

## THIRD DIVISION

[ G.R. No. 99425, March 03, 1997 ]

**ANTONIO C. RAMOS, ROSALINDA M. PEREZ, NORMA C. CASTILLO  
AND BALIUAG MARKET VENDORS ASSOCIATION, INC.,  
PETITIONERS, VS. COURT OF APPEALS, HON. CAMILO O.  
MONTESA, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF THE  
REGIONAL TRIAL COURT OF BULACAN, BRANCH 19, AND  
MUNICIPALITY OF BALIUAG, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

Who has the legal authority to represent a municipality in lawsuits? If an unauthorized lawyer represents a municipality, what is the effect of his participation in the proceedings? Parenthetically, does a motion to withdraw the appearance of the unauthorized counsel have to comply with Rule 15 of the Rules of Court regarding notice and hearing of motions?

These questions are answered by this Court in resolving this petition for review under Rule 45 of the Rules of Court of the Decision<sup>[1]</sup> of public respondent<sup>[2]</sup> in CA-G.R. SP No. 23594 promulgated on March 15, 1991, which denied due course to and dismissed the petition therein. Also assailed is the Resolution<sup>[3]</sup> of public respondent promulgated on May 9, 1991, which denied the motion for reconsideration for lack of merit.

### The Facts

The facts as found by public respondent are undisputed, to wit:<sup>[4]</sup>

"On April 18, 1990, petitioners Antonio C. Ramos, Rosalinda M. Perez, Norma C. Castillo, and the Baliuag Market Vendors Association, Inc. filed a petition before the court a quo docketed as Civil Case No. 264-M-9 for the Declaration of Nullity of Municipal Ordinances No. 91 (1976) and No. 7 (1990) and the contract of lease over a commercial arcade to be constructed in the municipality of Baliuag, Bulacan.

On April 27, 1980, during the hearing on the petitioners' motion for the issuance of preliminary injunction, the Provincial Fiscal appeared as counsel for respondent Municipality of Baliuag, which opposed the petition. Whereupon, a writ of preliminary injunction was issued by the court a quo on May 9, 1990.

Meanwhile, on May 3, 1990, the Provincial Fiscal and the Provincial Attorney, Oliviano D. Regalado, filed an Answer in (sic) behalf of

respondent municipality.

At the pre-trial conference scheduled on May 28, 1990, Atty. Roberto B. Romanillos appeared, manifesting that he was counsel for respondent municipality. On the same date, and on June 15, 1990, respectively, Atty. Romanillos filed a motion to dissolve injunction and a motion to admit an Amended Answer with motion to dismiss.

On June 18, 1990, Provincial Attorney Oliviano D. Regalado appeared as collaborating counsel of Atty. Romanillos. The Provincial Fiscal did not appear. It was Atty. Romanillos who submitted the Reply to- petitioners' Opposition to respondents' motion to dissolve injunction. It was also Atty. Romanillos who submitted a written formal offer of evidence on July 17, 1990 for respondent municipality.

During the hearing on August 10, 1990, petitioners questioned the personality of Atty. Romanillos to appear as counsel of (sic) the respondent municipality, which opposition was reiterated on August 15, 1990, and was put in writing in petitioners' motion of August 20, 1990 to disqualify Atty. Romanillos from appearing as counsel for respondent municipality and to declare null and void the proceedings participated in and undertaken by Atty. Romanillos.

Meanwhile, Atty. Romanillos and Atty. Regalado filed a joint motion dated August 22, 1990 stating, among others, that Atty. Romanillos was withdrawing as counsel for respondent municipality and that Atty. Regalado, as his collaborating counsel for respondent municipality, is adopting the entire proceedings participated in/undertaken by Atty. Romanillos.

On September 19, 1990 respondent Judge issued the Order now being assailed which, as already stated, denied petitioners' motion to disqualify Atty. Romanillos as counsel for respondent municipality and to declare null and void the proceedings participated in by Atty. Romanillos; and on the other hand, granted Atty. Regalado's motion 'to formally adopt the entire proceedings including the formal offer of evidence'. In support of his foregoing action, respondent Judge reasoned:

'Petitioners' motion for the disqualification of Atty. Romanillos as respondent municipality's counsel is deemed moot and academic in view of his withdrawal as counsel of said municipality pursuant to a joint motion dated August 22, 1990, although he shall remain as counsel on record of private respondent Kristi Corporation. Atty. Oliviano Regalado under the same joint motion moved for the adoption of the entire proceedings conducted by collaborating counsel, Atty. Romanillos.

It is noted that Atty. Romanillos initially entered his appearance as collaborating counsel of the Provincial Prosecutor and the Provincial Attorney when he filed a motion to dissolve injunction under motion dated May 30, 1990 and since then despite his active participation in the proceedings, the opposing counsel has never questioned his appearance until after he made a formal offer of evidence for the respondents. The

acquiescence of petitioners,' counsel of (sic) his appearance is tantamount to a waiver and petitioners are, therefore, estopped to question the same. In all the pleadings made by Atty. Romanillos, it was clearly indicated that he was appearing as the collaborating counsel of the Provincial Attorney. Besides, petitioners' counsel failed to submit their comment and/or objection to the said joint motion of respondents' counsel as directed by the Court within the reglementary period. By virtue of these circumstances, all the proceedings attended to and participated in by said collaborating counsel is a fait accompli and the Court finds no cogent justification to nullify the same.'

Petitioners' motion for reconsideration of the foregoing Order was denied by respondent Judge in his Order dated October 19, 1990, the second Order now being assailed. Respondent Judge reiterated the observations which he made in the Order of September 19, 1990 that Atty. Romanillos, while actively handling the said case was merely appearing as the collaborating counsel of both the Provincial Prosecutor and the Provincial Attorney of Bulacan; that Atty. Romanillos' appearance was 'never impugned by petitioners' and was only questioned after his (Atty. Romanillos') submission of the formal offer of evidence for respondent; and that therefore, said court proceedings 'is (sic) a fait accompli'. Respondent Judge went on to say that the declaration of nullity of said proceedings and the re-taking of the same evidence by the same parties is (sic) 'apparently an exercise in futility'. He added that in the absence of untimely objection by petitioners to Atty. Romanillos' appearance as the collaborating counsel, petitioners are guilty of laches for having slept on (sic) their rights and are estopped as their acquiescence may be considered as waiver of such right. Furthermore, according to respondent Judge, assuming that the proceedings had been 'tainted with frailness to render the same legally objectionable', the same has been 'legally remedied' by its formal adoption upon motion of the Provincial Accorney (sic), Atty. Regalado, who is not disqualified to appear as counsel for the municipality of Baliuag, for the reason that by virtue of Section 19 of R.A. No. 5185 (The Decentralization Act of 1967), the authority to act as legal officer/adviser for (sic) civil cases of the province of Bulacan, of which the municipality of Baliuag is a political subdivision, has been transferred from the Provincial Fiscal (now Provincial Prosecutor) of Bulacan to the Provincial Attorney thereof."

As earlier stated, the Court of Appeals dismissed the petition and denied the motion for reconsideration. Hence this recourse.

### **The Issues**

The issues raised by petitioners in their Memorandum are:<sup>[5]</sup>

- "1) Under present laws and jurisprudence, can a municipality be represented in a suit against it by a private counsel?
- 2) If not, what is the status of the proceedings undertaken by an unauthorized private counsel;

- 3) Can the provincial attorney of a province act as counsel of a municipality in a suit;
- 4) Can the provincial attorney adopt with legal effect the proceedings undertaken by an unauthorized private counsel of (sic) a municipality;
- 5) May a court act on an alleged motion which violates Sections 4 and 5 of Rule 15 and Section 26, Rule 128 of the Rules of Court."

Petitioners contend that the assailed Decision which affirmed the Orders of the trial court is void for being violative of the following laws:<sup>[6]</sup>

"VI-1        The respondent court violated Section 1683 of the Revised Administrative Code; Section 3, paragraph 3 (a) of Republic Act No. 2264, otherwise known as the Local Autonomy Act; and Section 35; Book IV, Title III, Chapter 12, Administrative Code of 1987 (Executive Order No. 292) when it authorized Atty. Oliviano D. Regalado, the Provincial Attorney of Bulacan, to appear as counsel for respondent Municipality of Baliuag.

VI-2        The respondent court violated Section 1683 of the Revised Administrative Code; Section 3, paragraph 3 (a) of Republic Act No. 2264, otherwise known as the Local Autonomy Act; Section 35, Book IV, Title III, Chapter 12, Executive Order No. 292, otherwise known as the Administrative Code of 1987; and Article 1352 of the New Civil Code, when it denied the petitioners' motion to declare the proceedings undertaken or participated in by said Atty. Roberto B. Romanillos, as private counsel of respondent Municipality, null and void.

VI-3        The respondent court acted in excess of its jurisdiction and in grave abuse of discretion when it acted and granted the respondent's JOINT MOTION dated August 22, 1990 (Annex 'H') which, as a rule, is a mere worthless piece of paper which the respondent judge/court has no authority to act upon, considering that said motion was filed in court in patent violation of or without complying with the mandatory requirements provided for by Sections 4 and 5 of Rule 15 and Section 26 of Rule 138 of the Rules of Court."

Public respondent did not give due course to the petition "because it does not prima facie show justifiable grounds for the issuance of certiorari.<sup>[7]</sup> Public respondent adds that:<sup>[8]</sup>

"Considering the foregoing jurisprudence, the logical conclusion is that the Provincial Attorney of Bulacan has now the authority to represent the municipality of Baliuag in its law suits.

It follows that respondent Judge was correct in ruling in the assailed Order of October 19, 1990 that even assuming, arguendo, that the proceedings by the court a quo which had been participated in by Atty.

Romanillos are legally objectionable, this was legally remedied by the formal adoption by the provincial Attorney, Atty. Regalado, of the said proceedings, considering that the provincial attorney is not disqualified from representing the municipality of Baliuag in civil cases.

In the second place, the record discloses that Atty. Romanillos had appeared as counsel for respondent municipality of Baliuag in collaboration with the Provincial Prosecutor and the Provincial Attorney, as shown in the motion to dissolve injunction dated May 28, 1990 which Atty. Romanillos had filed for respondent municipality. Accordingly and pursuant to the aforesaid provisions of law, it cannot correctly be said that respondent Judge had acted with grave abuse of discretion when he allowed Atty. Romanillos to act as private counsel and Atty. Regalado, Provincial Attorney of Bulacan, to appear as counsel for respondent Municipality of Baliuag. Perforce, it also cannot be correctly said that respondent Judge violated the aforesaid provisions when he denied petitioners' motion to declare null and void the proceedings undertaken by and participated in by Atty. Romanillos as private counsel of the municipality of Baliuag.

At any rate, even granting, only for the sake of argument, that Atty. Romanillos' appearance as counsel for the municipality could not be legally authorized under the aforesaid provisions of law, the fact that Atty. Regalado as Provincial Attorney of Baliuag had formally adopted the proceedings participated in by Atty. Romanillos as counsel for the municipality of Baliuag had served, as already stated, to cure such a defect.

Thirdly, We are likewise unable to see grave abuse of discretion in respondent Judge's actuation in granting the joint motion filed by Atty. Romanillos and Atty. Regalado for the withdrawal of the former as private counsel of respondent municipality, and the adoption by the latter of the proceedings participated in/undertaken by the former, including the formal offer of evidence submitted by the former."

Public respondent likewise found that the "joint motion does not partake of the nature of an adversarial motion which would have rendered non-compliance with Sections 4 and 5 of Rule 15 of the Rules of Court fatal to the motion." [9] It is to be emphasized that petitioners "sought the disqualification of Atty. Romanillos x x x (Thus,) what petitioners had sought to (be) achieve(d) in their said motion was in fact what Atty. Romanillos had sought x x x in the joint motion dated August 22, 1990." [10]

Respondent municipality submits that Section 19 of RA 5185:

"is not meant to prohibit or prevent the Provincial Attorney to act as legal adviser and legal officer for municipalities and municipal districts because such interpretations would be to say the least, absurd (sic). In this jurisdiction, a province is composed of municipalities and municipal districts, and therefore they are deemed included in the provisions of Section 19 of Republic Act 5185. It is also impractical and contrary to the