



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 11 March 2015 which reads as follows:*

**“G.R. No. 214867 (KONGEN CONSTRUCTION & DEVELOPMENT CORPORATION v. ARKIN S. ABAD).** – We resolve the petition for review on *certiorari* filed by petitioner KonGen Construction & Development Corporation (*KonGen*) assailing the April 30, 2014 decision and the October 8, 2014 resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 129119.

KonGen is a domestic corporation engaged in the business of construction of buildings and infrastructures. On December 8, 2010, KonGen hired the services of respondent Arkin Abad (*Abad*) as a Site Supervisor Engineer. KonGen designated Abad to supervise the construction of Stratford Residences but he was subsequently transferred to the Buddha Bar construction project in February 2011. **On August 25, 2011, Abad received a letter from KonGen informing him of the termination of his employment effective September 25, 2011 as the Buddha Bar project was nearing completion.**

Abad responded to the termination by filing a complaint for illegal dismissal with prayer for money claims before the Labor Arbiter (*LA*). **Abad argued that he was a regular employee and that he could only be dismissed for just and/or authorized causes.** He pointed out that the employment contract did not state the specific duration of his employment or his specific project assignment.

**KonGen took the contrary position that Abad was merely a project employee.** KonGen contended that the duration of his employment was dependent on the completion of the Buddha Bar project. In fact, Abad accepted and acknowledged the termination of his employment in an email dated August 29, 2011.

**The LA ruled in favor of Abad and ordered KonGen to pay him the sum of ₱509,321.48.** The LA found that Abad was a regular employee since KonGen did not specify the duration of his employment at the time of his engagement.

**Thereafter, KonGen filed an appeal with motion to reduce the appeal bond before the National Labor Relations Commission (NLRC).**

**The NLRC dismissed the case for lack of jurisdiction.** The NLRC ruled that KonGen failed to present any documentary evidence proving its financial incapacity to post the appeal bond. The NLRC likewise affirmed the LA’s finding that Abad was a regular employee. The NLRC reiterated

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that the employment contract did not indicate any specific project or duration of Abad's employment.

**The CA affirmed the NLRC's ruling.** The CA held that KonGen did not perfect its appeal with the NLRC for failure to post an appeal bond equivalent to the monetary award. The CA stated that the non-reduction of the appeal bond was proper for lack of evidence of financial incapacity, and for failure to establish a meritorious case. The employment contract neither specified the undertaking that Abad shall perform during the course of his employment nor did it limit the duration of his employment.

### The Petition

KonGen argues that the CA erred in not finding that the NLRC committed jurisdictional error in dismissing its appeal. It asserts that it substantially complied with the rules of procedure when it posted an appeal bond in the sum of ₱259,321.48. Furthermore, KonGen failed to post a sufficient bond since the bonding company could not issue the bond within the reglementary ten-day period.

KonGen asserts that the NLRC's outright denial of the appeal was erroneous. In *Calabash Garments, Inc. v. NLRC*,<sup>1</sup> the NLRC merely directed the respondents to post a surety bond within ten days from the receipt of the order denying the motion to reduce the bond.

KonGen also posits that Abad's employment was for a fixed term, despite the use of the phrase "project-based employee" in the employment contract. It asserts that Abad had full knowledge that his employment would end upon completion of the Buddha Bar project. KonGen complains that the CA's rulings disregard the fact that it could not hire Abad for an indefinite period since the construction project had a period of completion. Furthermore, its decision to terminate Abad was a valid exercise of management prerogative which Abad accepted and acknowledged in an email dated August 29, 2011.

### Our Ruling

**We deny the petition.**

Under Section 223 of the Labor Code, an appeal from the LA's ruling may only be perfected upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC, in the amount equivalent to the monetary award in the judgment appealed from. The mere filing of a motion to reduce bond without complying with the requisites under Section 6, Rule VI of the 2011 NLRC Rules of Procedure **shall not suspend the period to perfect an appeal with the NLRC.**

<sup>1</sup> 329 Phil. 226-237 (1996).

As an exception to the rule, the bond requirement on appeals involving monetary awards may be relaxed in meritorious cases where the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.<sup>2</sup>

Although KonGen posted a partial bond in the amount of ₱259,321.48 before the NLRC, it failed to convincingly show that the reduction of the bond is warranted in this case. KonGen failed to present proof that it was suffering from financial reverses. Thus, the CA did not commit any legal error in affirming the LA and the NLRC's uniform factual finding that Abad was a regular employee.

**WHEREFORE**, premises considered, we **DENY** KonGen Construction & Development Corporation's petition for review on *certiorari* dated November 4, 2014 for lack of merit.

**SO ORDERED.**"

Very truly yours,

  
MA. LOURDES C. PERFECTO  
Division Clerk of Court

<sup>2</sup> For an exhaustive enumeration of exceptions, see *Nicol v. Footjoy Industrial Corp.*, 555 Phil. 275, 292 (2007), and *McBurnie v. Ganzon*, G.R. Nos. 178034, 178117 and 186984-85, October 17, 2013, 707 SCRA 646-648, 676.

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