SUPREME COURT
THIRD DIVISION

UNIVERSITY OF THE PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. 97827
February 9, 1993

COURT OF APPEALS, HONORABLE RODOLFO A. ORTIZ, Presiding Judge, Regional Trial Court (Branch 89), National Capital Region, Quezon City, Metro Manila, MANUEL ELIZALDE, BALAYEM, MAHAYAG, DUL and LOBO,
***Respondents*.**
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D E C I S I O N

ROMERO, *J.*:

Waving aloft its banner of institutional academic freedom, the petitioner, University of the Philippines questions, in this petition for review on certiorari the Order of the lower court denying the motion to dismiss the complaint for damages filed against two of its professors for alleged derogatory statements uttered concerning the Tasadays, the cave-dwelling inhabitants of the rainforest of Mindanao.

The facts which have drawn the State University from the quiet groves of academia to the judicial arena are as follows:

On August 15-17, 1986, the "International Conference on the Tasaday Controversy and Other Urgent Anthropological Issues" was held at the Philippine Social Science Center in Diliman, Quezon City. Jerome Bailen, Professor of the University of the Philippines (UP) Department of Anthropology was the designated conference chairman. He presented therein the "Tasaday Folio," a collection of studies on Tasadays done by leading anthropologists who disputed the authenticity of the Tasaday find and suggested that the "discovery" in 1971 by a team led by former Presidential Assistant on National Minorities (PANAMIN) Minister Manuel Elizalde, Jr. was nothing more than a fabrication made possible by inducing Manobo and T'boli tribesmen to pose as primitive, G-stringed, leaf-clad cave dwellers.

In the same conference, UP history professor, Zeus Salazar, traced in a publication the actual genealogy of the Tasadays to T'boli and Manobo ethnic groups. He likewise presented ABC's "20/20" videotaped television documentary showing interviews with natives claiming to have been asked by Elizalde to pose as Tasadays.

Almost a year later or in July 1988, UP allegedly sent Salazar and Bailen to Zagreb, Yugoslavia to attend the 12th International Congress of Anthropological and Ethnological Sciences. There, Salazar and Bailen reiterated their claim that the Tasaday find was a hoax. Their allegations were widely publicized in several dailies.

With these acts and utterances of Bailen and Salazar as well as newspaper reports and commentaries on the matter as bases, on October 27, 1988, Elizalde and Tasaday representatives Balayem, Mahayag, Dul and Lobo, filed a complaint for damages and declaratory relief against Salazar and Bailen before the Quezon City Regional Trial Court (Civil Case No. Q-99-1028).

As causes of action, the plaintiffs alleged that defendants' conduct and statements that the Tasadays were nonexistent or frauds deprived them of their peace of mind and defiled the Tasadays' "dignity and personality;" that defendants' contention that Elizalde

caused the Tasadays to pose and pretend was defamatory and pictured the plaintiffs as dishonest and publicity-seeking persons, thereby besmirching their reputation and causing them serious anxiety; that the defendants' "concerted efforts to publicly deny plaintiff Tasadays" personality and their existence as a distinct ethnic community within the forest area reserved under the Proclamation (No. 995) unjustly becloud or tend to becloud their rights thereunder, and hence entitle plaintiff Tasadays to a judgment declaring them a distinct ethnic community qualified to receive the benefits of Presidential Proclamation No. 995," and that defendants' "deliberate and continuing campaign to vex and annoy" the Tasadays and the use of "false and perjured `evidence' to debase and malign" them, caused them to incur attorney's fees and expenses of litigation. The plaintiffs invoked Art. 26 of the Civil Code and pegged their claims for moral and nominal damages at the "amount equivalent to defendants' combined salaries for two (2) months, estimated at P32,000.00."

The complaint also stressed the necessity of appointing a guardian ad litem for the Tasaday plaintiffs as they are "not acquainted with the ways of the city, its institutions, customs, places and people" and they have "no notion of courts or of court proceedings." The plaintiffs thus prayed:

> "WHEREFORE, it is respectfully prayed that, after appropriate initial proceedings, the Court issue an order appointing Ms. Josine Loinaz Elizalde as Guardian ad litem for plaintiff Tasadays, under such conditions as the Court may prescribe. After trial, it is respectfully prayed that judgment be rendered sentencing defendants jointly and severally to pay plaintiffs:
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> (1) P32,000.00, by way of moral damages under the First Cause of Action;
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> (2) P32,000.00, by way of moral damages under the Second Cause of Action; and
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> (3) P5,000.00 as attorney's fees and litigation expenses;

> all of which amounts are to be donated to the Tasaday Community Care Foundation, Inc., a non-stock and non-profit foundation in process of incorporation.
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> Plaintiffs further pray for judgment declaring plaintiff Tasadays to be a distinct ethnic community within the territory defined under Presidential Proclamation No. 995 and hence entitled to the benefits thereof.
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> Plaintiffs pray for such other reliefs as may be just and proper."[1]

On November 24, 1988, UP filed a motion to intervene with supporting memorandum asserting that, having authorized the activities of Bailen and Salazar, it had a duty to protect them as faculty members for acts and utterances made in the exercise of academic freedom. Moreover, it claimed that it was itself entitled to the right of institutional academic freedom.

At the hearing on the motion to intervene on November 28, 1988, the lower court required UP to submit its answer in intervention "to enable the Court to better appreciate the issue of whether or not the motion for leave to intervene should be granted."[2]

On December 5, 1988, Salazar and Bailen filed a motion to dismiss the complaint on the grounds that: the complaint failed to state a cause of action; the cause of action, if any, had already prescribed; they are protected by the guarantees of free speech and academic freedom; the court had no jurisdiction to grant declaratory relief in a civil action and no justiciable controversy exists.

Said motion to dismiss was denied by the lower court on January 9, 1989. The same court order held that there was no necessity to appoint a guardian ad litem for the Tasaday plaintiffs, granted UP's motion for leave to intervene and admitted UP's answer in intervention dated December 8, 1988.[3]

Their motion for the reconsideration of the denial order having been likewise denied, on March 11, 1989, Salazar and Bailen filed in this Court a petition for certiorari, prohibition and mandamus. Docketed

as G.R. No. 87248, the petition charged the lower court with grave abuse of discretion in denying their motion to dismiss.

Without requiring comment on the petition, the Court resolved in a minute resolution dated April 3, 1989 to "dismiss the petition for failure of the petitioners to sufficiently show that respondent court had committed a grave abuse of discretion in rendering its questioned judgment."[4] Petitioners' motion for the reconsideration of said Resolution was denied on July 5, 1989 "for having been filed late, the motion for extension of time to file motion for reconsideration having been previously denied in the resolution of May 31, 1989."[5] Entry of judgment was made on August 14, 1989.[6]

In the meantime, on February 15, 1989, UP filed a motion to dismiss the complaint but it was stricken off the record in the Order of February 16, 1989. A subsequent motion for reconsideration was likewise denied.

The plaintiffs thereafter filed a motion to declare defendants in default which, on March 10, 1989, the lower court granted. The defendants tried to set aside the order of default but the lower court denied it on April 11, 1989.[7]

In the same Order, the lower court also resolved UP's motion for the reconsideration of the Order of February 16, 1989 striking its motion to dismiss from the record. The court explained that after it had filed the answer in intervention, UP could no longer file a separate motion to dismiss because under Section 2 (c) of Rule 12 of the Rules of Court, an intervenor may only file two kinds of pleadings: a complaint if he joins the plaintiff and an answer in intervention if he unites with the defendant. Consequently, by admitting UP's proposed answer in intervention, the court deemed the same as UP's answer to the complaint because the proposed answer in intervention may not, as incorrectly claimed by UP, be considered as filed only for the purpose of enabling the court to better appreciate the issue of whether or not its motion for leave (to intervene) shall be granted and nothing more.[8]

On May 3, 1989, UP filed a motion for a preliminary hearing on the special defenses it had raised in its answer-in-intervention,

specifically lack of cause of action and lack of jurisdiction over the nature of the action.

On May 15, 1989, the lower court, after allowing the parties to argue orally on UP's motion for a preliminary hearing, issued an Order denying "intervenor's special defenses (in its answer in intervention), as grounds for a motion to dismiss." After noting that UP's answer-in-intervention had not explicitly alleged lack of cause of action or that the court had no jurisdiction over the nature of the action or suit, the lower court said:

> "But, even granting arguendo, that what the intervenor raised in its answer in intervention to the effect that: (a) the acts of defendants subject of the complaint are protected by the mantle of the institutional academic freedom of the University of the Philippines; and (b) the statements made in the exercise of academic freedom are privileged, amounted to an allegation of the lack of cause of action of the plaintiffs' complaint, this Court is not persuaded that the plaintiffs' complaint does not state a cause of action, as contended by the intervenor.
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> For, while it may be true that the plaintiffs' complaint does not state a cause of action against the intervenor, as, in fact, it is admitted by plaintiff's counsel, in oral arguments, that the plaintiffs have no claim against intervenor University of the Philippines, however, since what is sought to be dismissed by the intervenor is the plaintiffs' complaint against the defendants, intervenor University of the Philippines being unwilling to withdraw its answer in intervention to which the plaintiffs even conceded, undoubtedly, the plaintiffs' complaint states a cause of action against the defendants on the basis of the allegations therein. For, this alleged protective mantle of institutional academic freedom of the University of the Philippines over the defendants and its privileged character, were already alleged by the defendants in their motion to dismiss filed on December 8, 1988, and this was denied by this Court in its order dated January 9, 1989.
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> What is more, this order was sustained by the highest court, for these grounds were also squarely raised by the defendants in

> their petition for certiorari, prohibition and mandamus with application for temporary restraining order, with the Supreme Court. But, this petition was dismissed by the Supreme Court in its Resolution dated April 3, 1989, in G.R. No. 87248, on the ground that the petitioners, the defendants herein, failed to sufficiently show that this Court had committed a grave abuse of discretion in rendering its questioned order dated January 9, 1989.
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> For this reason, the intervenor's move to question the sufficiency of the plaintiffs' complaint against the defendants is already foreclosed by the aforesaid resolution of the Supreme Court.
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> Besides, from a perusal of the plaintiffs' complaint, there is no allegation therein that the activities of the defendants were sanctioned by intervenor University of the Philippines. And since, the motion to dismiss of the intervenor is predicated upon lack of cause of action of the plaintiffs' complaint, this must be resolved only on the basis of what are alleged in the complaint and nothing more, for which reason, necessarily, the special defenses of the intervenor seeking the dismissal of the plaintiffs' complaint for lack of cause of action is without merit."[9]

In its petition for certiorari and prohibition filed with this Court on June 23, 1989, UP assailed the said Order. The petition, which was docketed as G.R. No. 88664, was referred to the Court of Appeals "for proper disposition" in the Resolution of June 29, 1989.[10] The petition was docketed in the Court of Appeals as CA-G.R. SP No. 18074.

On March 12, 1991, the Court of Appeals rendered a Decision[11] dismissing the petition and lifting the temporary restraining order it had earlier issued. It held that the motion to dismiss may not be granted on the ground of insufficiency of cause of action predicated on matters not raised in the complaint. It ruled that the lower court had jurisdiction over the complaint for damages as the action was aimed at recovering relief arising from alleged wrongful acts of the defendants. A relevant portion of the decision reads:

> "The petitioner contends that the acts of the defendants having been actually sanctioned by the University, are within the `protective mantle of academic freedom guaranteed by the Constitution' for which the defendants can not be made liable for damages. But this argument fails to consider that such allegations are not stated in the complaint and may only be properly raised in the answer and determined after trial for, as already above alluded to, by filing a motion to dismiss, the allegations of the complaint are hypothetically admitted and it is not the office of the order to determine whether the allegations of facts in the complaint are true.
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> The other argument is that the question of the Tasaday, that is, if the find of this ethnic group is a hoax as the defendants had claimed in a public discussion, 'is an academic and scientific question which courts do not have the expertise to inquire into.' But this again does not appear anywhere in the complaint and so may only be properly raised as a defense to be proved during the trial of the case.
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> The petitioner argues too that the cause of action for declaratory relief is not proper in an ordinary civil action. Granting this arguendo but the action may not be dismissed on that account alone for as may be noted, the declaratory relief is only one prayer and the principal object is to hold the defendants liable on what is claimed as the commission of a tort by the defendants which injured the plaintiffs.
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> The main concern of the plaintiffs is evidently only on the responsibility of the two (2) defendants concerning discussions they made for which the plaintiffs seek to hold them liable for damages. The prayer for declaratory relief is only a minor aspect of the case about which neither the defendants nor the intervenors have any apparent interest of whatever kind."[12]

Hence, the instant petition for review on certiorari.

We are confronted here with a situation wherein an intervenor who made common cause with the defendants moved to dismiss the

complaint after filing an answer in intervention and after the original defendants' motion to dismiss the complaint had been denied. What is more striking is the fact that the same intervenor sought the dismissal of a complaint where its interest is not apparent. Moreover, the intervenor founded its motion to dismiss on an extraneous matter which is not even obliquely alluded to in the complaint.

With this unique set-up, we cannot subscribe to private respondents' contention that the resolution of this petition is foreclosed by the principle of res judicata. While it is true that the instant petition and that in G.R. No. 87248 revolve around the issue of whether or not the lower court correctly denied the motion to dismiss the complaint in Civil Case No. Q-88-1028, there is an aspect of the case which takes it out of the ambit of the principle of res judicata.

The said principle applies when there is, among others, identity of parties and subject matter in two cases.[13] Concededly, the fact that UP is the petitioner herein while Salazar and Bailen were the petitioners in G.R. No. 87248 is not a hindrance to the application of res judicata because the situation is akin to the adding of other parties to a case which had been finally resolved in a previous one.[14] UP was not an original party-defendant in Civil Case No. Q-88-1028, but it intervened and made common cause with Bailen and Salazar in alleging that the case should be dismissed in order to hold inviolate academic freedom, both individual and institutional. There is, therefore, a resultant substantial identity of parties, as both UP, on the one hand, and Bailen and Salazar, on the other hand, represent the same interests in the two petitions.[15]

However, the requisite of identity of subject matter in the two petitions is wanting. Private respondents identify the subject matter as "the trial judge's refusal to dismiss the complaint against Bailen and Salazar."[16] This, of course, refers to the Order denying the motion to dismiss. It should be noted, however, that two motions to dismiss the same complaint were filed in this case and they were separately resolved. The first was the one filed by Bailen and Salazar which became the subject matter of the petition in G.R. No. 87248. The second motion to dismiss was filed by UP but on February 15, 1989, the lower court struck it off the record. UP filed a motion for the reconsideration of the said order of February 15, 1989, but the lower

court denied it on the ground of impropriety of the motion to dismiss as UP had already filed an answer in intervention.

Following the provisions of Section 5, Rule 16 of the Rules of Court which states that any of the grounds for dismissal provided for in Section 1 of the same Rule "except improper venue, may be pleaded as an affirmative defense," UP filed a motion for a preliminary hearing on the special defenses, specifically lack of cause of action and lack of jurisdiction over the nature of the action which it pleaded in its answer in intervention. As Section 5 provides, the result would be the same — "as if a motion to dismiss had been filed." It was the lower court's Order of May 15, 1989 ascribing no merit to UP's special defenses, which was first presented to this Court for nullification on the ground of grave abuse of discretion, through the petition for certiorari and prohibition docketed as G.R. No. 88664. The petition having been referred to the Court of Appeals, the propriety of the same Order of May 15, 1989 was resolved against UP by said appellate court on March 12, 1991.

Thus, to hold that res judicata applies to herein facts would be stretching to its limits the requirement of identity of subject matter. Moreover, the fact that the resolution of Civil Case No. Q-88-1028 would inevitably create an impact, not only on the academic community but also on the cultural minorities, we need to scrutinize more closely the validity of the Order denying the motion to dismiss. It bears stressing that res judicata may not be held applicable where justice may have to be sacrificed for the rigid rules of technicality.[17]

What the foregoing disquisition boils down to is that instant petition fails for lack of merit.

As its first ground for the allowance of the petition, UP contends that the allegations in the complaint regarding the acts and statements of Bailen and Salazar are "protected by the mantle of the institutional academic freedom of UP and are therefore privileged communications which cannot give rise to any cause of action for damages under Article 26 of the Civil Code in favor of the herein private respondents."[18] Actually, this ground is a restatement of the two affirmative defenses cited by the petitioner in its answer in intervention.[19] The lower court and the Court of Appeals correctly

interpreted these defenses as falling within the purview of Section 1(g), Rule 16 of the Rules of Court which considers as a ground for a motion to dismiss failure of the complaint to state a cause of action.

The lack of cause of action must be evident on the face of the complaint[20] inasmuch as in a motion to dismiss based on said ground, the question submitted for determination is the sufficiency of the allegations in the complaint itself.[21] On its face, herein complaint, however, does not allege any right or interest of the petitioner that is affected by the complaint simply because it was not an original defendant. As correctly observed by the lower court, the complaint does not even show that petitioner authorized Bailen and Salazar to conduct a study on the Tasaday. Neither does it even appear that the trip to Zagreb, Yugoslavia of Bailen and Salazar was sanctioned or sponsored by the petitioner.[22] Hence, by filing the motion to dismiss the complaint against Salazar and Bailen or by alleging defenses in its answer which amounted to invoking lack of cause of action as a ground for dismissal, the petitioner confined itself to the allegations of the complaint.

On the other hand, a cause of action against Bailen and Salazar can be made out from the complaint: their acts and utterances allegedly besmirched the reputation of the plaintiffs as they were shown therein to have staged a fraud. The fact that the "hoax" was played up in the media allegedly aggravated the situation.

This is not to say, however, that UP's intervention was improper. In fact, it eventually proved to be necessary. Coming to the defense of its faculty members, it had to prove that the alleged damaging acts and utterances of Bailen and Salazar were circumscribed by the constitutionally-protected principle of academic freedom. However, it should have championed the cause of Bailen and Salazar in the course of the trial of the case. It erred in trying to abort the proceedings at its inception through the device of filing the motion to dismiss. This procedural lapse, notwithstanding, no irremediable injury has been inflicted on the petitioner as, during the trial, it may still invoke and prove the special defense of institutional academic freedom as defined in Tangonan vs. Paño[23] and in Garcia vs. The Faculty Admission Committee, Loyola School of Theology.[24] Mayhap, in the

process, it may invoke and dwell upon the individual academic freedom of its faculty members.

Since Bailen and Salazar had defaulted and thereby forfeited their right to notice of subsequent proceedings and to participate in the trial,[25] petitioner's answer in intervention shall be the gauge in determining whether issues have been joined. The fact that the defenses raised in said answer were denied grounds for a motion to dismiss does not affect their value as affirmative defenses in an answer to a complaint within the purview of Section 5(b), Rule 6 of the Rules of Court. The Order of May 15, 1989 merely "denied" petitioner's affirmative defenses as grounds for a motion to dismiss. Moreover, under Section 4, Rule 18 of the Rules of Court, the failure of some defendants to answer cannot prevent the court from trying the case upon the answer filed and thereafter rendering judgment on the basis of the evidence presented.

With respect to the prayer of the complaint for "judgment declaring plaintiff Tasadays to be a distinct ethnic community within the territory defined under Presidential Proclamation No. 995," the lower court is cautioned that the same is akin to a prayer for a judicial declaration of Philippine citizenship which may not be granted in a petition for declaratory relief.[26] As private respondents themselves declare in their comment, "(t)he complaint was filed mainly to vindicate plaintiffs' dignity and honor, and to protect them from further vexation."[27] More explicitly in their comment in CA-G.R. SP No. 18074 before the Court of Appeals, they declared:

> "Plaintiffs below do not ask the court to rule on so-called scientific or anthropological issues, nor to interpret scientific or anthropological findings pertaining to the Tasaday. They merely ask the court to find from the evidence to be presented below —
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> > Whether or not Bailen and Salazar infringed on plaintiffs' civil and human rights when they maliciously and falsely spoke and intrigued to present plaintiffs Tasaday as fakers and impostors collaborating in a hoax or fraud upon the public with and under the supervision of plaintiff Elizalde."

Indeed, it is not the province of the court to make pronouncements on matters beyond its ken and expertise. To be sure, in resolving the complaint for damages, the court may find congruence in what is justiciable and what falls within the field of the sciences. Still, it is best to keep in mind that its proper role and function is the determination of legal issues.

WHEREFORE, the questioned Order of the lower court and the Decision of the Court of Appeals are hereby **AFFIRMED**. The lower court is directed to **PROCEED** with the hearing of the case with **DISPATCH** even as it observes caution in the resolution of Civil Case No. Q-88-1028. No costs.

SO ORDERED.

Bidin, Davide, Jr. and Melo, *JJ*., concur.
Gutierrez, Jr., *J*., On leave.

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[1] Rollo, pp. 52-53.
[2] Rollo of G.R. No. 88664, p. 7.
[3] Ibid, pp. 67 and 163.
[4] Rollo of G.R. No. 87248, p. 66.
[5] Ibid, p. 109.
[6] Ibid, p. 117.
[7] CA Decision, p. 4; Rollo of G.R. No. 97827, p. 33.
[8] Rollo of G.R. No. 88664 (CA G.R. No. SP 18074), p. 65.
[9] Rollo of G.R No. 97827, pp. 56-57.
[10] Rollo of G.R. No. 88664, p. 44.
[11] Penned by Justice Cezar D. Francisco and concurred in by Justices Reynato S. Puno and Jorge S. Imperial.
[12] Rollo of G.R. No. 97827, pp. 37-38.
[13] The requisites for the application of the principle of res judicata are: (a) there must be a final judgment; (b) the court which resolved it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits, and (d) there must be identity between the two cases, as to the parties, subject matter and cause of action (American Inter-Fashion Corporation vs. Office of the President. G.R. No. 92422, May 23, 1991, 197 SCRA 417).
[14] See: Gutierrez vs. Court of Appeals, G.R. No. 82475, January 28, 1991, 193 SCRA 437, 445.
[15] Alarcon vs. Torres, L-21656, March 31, 1967, 19 SCRA 706.
[16] Comment, p. 13; Rollo, p. 77.

[17] Suarez vs. Court of Appeals, G.R. No. 83251, January 23, 1991, 193 SCRA 183.
[18] Petition, p. 5; Rollo, p. 14.
[19] These affirmative defenses were enumerated therein as: (a) acts of the defendants subject of the complaint are protected by the mantle of institutional academic freedom of the University of the Philippines; and (b) statements made in the exercise of academic freedom are privileged (Rollo of G.R. No. 88664, pp. 67-77).
[20] Azur vs. Provincial Board, L-22333, February 27, 1969, 27 SCRA 50.
[21] Calalang vs. IAC, G.R. No. 74613, February 27, 194 SCRA 514.
[22] Complaint, p. 10; Rollo, p. 48.
[23] L-45157, June 27, 1985, 137 SCRA 245.
[24] L-40779, November 28, 1975, 68 SCRA 277.
[25] Section 2, Rule 18, Rules of Court.
[26] Santiago vs. Commissioner of Immigration, L-14653, January 31, 1963, 7 SCRA 21.
[27] Comment, p. 2; Rollo, p. 66.