CAGAYAN DE ORO CITY

# TWENTY-SECOND DIVISION

# [ CA-G.R. SP NO. 102248-MIN, January 24, 2014 ]

## L.G. FOODS CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ROEL D. IWAY AND BERNABE M. SENANGOTE, RESPONDENTS.

## DECISION

**INTING, J.:**

Before Us is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the August 31, 2007 and December 10, 2007 Resolutions[1] of the National Labor Relations Commission, 5th Division, Cagayan de Oro City, dismissing the petitioner L.G. Foods Corporation's appeal and denying their motion for reconsideration, respectively, in relation to their motion to quash the writ of execution issued against them in NLRC Case No. RAB 11-12-01353-99. The dispositive portion of August 31, 2007 Resolution affirmed in the December 10, 2007 Resolution reads:

> "**WHEREFORE**, premises considered, respondents' appeal is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.** "

The facts of the case are as follows: On June 30, 2000, the Labor Arbiter rendered a decision dismissing the complaint filed by Roel D. Iway and Bernabe M. Senangote against LG Foods Corporation (LG Foods for brevity) for illegal dismissal. Nevertheless, LG Foods was directed to pay the complainants their separation pay and other monetary benefits, damages and attorney's fees. The decision attained finality per Resolution dated May 17, 2004,[2] after the Supreme Court affirmed it when it was raised to it following the Court of Appeals' and the NLRC's adverse decision on LG Foods' appeal and petition, respectively. This paved the way for the issuance of a writ of execution[3] dated December 3, 2004.

However, on March 2, 2005, LG Foods filed a motion to quash the writ of execution[4] on the ground that the Labor Arbiter had no jurisdiction to hear the case and much more issue the writ of execution. LG Foods purportedly found new evidence consisting of BIR, SSS and PAG-IBIG records showing that the complainants are not their employees but that of Harvest Distributor Phil., Inc., a different and distinct company. Since there was no employer-employee relationship between the complainants and LG Foods, it follows that the labor arbiter had no jurisdiction to hear the case and the decision it rendered in the case is void.

The complainants filed their opposition to the motion to quash contending that the case had passed several legal proceedings up to the Court of Appeals and the Supreme Court but never did LG Foods raise nor question the labor arbiter's jurisdiction.[5] The complainants reiterated that Harvest Distributor, Inc. is the

marketing arm of LG Foods; that this was stated in their position paper which LG Foods did not deny or refute; and that the complainants have submitted documents which show that they were LG Foods' employees, though the documents were not primarily offered to prove employer-employee relationship as it was never an issue then. Further, the complainants averred that the issue on the employment relationship is basic in labor cases and should have been raised immediately and not only when the decision had attained finality.[6]

In the reply,[7] LG Foods maintains that it would be extremely unjust and detrimental for them to pay the complainants and insists that the latter were not their employees and thus, the labor arbiter had no jurisdiction over the action.

The labor arbiter denied LG Foods' motion to quash the writ of execution in an Order dated September 8, 2006.[8] The arbiter found the motion as whimsical, capricious and intended only to delay the execution of judgment; that LG Foods could no longer raise the issue of jurisdiction on the ground of estoppel as their learned counsel actively participated in the proceedings from the arbitration to the appeal without raising the issue of jurisdiction; that once the judgment becomes final and executory, it can no longer be disturbed, altered or modified; and that the instant case does not belong to the exceptions provided by law.

LG Foods appealed[9] the labor arbiter's Order. The NLRC, in its August 31, 2007 Resolution,[10] affirmed the labor arbiter and held that the denial of a motion to quash is an interlocutory order and thus, not appealable. Moreover, the NLRC found no palpable mistake on the part of the arbiter in rendering the order considering that the decision upon which the writ of execution was based was already final and executory.

Unyielding, LG Foods filed their motion for reconsideration[11] but it was also denied per Resolution dated December 12, 2007.[12]

Hence, this petition by L.G. Foods Corporation raising the following issues to wit:

I.

> WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE ISSUANCE OF THE LABOR ARBITER A QUO OF A WRIT OF EXECUTION DESPITE THE FACT THAT THE NEWLY FOUND EVIDENCE SHOWS THAT PRIVATE RESPONDENTS WERE NOT EMPLOYEES OF HEREIN PETITIONER LG FOODS CORPORATION, BUT BY HARVEST DISTRIBUTOR PHILS., INC., THUS THERE IS LACK OF JURISDICTION;

II.

> WHETHER OR NOT A VOID DECISION CAN GAIN FINALITY AND BE ENFORCED THRU A WRIT OF EXECUTION.

Our Ruling

The petition lacks merit.

Herein petitioner maintains that the NLRC committed grave abuse of discretion when it dismissed their appeal from the labor arbiter's order denying their motion to

quash the writ of execution. The petitioner alleges that the decision upon which the writ was based is void for being issued without jurisdiction, thus, it follows that the writ is likewise void.

We beg to disagree.

Generally, an appeal does not lie as a remedy from the order denying a motion to set aside a writ of execution.[13] In the case of *Reburiano v. CA*,[14] the Supreme Court held that as a general rule, no appeal lies from such an order, otherwise litigation will become interminable. However, the High Court added that there are exceptional instances when an error may be committed in the course of execution proceedings prejudicial to the rights of a party where considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or *certiorari*) or by a special civil action of *certiorari*, prohibition, or *mandamus*. These instances include where-

1) the writ of execution varies the judgment;

2) there has been a change in the situation of the parties making execution inequitable or unjust;

3) execution is sought to be enforced against property exempt from execution;

4) it appears that the controversy has never been submitted to the judgment of the court;

5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or

6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, *or the writ was issued without authority*; (italics for emphasis)

From the above enumeration, a writ may be questioned when it is allegedly issued by one without authority to do so. In the case at bench, the petitioner's contention in assailing the NLRC's resolution is founded on its claim that the labor arbiter was without jurisdiction to render the decision upon which the writ of execution was based. Consequently, petitioner avers that the labor arbiter also has no authority to issue the writ. Considering this controversy, an appeal may, therefore, be made on the denial of the motion to quash the writ of execution. This is one of the instances where the aggrieved party is given the opportunity to elevate questions regarding the execution of an adverse decision since the authority to issue the writ of execution is in query. Thus, We find that the petitioner aptly appealed the labor arbiter's order before the public respondent.

Nevertheless, it has been held that while parties are given the remedy from the denial of the motion to quash or recall the writ of execution, it is equally settled that the writ will not be recalled by reason of any defense which could have been made

at the time of the trial of the case.[15] In the aforementioned case of *Reburiano*,[16] the Supreme Court declared:

> "We agree with this ruling. Rules of fair play, justice, and due process dictate that parties cannot raise for the first time on appeal from a denial of a Motion to Quash a Writ of Execution issues which they could have raised but never did during the trial and even on appeal from the decision of the trial court."

In the case before Us, it is indisputable that the issue as to the employer-employee relationship between the petitioner and the private respondents was not raised during the entire proceedings of the labor case except only when the petitioner filed its motion to quash the writ of execution after the labor arbiter's decision had already become final. It behooves this Court why such defense was belatedly raised after several years of proceedings made not only before the public respondent or the appellate courts but also before the highest court of the land. The private respondents' employment is not a supervening event that existed after the judgment was rendered. During the entire proceedings, the petitioner had ample time and opportunity to refute and deny being the private respondents' employer but they were remiss in doing so. They raised the issue only after the labor arbiter's decision had already attained finality from the affirmations made not only by the NLRC or the appellate court but also by the Supreme Court. The employer-employee relationship in cases before the labor arbiter is elementary and it would be absurd for a party, thoroughly represented by a counsel, to go through the rigorous proceedings without raising it as an issue if there really was no such relationship in the first place. It is unfathomable for a party to overlook such indispensable fact. The public respondent cannot be faulted when they gave no credit to the documents purporting to show that there was no employer-employee relationship between herein private parties and when they treated the petitioner's motion to quash the writ as a mere delaying tactic to stay the execution of a final judgment. Thus, there is no sufficient basis to quash the writ.

Generally, the jurisdiction of a court may be assailed at any stage of the proceedings. In the case of *Fernando v. de Belen*,[17] the Supreme Court reiterates that:

> "Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss. So that, whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."

However, it bears noting that such defense may hold no water when laches has set in. Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[18] Although in a plethora of cases the