529 Phil. 209

FIRST DIVISION

[G.R. NO. 147396, July 31, 2006]

TIRSO ENOPIA, VIRGILIO NANO, AND 34 OTHERS, PETITIONERS, VS. COURT OF APPEALS, (FORMER FOURTEENTH DIVISION), JOAQUIN LU, AND NATIONAL LABOR RELATIONS COMMISSION,

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This case originally had fifty (50) complainants: forty-seven (47) in NLRC Case No. RAB-XI-08-50294, and three (3) in NLRC Case No. RAB-XI-08-50296-97. All 50 complainants basically alleged the same causes of action, *i.e.*, illegal dismissal with prayer for monetary awards and damages. However, fifteen (15) of the complainants subsequently executed quitclaims, leaving thirty-five (35) who are now the petitioners in the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

Petitioners were hired from January 20, 1994 to March 20, 1996 as crewmembers of the fishing mother boat F/B MG-28 owned by respondent Joaquin "Jake" Lu (Lu) who is the sole proprietor of Mommy Gina Tuna Resources based in General Santos City. Petitioners and Lu had an income-sharing arrangement wherein 55% goes to Lu, 45% to the crewmembers, with an additional 4% as "backing incentive." They also equally share the expenses for the maintenance and repair of the mother boat, and for the purchase of nets, ropes and *payaos.*

Some time in August 1997, Lu proposed the signing of a Joint Venture Fishing Agreement between them, but petitioners refused to sign the same as they opposed the one-year term provided in the agreement. According to petitioners, during their dialogue on August 18, 1997, Lu terminated their services right there and then because of their refusal to sign the agreement. On the other hand, Lu alleged that the master fisherman (*piado*) Ruben Salili* informed him that petitioners still refused to sign the agreement and have decided to return the vessel F/B MG-28.

On August 25, 1997, petitioners filed their complaint for illegal dismissal, monetary claims and damages. Despite serious efforts made by Labor Arbiter (LA) Arturo P. Aponesto, the case was not amicably settled, except for the following matters: (1) *Balansi* 8 and 9; (2) 10% *piado* share; (3) *sud-anon* refund; and (4) refund of payment of motorcycle in the amount of P15,000.00. LA Aponesto further inhibited himself from the case out of "delicadeza,"[1] and the case was raffled to LA Amado M. Solamo.[2]

In their Position Paper, petitioners alleged that their refusal to sign the Joint Venture Fishing Agreement is not a just cause for their termination. Petitioners also asked for a refund of the amount of P8,700,407.70 that was taken out of their 50%

income share for the repair and maintenance of boat as well as the purchase of fishing materials, as Lu should not benefit from such deduction.[3]

On the other hand, Lu denied having dismissed petitioners, claiming that their relationship was one of joint venture where he provided the vessel and other fishing paraphernalia, while petitioners, as industrial partners, provided labor by fishing in the high seas. Lu alleged that there was no employer-employee relationship as its elements were not present, viz.: it was the *piado* who hired petitioners; they were not paid wages but shares in the catch, which they themselves determine; they were not subject to his discipline; and respondent had no control over the day-to-day fishing operations, although they stayed in contact through respondent's radio operator or checker. Lu also claimed that petitioners should not be reimbursed for their share in the expenses since it was their joint venture that shouldered these expenses.[4]

In Decision dated June 30, 1998, LA Solamo dismissed the case for lack of merit, finding that there was no employer-employee relationship between petitioners and Lu.[5]

Petitioners appealed to the National Labor Relations Commission (NLRC), docketed as NLRC CA No. M-004368-98. The NLRC, however, affirmed the LA's Decision in its Resolution dated March 12, 1999.[6] The NLRC likewise denied petitioners' motion for reconsideration for lack of merit per Resolution dated July 9, 1999.[7]

Petitioners then filed a petition for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 55486.

It appears, however, that the petition included the case of Engr. Virgilio Nano (Nano), who likewise filed a complaint for illegal dismissal and money claims against Lu, docketed as Case No. RAB-11-04-50120-97. In Nano's case, he alleged that as early as 1994, he was hired by Lu as an unlicensed engineer, but was summarily dismissed on March 10, 1997.[8] LA Miriam A. Libron-Barroso dismissed his complaint in her Decision dated May 13, 1998 on the similar finding that there was no employer-employee relationship between him and respondent.[9] Nano's appeal, docketed as NLRC CA No. M-004113-98 (RAB-11-04-50120-97), was dismissed by the NLRC in its Resolution dated March 12, 1999,[10] and his motion for reconsideration denied per Resolution dated July 9, 1999.[11] Entry of Resolution dated March 12, 1999 was made on August 9, 1999 in the Book of Entries of Judgment as the same already became final and executory.[12]

In a Resolution dated November 22, 1999, the CA[13] dismissed the petition for having been filed beyond the 60-day reglementary period within which to file a petition for *certiorari* under Rule 65 of the Rules of Court, and that the sworn certification of non-forum shopping was signed only by 2 of the petitioners who have not shown any authority to sign in behalf of the other petitioners.[14]

Petitioners filed a motion for reconsideration but the CA denied this in its Resolution dated January 31, 2001.[15]

Hence, this petition for review under Rule 45 of the Rules of Court where petitioners set forth the following grounds:

I

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THERE EXISTS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRIVATE RESPONDENT AND THE PETITIONERS NOTWITHSTANDING THE CLEAR AND ESTABLISHED JURISPRUDENCE ON THE MATTER AND THE FACT THAT THE EVIDENCE SUBMITTED BY THE LATTER CLEARLY SHOW SUCH EXISTENCE.

II

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THERE EXISTS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRIVATE RESPONDENT AND THE PETITIONERS NOTWITHSTANDING THE FACT THAT THE FORMER REPORTED TO THE SOCIAL SECURITY SYSTEM THE PETITIONERS AS HIS EMPLOYEES AND HAS PAID CONTRIBUTIONS THERETO FOR SEVERAL YEARS.

III

THE HONORABLE COURT OF APPEALS, FORMER FOURTEENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITIONERS' PETITION FOR CERTIORARI NOTWITHSTANDING THE FACT THAT THE 6-DELAY (sic) DELAY IN THE FILING THEREOF IS DUE TO EXCUSABLE AND INEVITABLE NEGLIGENCE BROUGHT ABOUT BY EXTREME POVERTY.

IV

THE HONORABLE COURT OF APPEALS, FORMER FOURTEENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REMOVED FROM ITSELF THE AUTHORITY TO RELAX ON SIMPLE AND EXCUSABLE PROCEDURAL OMMISSION [sic] EVEN IF SUCH IS WELL JUSTIFIED.[16]

There are two issues presented in this case. First is the procedural question of whether the CA committed grave abuse of discretion in summarily dismissing the petition filed before it, and second is the substantive issue of whether there exists an employer-employee relationship between petitioners and respondent.

Before proceeding further, the Court stresses the point that this case does not include Nano's case, as the NLRC Resolutions dated March 12, 1999 and July 9, 1999, dismissing his appeal are already final and executory, and in fact, entry of judgment has already been made thereon.[17] Hence, it can no longer be reversed or modified,[18] and whether right or wrong, it has become immutable.[19]