶ upon a finding that there was no permanent appointment as the concurrence of the local *Sanggunian* was not obtained. Respondent's appeal of the CSC decision was denied by the CA⁷ and such denial became final on October 6, 2006.⁸

³ Id. at 103-112. Docketed as CA-G.R. SP No. 75048.

⁴ Records, p. 197.

⁵ *Rollo*, pp. 131-132.

⁶ Records, pp. 524-532.

⁷ *Rollo*, pp. 124-129. Docketed as CA-G.R. SP No. 90782.

⁸ Records, p. 310.

On March 17, 2008, respondent moved for the issuance of an alias writ of execution by the RTC in Special Civil Action No. 2002-0019 for the alleged unsatisfied judgment award in the amount of ₱837,022.50 representing her unpaid salaries and allowances from May 8, 2003 to October 6, 2006 during the pendency of her appeal of the CSC Resolutions.⁹ Petitioner opposed the motion claiming full satisfaction of the judgment after having already paid respondent the net sum of ₱391,040.60¹⁰ covering all benefits for the period from the date the CSC-CSFO approved her request for change of status on August 13, 2001 to May 7, 2003, the day before the CSC denied her application for permanent appointment.

Ruling of the Regional Trial Court

Finding that the May 8, 2003 CSC Resolution became final and executory only on October 6, 2006 after respondent's appeal was resolved by the CA and with no appeal having been taken therefrom, the RTC ordered the issuance of an alias writ of execution in the order dated October 22, 2008.¹¹ It also subsequently denied petitioner's motion for reconsideration.¹²

Dissatisfied, petitioner, through Attorneys Joselito I. Fandiño (Atty. Fandiño) and Voltaire V. Saulon (Atty. Saulon), the counsels he had retained since the initial stage of the litigation, filed a petition for *certiorari* seeking to annul and set aside the two (2) Orders of the RTC.

⁹ *Rollo*, pp. 133-136.

¹⁰ *Id.* at 69-70, 52-53. In addition to attorney's fees of ₱10,000.00.

¹¹ *Id.* at 69-72. Penned by Judge Maria Eden Huenda Altea.

¹² *Id.* at 73.

Ruling of the Court of Appeals

The CA dismissed the petition on the ground of lack of legal authority on the part of Atty. Saulon, a private attorney, to represent the Municipality of Gainza, Camarines Sur. Petitioner's motion for reconsideration was denied in the assailed March 22, 2010 Resolution.

Issue Before the Court

Hence, the instant petition raising the issue of whether the CA erred in dismissing the petition *forcertiorari* on the ground of unauthorized representation of petitioner by private lawyers.

The Ruling of the Court

The petitionis meritorious.

The present case stemmed from Special Civil Action No. 2002-0019 for mandamus and damages.¹³ The damages sought therein could have resulted in personal liability, hence,petitionercannot be deemed to have been improperly represented by private counsel.¹⁴ In *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*,¹⁵ the Court ruled that in instances like the present case where personal liability on the part of local government officials is sought, they may properly secure the services of private counsel, explaining:

¹³ Id. at 98. The petition for mandamus, inter alia seeks "that respondent be held personally liable for the amount of One Hundred Thousand Pesos (P100,000) by way of moral damages suffered by the petitioner; Fifty Thousand Pesos (P50,000) by way of exemplary damages; Ten Thousand Pesos (P10,000) as and for attorney's fees; One Thousand Pesos (P1,000) per appearance; plus costs of the suit amounting to not less than Five Thousand Pesos (P5,000) all in favor of the petitioner."

¹⁴ *Mancenido v. CA*, G.R. No. 118605, April 12, 2000, 330 SCRA 419, 426.

¹⁵ G.R. No. 108232, August 23, 1993, 225 SCRA 553.

It can happen that a government official, ostensibly acting in his official capacity and sued in that capacity, is later held to have exceeded his authority. On the one hand, his defense would have then been underwritten by the people's money which ordinarily should have been his personal expense. On the other hand, personal liability can attach to him without, however, his having had the benefit of assistance of a counsel of his own choice. In *Correa v. CFI*, the Court held that in the discharge of governmental functions, 'municipal corporations are responsible for the acts of its officers, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof.

In such instance, this Court has sanctioned the representation by private counsel. In one case, We held that where rigid adherence to the law on representation of local officials in court actions could deprive a party of his right to redress for a valid grievance, the hiring of a private counsel would be proper. And in *Albuera v. Torres*, this Court also said that a provincial governor sued in his official capacity may engage the services of private counsel when "the complaint contains other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity."¹⁶ (Citations omitted)

Consequently Attys.Fandiño and Saulonhad the authority to represent petitioner at the initial stages of the litigation and this authority continued even up to his appeal¹⁷ and the filing of the petition for *certiorari* with the CA respecting the execution of the RTC judgment.¹⁸It was therefore an error for the CA to have dismissed the said petition for *certiorari* on the ground of unauthorized representation.

¹⁶ Id. at 559.

¹⁷ Rules of Court, Rule 138, Sec 22, provides:

Sec. 22. Attorney who appears in lower court presumed to represent client on appeal.-An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

¹⁸ Rules of Court, Rule 138, Sec 22, provides:

Sec. 23. Authority of attorneys to bind clients.- Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. x xx

See also *Province of Bulacan v. CA*, G.R. No. 126232, November 27, 1998, 299 SCRA 442, 453-454, where the Court stated that "[s]uch questions as what action or pleading to file, where and when to file it, what are its formal requirements, what should be the theory of the case, what defenses to raise, how may the claim or defense be proved, when to rest the case, as well as those affecting the competency of a witness, the sufficiency, relevancy, materiality or immateriality of certain evidence and the burden of proof are within the authority of the attorney to decide."

WHEREFORE, the petition is **GRANTED**. The assailed May 26, 2009 and March 22, 2010 Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 107366 are hereby **SET ASIDE**. The case is **REMANDED** to the CA for further proceedings.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

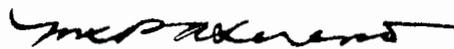
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice