

## FIRST DIVISION

[ G.R. No. 137592, December 12, 2001 ]

**ANG MGA KANIB SA IGLESIA NG DIOS KAY KRISTO HESUS,  
H.S.K. SA BANSANG PILIPINAS, INC. PETITIONER, VS. IGLESIA  
NG DIOS KAY KRISTO JESUS, HALIGI AT SUHAY NG  
KATOTOHANAN, RESPONDENT.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

This is a petition for review assailing the Decision dated October 7, 1997<sup>[1]</sup> and the Resolution dated February 16, 1999<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 40933, which affirmed the Decision of the Securities and Exchange and Commission (SEC) in SEC-AC No. 539.<sup>[3]</sup>

Respondent *Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan* (Church of God in Christ Jesus, the Pillar and Ground of Truth),<sup>[4]</sup> is a non-stock religious society or corporation registered in 1936. Sometime in 1976, one Eliseo Soriano and several other members of respondent corporation disassociated themselves from the latter and succeeded in registering on March 30, 1977 a new non-stock religious society or corporation, named *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan*.

On July 16, 1979, respondent corporation filed with the SEC a petition to compel the *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan* to change its corporate name, which petition was docketed as SEC Case No. 1774. On May 4, 1988, the SEC rendered judgment in favor of respondent, ordering the *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan* to change its corporate name to another name that is not similar or identical to any name already used by a corporation, partnership or association registered with the Commission.<sup>[5]</sup> No appeal was taken from said decision.

It appears that during the pendency of SEC Case No. 1774, Soriano, et al., caused the registration on April 25, 1980 of petitioner corporation, *Ang Mga Kanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K., sa Bansang Pilipinas*. The acronym "H.S.K." stands for *Haligi at Saligan ng Katotohanan*.<sup>[6]</sup>

On March 2, 1994, respondent corporation filed before the SEC a petition, docketed as SEC Case No. 03-94-4704, praying that petitioner be compelled to change its corporate name and be barred from using the same or similar name on the ground that the same causes confusion among their members as well as the public.

Petitioner filed a motion to dismiss on the ground of lack of cause of action. The motion to dismiss was denied. Thereafter, for failure to file an answer, petitioner was

declared in default and respondent was allowed to present its evidence *ex parte*.

On November 20, 1995, the SEC rendered a decision ordering petitioner to change its corporate name. The dispositive portion thereof reads:

**PREMISES CONSIDERED**, judgment is hereby rendered in favor of the petitioner (respondent herein).

Respondent Mga Kaanib sa Iglesia ng Dios Kay Kristo Jesus (sic), H.S.K. sa Bansang Pilipinas (petitioner herein) is hereby **MANDATED** to change its corporate name to another **not deceptively similar or identical to the same already used by the Petitioner**, any corporation, association, and/or partnership presently registered with the Commission.

Let a copy of this **Decision** be furnished the **Records Division** and the **Corporate and Legal Department [CLD]** of this Commission for their records, reference and/or for whatever requisite action, if any, to be undertaken at their end.

**SO ORDERED.**<sup>[7]</sup>

Petitioner appealed to the SEC *En Banc*, where its appeal was docketed as SEC-AC No. 539. In a decision dated March 4, 1996, the SEC *En Banc* affirmed the above decision, upon a finding that petitioner's corporate name was identical or confusingly or deceptively similar to that of respondent's corporate name.<sup>[8]</sup>

Petitioner filed a petition for review with the Court of Appeals. On October 7, 1997, the Court of Appeals rendered the assailed decision affirming the decision of the SEC *En Banc*. Petitioner's motion for reconsideration was denied by the Court of Appeals on February 16, 1992.

Hence, the instant petition for review, raising the following assignment of errors:

## I

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONER HAS NOT BEEN DEPRIVED OF ITS RIGHT TO PROCEDURAL DUE PROCESS, THE HONORABLE COURT OF APPEALS DISREGARDED THE JURISPRUDENCE APPLICABLE TO THE CASE AT BAR AND INSTEAD RELIED ON TOTALLY INAPPLICABLE JURISPRUDENCE.

## II

THE HONORABLE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF THE CIVIL CODE PROVISIONS ON EXTINGTIVE PRESCRIPTION, THEREBY RESULTING IN ITS FAILURE TO FIND THAT THE RESPONDENT'S RIGHT OF ACTION TO INSTITUTE THE SEC CASE HAS SINCE PRESCRIBED PRIOR TO ITS INSTITUTION.

## III

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER AND PROPERLY APPLY THE EXCEPTIONS ESTABLISHED BY JURISPRUDENCE IN THE APPLICATION OF SECTION 18 OF THE CORPORATION CODE TO THE INSTANT CASE.

#### IV

THE HONORABLE COURT OF APPEALS FAILED TO PROPERLY APPRECIATE THE SCOPE OF THE CONSTITUTIONAL GUARANTEE ON RELIGIOUS FREEDOM, THEREBY FAILING TO APPLY THE SAME TO PROTECT PETITIONER'S RIGHTS.<sup>[9]</sup>

Invoking the case of *Legarda v. Court of Appeals*,<sup>[10]</sup> petitioner insists that the decision of the Court of Appeals and the SEC should be set aside because the negligence of its former counsel of record, Atty. Joaquin Garaygay, in failing to file an answer after its motion to dismiss was denied by the SEC, deprived them of their day in court.

The contention is without merit. As a general rule, the negligence of counsel binds the client. This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client.<sup>[11]</sup> An exception to the foregoing is where the reckless or gross negligence of the counsel deprives the client of due process of law.<sup>[12]</sup> Said exception, however, does not obtain in the present case.

In *Legarda v. Court of Appeals*, the effort of the counsel in defending his client's cause consisted in filing a motion for extension of time to file answer before the trial court. When his client was declared in default, the counsel did nothing and allowed the judgment by default to become final and executory. Upon the insistence of his client, the counsel filed a petition to annul the judgment with the Court of Appeals, which denied the petition, and again the counsel allowed the denial to become final and executory. This Court found the counsel grossly negligent and consequently declared as null and void the decision adverse to his client.

The factual antecedents of the case at bar are different. Atty. Garaygay filed before the SEC a motion to dismiss on the ground of lack of cause of action. When his client was declared in default for failure to file an answer, Atty. Garaygay moved for reconsideration and lifting of the order of default.<sup>[13]</sup> After judgment by default was rendered against petitioner corporation, Atty. Garaygay filed a motion for extension of time to appeal/motion for reconsideration, and thereafter a motion to set aside the decision.<sup>[14]</sup>

Evidently, Atty. Garaygay was only guilty of simple negligence. Although he failed to file an answer that led to the rendition of a judgment by default against petitioner, his efforts were palpably real, albeit bereft of zeal.<sup>[15]</sup>

Likewise, the issue of prescription, which petitioner raised for the first time on appeal to the Court of Appeals, is untenable. Its failure to raise prescription before the SEC can only be construed as a waiver of that defense.<sup>[16]</sup> At any rate, the SEC