

BAILINANG P. MAROHOMBSAR, COMPLAINANT, VS. JUDGE SANTOS B. ADIONG, RESPONDENT.

A.M. No. RTJ-02-1674. January 22, 2004

Ponente: CORONA, J.

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CORONA, J.:

This is a complaint filed against Judge Santos B. Adiong of the Regional Trial Court, Branch 8, Marawi City, Lanao del Sur, charging him with gross ignorance of law, abuse of discretion and conduct unbecoming of a judge in connection with his issuance of a temporary restraining order (TRO) and a preliminary restraining order in Civil Case No. 1670-99, entitled Ms. Yasmira N. Pangadapun vs. Ms. Bailinang P. Marohombsar.

After respondent filed his comment, we issued a resolution on February 6, 2000 referring the case to Associate Justice Eugenio S. Labitoria of the Court of Appeals for investigation, report and recommendation.

Complainant Marohombsar was the defendant in Civil Case No. 1670-99 for “injunction with prayer for preliminary injunction.” The case was filed on March 17, 1999 by Yasmira Pangadapun, daughter of Judge Yusoph Pangadapun of RTC Branch 10, Marawi City. In the said complaint, Pangadapun questioned the legality of Marohombsar’s appointment by DSWD Regional Secretary Salic-Malna as provincial social welfare officer V of the Department of Social Welfare and Development – Autonomous Region for Muslim Mindanao (DSWD-ARMM). Prior to Marohombsar’s appointment, Pangadapun used to occupy said position as officer-in-charge.

Upon the filing of the said complaint, respondent judge issued a TRO and set the hearing on the application for the issuance of a writ of preliminary injunction on April 6, 1999. Summons, together with a copy of the complaint and a notice indicating that a preliminary conference would be held on March 22, 1999, was also served on both parties.

On March 18, 1999, Marohombsar filed an ex parte urgent motion to dissolve the TRO. Pangadapun was given until March 26, 1999 to comment and, pending the filing of the same, the TRO was extended up to said date.

On March 22, 1999, respondent issued an order stating that a preliminary conference had been held and that both parties had waived the raffle of the case. He reset the hearing on the application for the issuance of a writ of preliminary injunction from April 6, 1999 to April 5, 1999 at 2:00 p.m.

On March 29, 1999, respondent gave Pangadapun up to April 5, 1999 to file her comment and again, the TRO was extended to that date.

During the hearing on the application for the issuance of a writ of preliminary injunction on April 5, 1999, none of the lawyers appeared. Hence, respondent considered it submitted for resolution and issued the preliminary injunction the following day.

In his partial Comment dated November 13, 2000, respondent denied that: (1) he issued the TRO in favor of

Pangadapun without benefit of a hearing; (2) in his order dated March 22, 1999, he made it appear that a preliminary conference was held where the parties agreed to waive the raffle of the case, when in fact there was none; (3) he falsified the records of the case and (4) he granted the preliminary injunction without a hearing. He alleged that the complaint was purely a harassment case filed by a disgruntled party because of the latter's failure to obtain a favorable resolution from him. Although respondent judge admitted that Judge Yusoph Pangadapun and Judge Abdulhakim Ibrahim were his distant relatives and townmates, he stressed that "never in our careers in the judiciary have we interfered nor influenced one another on any pending case before our courts."

During the preliminary hearing of the complaint on April 18, 2002 before Justice Labitoria, the parties agreed to have the case decided based on the pleadings presented.

Respondent submitted the following additional evidence and exhibits to strengthen his case:

a)

partial Comment on the Complainant's Affidavit-Complaint;

b)

2[nd] Indorsement dated December 11, 2000 in OCA IPI No. 00-929-RTJ executed by Judge Abdulhakim A.R. Ibrahim showing that the complainant likewise filed an administrative case against him involving the same parties and cause of action, and

c)

Supreme Court resolution dated September 11, 2001 dismissing the administrative case against Judge Ibrahim.

On the other hand, complainant filed her "comment/objection to respondent's formal offer of exhibits" on the ground that all the documents were irrelevant and immaterial to the instant case.

In his final report and recommendation, Justice Labitoria recommended that respondent judge be absolved of all the charges against him.

We find the recommendation of Justice Labitoria to be supported by the evidence and we approve the same.

A TRO is generally granted without notice to the opposite party and is intended only as a restraint on him until the propriety of granting a temporary injunction can be determined. It goes no further than to preserve the status quo until that determination.[1]

Respondent judge was justified in issuing the TRO ex parte due to his assessment of the urgency of the relief sought. Rule 58, Section 5 of the 1997 Rules of Civil Procedure provides:

Preliminary injunction not granted without notice; exception. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided therein.

Complainant also contends that respondent issued an order dated March 22, 1999 making it appear that a preliminary conference was held and the parties agreed to waive the raffle of the case when, in truth and in fact, no conference was held.

We are not persuaded. The order of March 22, 1999 stated in part:

In the preliminary conference scheduled this morning, counsels of both parties jointly agreed to waive the raffling of the case and for this court to continue further proceedings considering that the plaintiff is the daughter of Hon. Yusoph Pangadapun, Presiding Judge of RTC-Branch 10 and per manifestation of Atty. Tingcap Mortaba, counsel for the plaintiff, should the case be raffled to Branch 9, the Presiding Judge, Hon. Amer R. Ibrahim will voluntarily inhibit himself from hearing the case.

In the summary hearing that followed for the purpose of determining whether the TRO previously issued on March 17, 1999 shall be extended or not, the counsels is (sic) submitting the same for resolution on the basis of the pleading.

We note that complainant did not dispute the order of respondent judge immediately after its issuance. Hence, the presumption was that the order in question was proper and well taken.

Complainant likewise insists that respondent judge tampered with the records of the case, as shown by its inconsistent pagination.

We agree with the finding of Justice Labitoria who accepted respondent judge's explanation that:

Resolutions or orders are dictated either in open Court or inside the chamber. The attending stenographers type the same in a draft form and then presented to me for proper correction or modification before finally typing them for my signature.

Because of the many number of cases calendared daily and other related works being attended to, all this paper works take a little time to finish until finally attach (sic) to the records of the cases. This explains the little delay sometimes in sewing or attaching some orders or other Court processes to the records. All of this is always under the strict and direct supervision of the Branch Clerk of Court.

In the same investigation report, Justice Labitoria went on to say:

Besides, complainant merely assumes that respondent judge doctored the records to favor plaintiff. Her mind was already set that it would be impossible for the staff or respondent judge not to commit any error in sewing the records. However, as human beings all of us are prone to commit some mistakes. As what happened in the instant case. Thus, a mere suspicion that a judge was partial to party is not enough as there should be adequate evidence to prove the charge.

Finally, complainant's assertion that she was denied due process because the preliminary injunction was issued without hearing is likewise untenable.

In applications for preliminary injunction, the dual requirement of prior notice and hearing before injunction may issue has been relaxed to the point that not all petitions for preliminary injunction need undergo a trial-type hearing, it being doctrinal that a formal or trial-type hearing is not, at all times and in all instances, essential to due process.[2] The essence of due process is that a party is afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. In the present case, complainant was able to move for a reconsideration of the order in question, hence her right to due process was not in anyway transgressed. We have ruled that a party cannot claim that he has been denied due process when he has availed of the opportunity to present his position.[3]

Even assuming for the sake of argument that respondent judge erred in ordering the issuance of the writ of preliminary injunction, we ruled in *Equatorial Realty vs. Anunciacion, Jr.*[4] that, as a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action even though such acts are erroneous, provided he acts in good faith and without malice. Respondent judge, or any other member of the bench for that matter, is presumed to have acted regularly and in the manner that preserves the ideal of the cold neutrality of an impartial judge implicit in the guarantee of due process.[5]

WHEREFORE, the administrative complaint against Judge Santos B. Adiong is hereby DISMISSED for lack of merit.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Herrera, Remedial Law, Vol. III, 1999 Ed., p. 113 citing Francisco, The Revised Rules of Court, Vol. IV-A, 1972 ed., pp. 184-185.

[2] *Batangas Laguna Tayabas Bus Company, Inc. vs. Bitanga*, 362 SCRA 635, 646-647 [2001].

[3] *Amarillo, et al., vs. Sandiganbayan*, G.R. Nos. 145007-08, Jan. 28, 2003, *National Police Commission vs. Bernabe*, 332 SCRA 74, 81 [2000]; *Toh vs. Court of Appeals*, 344 SCRA 831, 836 [2000].

[4] 280 SCRA 571 [1997].

[5] *People vs. Castillo*, 289 SCRA 213 [1998].

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