

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

RAFAEL B. GAERLAN, SR.,
Petitioner,

-versus-

G.R. No. L-66526
September 28, 1984

**NATIONAL LABOR RELATIONS
COMMISSION and ORIENTAL
SHIPMANAGEMENT CO., INC.,**
Respondents.

X-----X

D E C I S I O N

ABAD SANTOS, J.:

This is a petition to review and reverse a Resolution of the National Labor Relations Commission (NLRC) which dismissed the appeal of the petitioner principally for failure to satisfy the formal requirements to perfect an appeal.

The petition was initiated in a pleading styled "MOTION TO APPEAL w. EXECUTION ORDER." It was signed personally, in pencil, by Mr. Gaerlan himself and reads as follows:

“Chairman, 1st Division & Member Honorable Justices:
1st Division, Clerk of Court SUPREME COURT

Greetings:

COMES NOW unto the Honorable First Division Supreme Court plaintiff-appellant Engr. Rafael B. Gaerlan, 39 years old. married, resident of Manila, do avers:

1. The Resolution of NLRC Commissioners Castro, Seno & Borromeo dated August 29, 1983 as attached hereto is NLRC’s downright silly technicalities to most aggrieved herein Plaintiff-Appellant namely sworn statement or oath, copy not served, etc. and smacks of imbecility as Commissioners if not CONDUCT unbecoming Public Officials for, the valid appeal by herein Appellant based on the grounds of a.) NON-EXECUTION of ORDER of Director Elmor Juridico by NLRC to said guilty respondent-Appellee ORIMAN to ‘return to herein Appellant Rafael B. Gaerlan his Philippine passport, Seaman’s continuous Discharge Book and Seaman Registration Book Certificate without charging any fee’. b.) NON-INCLUSION by both NSB & NLRC of Appellant’s LOSS OF EARNINGS for three (3) years ever since December 4, 1980 effectivity of Contract as Seaman with ORIMAN thus Appellant could not be employed elsewhere because said guilty ORIMAN illegally withheld Appellant’s Passport and Seaman Book within said period with no means nor ways to embark in any other ship due to non-embarcation by ORIMAN which constitutes BREACH OF CONTRACT (see MASTER CONTRACT at NSB file);
2. Henceforth despite pleas of Appellant Rafael B. Gaerlan to ORIMAN to embark him in sister-ship of said Company under the same Contract which stipulates Art. 1, Clause L: ‘in the event of non-embarcation in the original vessel, Company has the

option to embark subject seaman to sister-ship or any available ship by said Company;’

3. Therefore, under the Revised Penal Code, Article 104, 8th Phil. Legislature, 3rd Session, frankly states: there was no restitution, there was no reparation of the damage caused by ORIMAN to employment and livelihood of herein Appellant, there was no indemnification for consequential reparation of the damage done by ORIMAN to herein Appellant, similarly Art. 110, Revised Penal Code: there was no resolution by both NSB & NLRC to ORIMAN as OBLIGATION to make Restitution In An Amount Equivalent To The Extent of Such Participation (see Appellant’s MOTION TO APPEAL at NLRC p. 1) Thereby GROSS VIOLATIONS of said Articles 62, 104, 110, 111, etc. ON CONTRACTS, by ORIMAN to subject seaman-Appellant is not condonable equally Acts of Omission by NSB & NLRC in their dispositive resolutions;

Respectfully prayed unto Honorable Supreme Court FIRST DIVISION for Execution ORDER to ORIMAN to do Items A & B herein-mentioned and ORDER said company ORIMAN to pay consequential damages due to LOSS-OF-EARNINGS under REVISED PENAL CODE as PENALTY by Court to most aggrieved Appellant as follows:

- 1.) P90,000. — pesos, due to LOSS OF EARNINGS & MORAL & EXEMPLARY DAMAGES.
- 2.) P10,000. — pesos, Lawyer’s Fees, Court Fees, Admin. Fees, etc.

(Lump Sum of ONE-HUNDRED THOUSAND-PESOS ONLY as PENALTY under R.P.C.)

Also, to waive all technicalities & docket as pauper & jobless & indigent Appellant to the Supreme Court FIRST DIVISION.

Done in the City of Manila his 1st of September, 1983.

(SGD.)

Engr. RAFAEL B. GAERLAN, Sr.
Indigent Plaintiff-Appellant.

Counsels & Lawyers:

1. Messrs. Atty. A. Savellano-CLAO
Ministry of Justice” (Rollo, p. 2.)

It can be readily perceived that it is not easy to make something out of the “MOTION” for which reason We required the Citizens Legal Assistance Office (CLAO) to assist the petitioner. The CLAO filed the instant petition from which can be gathered the following facts:

Mr. Gaerlan filed a complaint with the National Seamen’s Board against Oriental Shipmanagement Co., Inc. for breach of contract and damages. On January 13, 1983, Director Elmor D. Juridico of the Workers Assistance and Adjudication Office rendered a Decision with the following dispositive portion:

“WHEREFORE, in the light of the foregoing considerations, the above entitled case is hereby ordered dismissed for lack of merit and the complainant is not entitled to the relief prayed for.

“However, Oriental Shipmanagement Co., Inc., is hereby ordered to return to Rafael B. Gaerlan his Philippine passport, Seaman’s Continuous Discharge Book and Seaman Registration Certificate without charging any fee.” (Rollo, p, 17.)

On February 16, 1983, Mr. Gaerlan personally filed a “MOTION TO APPEAL AT NLRC” which reads as follows:

“MINISTER HON BLAS F. OPLE
VICE-CHAIRMAN DIEGO ATIENZA
LABOR ARBITER LITA AGLIBUT
EN BANC

Honourables Minister Blas F. Ople & V.C. Hon. D. Atienza & Hon. Lita Aglibut:

COMES NOW UNTO the Honourable National Labor Relations Commission Plaintiff Rafael B. Gaerlan, Sr., married, 33 years old, do avers:

1. That the above-entitled Case for DAMAGES is biased & gross injustice & lack of fair play to pay me damages (see my itemized damages re-Hearing Officer Montesines NSB) by the DECISION dated February 13, 1983 Director E. Juridico NSB is tantamount to insult to moral injuries not only to myself but also to my family because it is the guilty party/defendants namely Oriental Ship-management Corp. F-A-I-L-U-R-E to employ me (see DECISION by Director E. Juridico NSB) & not the Principal despite an approved Contract for One (1) year by the NSB because Defendants have violated grossly not only the NSB Rules & Regulation Protection For Employment of Seaman but also the Revised Penal Code and Civil Code of the Philippines with penalties due to corresponding Criminal & Civil Offenses and Liabilities incurred by Board of Directors & President of said Company with a view of imprisoning them;
2. Furthermore, the DECISION of Director E. Juridico that I did not avail of 'waiting period of hired seafarers of NSB & MEMO CIRCULAR 50 on Oct. 1, 1979' is precisely detrimental & to dismiss the said case for lack of merit and is a block of JUSTICE against the innocent seaman namely me who, al contrario, I availed of said NSB CIRCULAR but the Oriental Shipmanagement Company & their officer made fell on deaf ears. They disallowed it;
3. Under the REVISED PENAL CODE, 8th Legislature, 3rd Session, No. 1 Article 104 Civil Inclusion Liabilities, state:

- a. There was no restitution.
- b. There was no reparation of the damage caused.
- c. There was no Indemnification for consequential damages.

Above-mentioned items of Art. 104 caused by fault of ORIENTAL ET AL to subject seaman plaintiff.

Article 110 Several & Subsidiary Liability of Principals, Accomplices & Accessories of a Felony shall be liable severally (in solidum) among themselves for their quota, and subsidiary for those of the other person liable.

Article 111 Obligation to make Restitution In An Amount Equivalent to the Extent of such Participation.

Article 62 Effect of the Attendance of Aggravating Circumstances. Any aggravating circumstance inherent in the crime to such a degree that it must of necessity accompany the Commission thereof.

4. In above-mentioned VIOLATIONS of said Articles of Revised Penal Code it is very clear that Defendants are guilty of aggravating circumstances when, precisely, with particularity said defendants committed a crime of felony to the offended Plaintiff when they failed to abide by the START of the CONTRACT beginning from the SIGNING OF THE CONTRACT or its DATE therein up to filing of Complaint to NSB, the Defendants did not act for restitution & reparation of the Damages caused to Plaintiff namely loss of Income or Unearned Salary of Employment for One (1) Year for knowingly the consequences of their acts of omission to non-embarkation and non-employment of herein Plaintiff is crime itself and aggravating circumstances include the Plaintiff's sufferings and agonies incurred due to Defendants actions herein invoked: as Article 63

Application of Indivisible Penalties of Commission of The Deed; there is present only one aggravating circumstance namely unemployment of Plaintiff done by said Defendants for inasmuch as it was their duty and bound by approved Contract by NSB BOTH NSB DIRECTOR E. JURIDICO & ORIMAN they knowingly renegaded to gainfully employ on boardship subject seaman on boardship, to Manila or Singapore, herein subject Seaman-Plaintiff.

5. In the LAW OF AGENCY, F. Hipolito, Article 113 Liability of Agent for Wrongful Termination of Contract states 'Where the relation of Employer & Employee exists, both parties are bound by the terms of the contract.

'If the employer discharge the employee before the expiration of the term of the service, he can be made to respond in damages.'

Therefore, above-mentioned Article 113 Plaintiff had employer-employee relationship and during the term of said Contract herein Defendants as Agent did not abide by the Contract Terms namely Clause 11: 'The Agent has the option to embark seaman on sister ships or any vessel available.' The failure of ORIMAN TO DO SO is explicit of knowingly and wrongfully with wilfull liabilities done and incurred grave harm and damages to the profession of seaman in particular and to employee Plaintiff in general.

P R A Y E R

Respectfully pray unto the Honorables Minister of Labor EN BANC to correct and review and made a favorable DECISION reversing the Decision of Director Juridico thus granting me at least minimum Damages award of \$300. monthly x 12-months of Unearned Income due to the FAILURE of Oriental Shipmanagement Corporation. Also, moral and exemplary Damages including Attorney's fees totalling One Hundred Thousand Lump Sum Only.

Please SUMMON my LAWYERS for Trial and Hearings and specially request to docket this as PAUPER LITIGANT due to severe unemployment of seaman Plaintiff Rafael B. Gaerlan.

Done in the City of Manila this 16th day of February 1983.

(SGD)

ENGR. RAFAEL B. GAERLAN SR.
Complainant

COUNSELS & LAWYERS:

1. Attorney Atanacio Mardo
1809 G. Perfecto Street
Tayuman, Tondo, Manila
Telephone 2045-85
2. Attorney Diosdado Savellano”
(Rollo, pp. 19-20.)

In a Resolution promulgated on August 29, 1982, the NLRC dismissed the appeal “for failure to satisfy the requirements of a valid appeal. The subject motion is not verified under oath and there is no showing whatsoever that a copy thereof was served on the adverse party. Moreover, said motion does not invoke any of the valid grounds for appeal, hence pro forma.” (Rollo, p. 21.) Hence the instant petition.

The respondents, both public and private, were required to comment on the petition. The Solicitor General filed a comment for the NLRC. The private respondent did not file any comment notwithstanding two extensions to do so.

The Solicitor General recommends and We agree “that an order issue directing public respondent to give due course to petitioner’s appeal taken before it.” (Rollo, p. 46.)

The formal defects in the appeal which the petitioner filed with the NLRC were not fatal defects. The lack of verification can be easily

corrected by requiring an oath. (Gadit vs. Feliciano, A.C. No. 1222, Feb. 27, 1976, 69 SCRA 388.) And the non-service of the appeal to the adverse party is likewise not a fatal defect for it can also be easily corrected. (Estrada vs. NLRC, G.R. No. 57735, March 19, 1982, 112 SCRA 688; Magpayo vs. NLRC, G.R. No. 60950, Nov. 19, 1982, 118 SCRA 645.)

As to the dismissal of the appeal because it was pro forma, the Solicitor General suggests “that this Honorable Court require petitioner’s present counsel (CLAO) to redraft the Appeal Memorandum setting forth in clear and concise language the position of petitioner in order to enable public respondent to evaluate properly the merits of petitioner’s appeal.” (Rollo, p. 46.) This suggestion is well-taken and here it will not be amiss to state that obviously most of Mr. Gaerlan’s difficulties are due to the fact that although he is not a lawyer but an engineer, he acts as his own counsel. He persists in doing so even after the CLAO had entered its appearance for him. The rollo of this case is replete with hand and typewritten motions filed by Mr. Gaerlan who is well-advised to leave the lawyering of his case to lawyers.

WHEREFORE, the petition is granted; the Resolution of the NLRC is hereby set aside and said entity is directed to give due course to the petitioner’s appeal. In lieu of the petitioner’s Motion to Appeal, the CLAO is directed to file for the petitioner an appeal memorandum sufficient in form and substance.

SO ORDERED.

**Makasiar, Aquino, Escolin and Cuevas, JJ., concur.
Concepcion, Jr. and Guerrero, JJ., are on leave.**