

**JUAN YSASI, PETITIONER, VS. HON. JOSE F. FERNANDEZ, AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL (BACOLOD CITY, BRANCH V), ET AL., RESPONDENTS.**

G.R. No. L-28593. December 16, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

When we decided this case last June, we thought that the explicit mandate of this Court would readily be complied with, and that we had written finis to the question of possession pendente lite of Hacienda Manucao-A and other properties, between petitioner and private respondents. For, we made it clear that a husband had the statutory right to administer conjugal properties and that administration could only be removed from him after proof of abuse of administration.

As it turned out, the preliminary mandatory injunction issued by respondent judge, rooted on a specific directive by this Court, was disobeyed by private respondents. Then, it was dissolved by respondent judge himself upon the mere filing of a counterbond. Thus, we have before us a sequel to that judgment brought about by charges lodged by petitioner of: first, contumacious conduct on the part of private respondents in disobeying a lawful judicial order; and, second, acts attributed to respondent judge that impair the respect due this Court.

The following are the background facts:

On June 25, 1968, this Court rendered judgment herein sustaining petitioner's right to administer conjugal properties, particularly Hacienda Manucao-A, in the absence of evidence of maladministration thereof. The judgment runs thus -

"For the reasons given –

We vote to grant the petition for certiorari;

We strike down the orders of respondent judge of December 22, 1967 and January 17, 1968 complained of, in Civil Case 8306, and declare them null and void; and

We direct respondent judge to issue a writ of preliminary mandatory injunction ordering and compelling respondents Maria Aldecoa de Ysasi and Jon Ysasi to turn over to petitioner the possession and control of Hacienda Manucao-A, and all the agricultural machinery, implements, work animals, and other properties used in the operation of the hacienda, as well as its records, papers, documents and books of accounts, upon petitioner's filing, and said judge's approval, of a bond in the sum of P50,000 to answer for any and all damages which private respondents or any of them may suffer by reason of the issuance of said injunction."

On July 9, 1968, private respondents moved for the modification of the aforesaid judgment. Motion was denied. The judgment became final on July 23, 1968.

On July 26, 1968, petitioner Juan Ysasi submitted for approval in the court below the requisite bond, and moved

for the issuance of the writ of preliminary mandatory injunction called for in our aforesaid judgment. Resolution on this motion was deferred pending receipt by the court of our resolution on private respondents' motion for modification of judgment.

On August 5, 1968, respondent judge approved petitioner's bond of P50,000 and directed Maria Aldecoa de Ysasi and Jon Ysasi to turn over to Juan Ysasi "the possession and control of Hacienda Manucao-A, and all the agricultural machinery, implements, work animals, and other properties used in the operation of the hacienda, as well as its records, papers, documents and books of accounts." This order was served on August 6, 1968 upon Maria Aldecoa de Ysasi but she "refused to turn over the possession and control of Hacienda Manucao-A x x x as she said, her son Jon Ysasi is not here."

On August 7, 1968, but before the lower court's order of August 5 could be enforced, private respondents moved to dissolve the injunction, alleging that: (1) continuance thereof will cause damage and irreparable injury to them; (2) the injunction will avail Juan Ysasi of an easy means to destroy or conceal the records constituting the evidence against him to prove abuse of administration; and (3) the lifting of the injunction will cause no damage to Juan Ysasi. They invoked Section 6, Rule 58 of the Rules of Court. Juan Ysasi opposed, challenged the lower court's power to dissolve the mandatory injunction directed by this Court and presented a counter-motion to hold private respondents in contempt for refusal to comply with the lower court's order of August 5. To enable respondent judge to promptly rule on the motion to dissolve, the counter-motion was thereafter withdrawn.

On the day the motion to dissolve was heard - August 10, 1968 - respondent judge lifted the injunction upon a counterbond of P60,000.

Juan Ysasi came up to this Court on August 21, 1968 upon an urgent motion asking us to overturn the lower court's order of August 10, 1968 dissolving the injunction, and to cite respondents for contempt.

On August 26, 1968, by resolution, we ordered respondents to reply and show cause why they should not be punished for contempt.

On September 17, 1968, after hearing the parties, this Court resolved to temporarily restrain respondent judge from approving private respondents' counterbond, or if the same had already been approved, from enforcing his order of August 10, 1968. This Court's restraining order was issued on September 20, 1968. On October 4, 1968, private respondents moved to lift the restraining order. We denied.

On October 11, 1968, Juan Ysasi again filed with this Court another urgent motion alleging, amongst others, that on October 1, 1968, his lawyer demanded from private respondents, through their counsel, Atty. Rodolfo Herman, compliance with the preliminary mandatory injunction issued upon this Court's order; that on October 2, 1968, the Chief Deputy Sheriff of Bacolod served upon private respondents copies of the lower court's order of August 5, 1968, and this Court's restraining order of September 20, 1968, but that said respondents refused to receive the same, which the sheriff thereupon left with them without an acknowledgement receipt therefor. Petitioner reiterated his prayer that private respondents be held in contempt.

Another hearing was had before this Court on November 7, 1968.

1. Respondents challenge the propriety of bringing the instant matter before this Court by a mere motion. They contend that the certiorari proceedings here started by petitioner have terminated; because, so they claim, the lower court had issued the preliminary mandatory injunction in implementation of this Court's judgment. They maintain that respondent judge's dissolution of said injunction is a new matter distinct and separate from the issuance thereof. They draw attention to the fact that petitioner's position is that respondent judge, in so dissolving, acted in excess of jurisdiction and with grave abuse of discretion. They thus submit that a motion

before this Court is not the vehicle for relief; that petitioner must avail of some other proper remedy under the Rules of Court.

We think it quite evident that these statements do not add up to a convincing whole. The decree of this Court directing respondent judge to "issue a writ of preliminary mandatory injunction ordering and compelling" private respondents "to turn over to petitioner the possession and control of Hacienda Manucao-A" and other properties, is a continuing mandate.[1] Any violation thereof or disobedience or obstruction thereto may be dealt with by this Court in the same proceeding in which it was issued. Respondent judge's compliance with it by issuing the writ of preliminary mandatory injunction did not automatically terminate this Court's control over said order. Enforcement thereof is part and parcel of the certiorari proceedings. It is inherent upon any court to see to it that its orders are obeyed to the full extent.[2]

The dissolution by respondent judge of the injunction this Court ordered him to issue is not an act new, distinct or separate from the previous proceedings had before this Court. It cannot be gainsaid that the impact of that dissolution was to destroy the effectiveness of our directive. Obviously, to compel respondent judge to keep on abiding by our judgment, the remedy must be here, in the same proceedings where the mandatory injunctive order was directed to be issued. Petitioner's urgent motions before this Court, therefore, should be sufficient to enable us to take action.

It is not contended, nor could it be, that a fresh suit or a separate proceeding - not a motion before this Court in this case - could better advance the cause of justice. Respondents' protestation - that petitioner's urgent motions here should be thrown overboard - seems pointless when pitted against the fundamental principle that multiplicity of suits is odious in law.

We, accordingly, rule that petitioner's urgent motions to compel obedience to our mandate issued in this case and to declare respondents in contempt for refusal to abide thereby are properly before this Court in this very same case.

2. We now come to grips with respondent judge's alleged authority to dissolve - upon mere counterbond - the preliminary mandatory injunction which, by mandate of this Court, he had to issue.

Justification for such dissolution below, respondents aver, is to be found in Section 6, Rule 58 of the Rules of Court, which states, inter alia, that preliminary injunction "if granted, may be dissolved, if it appears after hearing that although the plaintiff is entitled to the injunction, the issuance or continuance thereof, as the case may be, would cause great damage to the defendant while the plaintiff can be fully compensated for such damages as he may suffer, and the defendant files a bond in an amount fixed by the judge conditioned that he will pay all damages which the plaintiff may suffer by the refusal or the dissolution of the injunction."

In his order of dissolution, respondent judge gave as bases therefor the bare allegations in private respondents' motion below that continuance of the preliminary mandatory injunction would result in great damage and irreparable injury to them and that said injunction would avail Juan Ysasi of an easy means to destroy or conceal the records constituting the evidence against him which respondents would utilize to prove abuse of administration. To be stressed, however, is that these were the very same reasons earlier advanced by respondents in their answer to Juan Ysasi's original petition before this Court - the petition for certiorari which resulted in the grant of the mandatory injunction.

It is quite obvious that so long as the same facts prevail, this Court's directive stays. Of course, should new facts be established such that continuance of the injunction would impair private respondents' rights, then the same may be dissolved.[3] No such new facts have surfaced.

To be considered is that Juan Ysasi's right to administer conjugal properties is conferred upon him by substantive law. Article 165 of the Civil Code is explicit. It provides that "(t)he husband is the administrator of the conjugal partnership." This right cannot be taken away from him by his wife upon mere filing of a bond.[4] Because, the Civil Code, in its Article 167, bestows the right of administration to the wife only "(i)n case of abuse of powers of administration of the con-jugal partnership property by the husband." [5]

It was, indeed, with the foregoing precepts in mind that in our judgment herein, we said: "At stake here is the husband's power of administration and the wife's right to be protected from abuse thereof. x x x. Absent that proof, the wife's right does not exist." And we there concluded that: "Petitioner may not be forced to surrender his statutory right to administer the conjugal properties by the simple expedient of merely charging him with the naked averment that he has forfeited that right." In short, evidence of abuse of administration is a condition precedent to deprivation of the husband's right of administration. Respondent judge's dissolution of the injunction in question produced exactly the effect of what this Court ruled out in the aforesaid decision: It allowed administration by the wife upon mere filing of a bond pending presentation of evidence on maladministration by the husband. Bond is no substitute for proof of maladministration.

Appropriately to be recalled at this point is the teaching sounded in *Shioji vs. Harvey*[6] that: "If each and every Court of First Instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation, and judicial chaos would result. Appellate jurisdiction would be a farce if the Supreme Court did not have the power of preventing inferior courts from meddling with decisions when sent to them for compliance."

There is, therefore, grave abuse of discretion which this Court is now permitted to correct. In consequence, respondent judge's order of August 10, 1968, directing the dissolution of the preliminary mandatory injunction, should be set aside.

3. Private respondents are cited for contempt of this Court on two counts, namely: (1) for refusing to turn over to Juan Ysasi Hacienda Manucao-A and other properties upon being served on August 7, 1968 with the lower court's order of preliminary mandatory injunction of August 5, 1968; and (2) for persisting in their refusal after service by the deputy sheriff on October 2, 1968 of said order, together with the September 20 restraining order issued by this Court.

Non-compliance with the preliminary mandatory injunction is not denied. Private respondents, however, set up the following defenses: On the first count, Maria Aldecoa de Ysasi allegedly could not comply because her son and co-respondent, Jon Ysasi, was not around. On the second count, they maintain that there is no order to be complied with. They reason out that this Court's restraining order is not directed to them for compliance; that this Court or the lower court has not ordered the sheriff to serve on them on October 2, 1968 the preliminary mandatory injunction and this Court's restraining order, or to effect the transfer of the litigated properties. Their thinking is that since it was the lower court - not this Court - which issued the injunction, they are insulated from the contempt charge before us.

The preliminary mandatory injunction of August 5, 1968, it is well to remember, was issued by the lower court upon a directive from this Court. Accordingly, violation thereof or disobedience thereto is an affront directly against the lower court and indirectly against this Court. For, to reiterate, the aforesaid injunction came to be by specific command of this Court in implementation of our holding that petitioner is entitled to administration. Non-compliance with the lower court's order is no more than non-recognition of this Court's directive.

To make matters difficult, respondent judge which issued the injunctive order has shown indifference in enforcing the same or compelling mother and son to abide by it. Worse, said court aborted compliance by dissolution. It thus

behooves this Court to take action with the end in view of insuring that our judgment of June 25, 1968 is carried out.

Maria Aldecoa de Ysasi cannot be heard to say that she could not comply with the injunctive order of August 5, 1968 when served for the first time on August 6, 1968 because her son, Jon Ysasi, was not in. She had at the time custody and control of the properties. She could have kept faith with the court's order had she wanted to. But, she chose to shunt it aside upon the pretext of Jon Ysasi's absence.

As for Jon Ysasi, the sheriff's return of August 7, 1968, it is true, does not state personal service of the order upon him. However, the events which transpired thereafter show that he was informed of the mandatory injunction to surrender possession. Suffice it to mention that on August 7, 1968, two days after the order therefor was issued, he and Maria Aldecoa de Ysasi moved for the dissolution of the same. It is no reason for refusing obedience to the injunction that no service at all is made on the party, if he is other-wise informed of its issuance.[7]

Private respondents' adamant refusal to honor and carry out the injunctive order is brought clearer to the open when we consider that this Court has, on September 20, 1968, restrained the lower court from enforcing its dissolution order. Yet, up to now, respondents have not turned over Hacienda Manucao-A and other specified properties to Juan Ysasi. Written demand so to do upon their counsel and personal service upon them of the injunctive order below and this Court's said restraining order were unavailing. Immaterial it is that the October 2 service on them of said orders was allegedly effected at the behest of petitioner's counsel. Important is that by such service, private respondents were notified that the injunctive order was still operative.

There is good reason to believe that their own lawyer communicated to and advised them of the acts required to be done under the order as well as the consequences of refusal to abide thereby. In the course of the oral arguments before this Court on November 7, 1968, there emerged a significant fact: Before October 3, but after the sheriff had gone to private respondents in the morning of October 2, Atty. Rodolfo J. Herman, private respondents' counsel, told his client, Jon Ysasi, that the properties involved should really be delivered to petitioner in obedience to the court order. Their duty then was to comply. No compliance was made. But no justifiable reason there is. Their pattern of conduct does not sit well with a desire to submit to the injunction. Contumacious disobedience is clear. These respondents must know that this Court is not expected to yield to assaults of disrespect. Punishment for contempt is in order.[8]

4. We now direct attention to the contempt charge against respondent judge.

At the hearing below on August 10, 1968 of the motion to dissolve injunction, the following dialogue took place:

"COURT: x x x

x x x But is it not in effect that what you are asking is a reversal of the decision of the Supreme Court?

ATTY. HERMAN:

We do not ask for a reversal, Your Honor.

COURT:

But the effect is the same.

ATTY. HERMAN:

We propose to introduce evidence to prove abuse of administration. That is why we ask this Honorable Court to set a date.

COURT:

Why don't you go to the Supreme Court and tell them they make a little mistake so that they will have a chance to correct themselves?

ATTY. HERMAN:

We do not say there is a mistake.

COURT:

Inadvertence, not mistake."[9]

From a reading of the transcript, it is not hard to come to a deduction that at that time respondent judge knew and fully realized the import of the dissolution of the preliminary mandatory injunction. His words - "in effect x x x a reversal of the decision of the Supreme Court" - are meaningful. His frame of mind though was set on one thought: that this Court committed "a little mistake" or lapsed into "inadvertence". And, to cure such supposed mistake or inadvertence, he motu proprio suggested a solution - the filing of a counterbond. Which, in an afterglow, is but a flanking movement in a deft sidestep of this Court's clear mandate. Thus:

"ATTY. HERMAN:

Probably we might admit the Supreme Court was right in issuing that order requesting for the issuance of a writ of preliminary mandatory injunction in view of the fact that there was no hearing on the allegations of the wife. But Your Honor, we propose to present evidence to prove and establish abuse of administration. We can prove that this Court can lift the injunction.

COURT:

In effect it is like a boy, a son, hitting the back of his father saying, father you made a mistake.

ATTY. HERMAN:

This is another. If we are asking for the lifting of the injunction we propose that we now ...

COURT: (Cutting in)

To bypass that crisis, why don't you file a counter bond?

ATTY. HERMAN:

That is why, in addition ...

COURT:

How much bond, counter bond you are willing to file?

ATTY. HERMAN:

P50,000.00.

COURT:

All right, I am not very sure if the law does not require double the amount. Mr. Hilado, what do you say?"[10]

But as respondent judge overruled counsel for petitioner on the issue of the judge's jurisdiction to lift the injunctive order, His Honor gave the impression that he, not the Supreme Court, had the last word on the matter. We continue to quote from the transcript:

"ATTY. HILADO:

With all due respect, we maintain that this Court has no more jurisdiction, even ten times fixed by the Supreme Court.

COURT:

Why?

ATTY. HILADO:

Because they are asking now that the in-junction order by the Supreme Court be lifted.

COURT:

Because they made a mistake. But we are bypassing that. He is proposing to file a counter bond.

ATTY. HILADO:

I did not say they made a mistake. I contend this Court has no juris-diction.

COURT:

But the case is back to this Court. Since the receipt of this Court the case comes back here. It's newly born again.

ATTY. HILADO:

This is a continuation of the proceedings of the Supreme Court.

COURT:

Insofar as the approval of your bond in support of the preliminary mandatory injunction is con-cerned but the counter bond is a new matter.

ATTY. HILADO:

The very same arguments of the Compañero today were raised by them before the Supreme Court. Atty. Herman and I were there. They contend in their motion that if the injunction that was ordered by the Supreme Court is not lifted it would cause great damage and irreparable injury.

COURT:

Suppose we make this a test case. I will allow the approval of the counter bond then go to the Supreme Court.

ATTY. HILADO:

I would like to complete my argument.

COURT:

To my satisfaction?

ATTY. HILADO:

It is for the satisfaction of the Supreme Court.

COURT:

The case is before me now, not before the Supreme Court. Forget about the Supreme Court."[11]

The last remark - "The case is before me now, not before the Supreme Court. Forget about the Supreme Court." - was spoken in court at a public hearing. By itself alone, such remark certainly is not an expression of respect for this Court. Taken in context, it has a tendency to produce in the minds of the listeners the dispiriting thought that a judge of first instance may take the Supreme Court so lightly that he may brush aside or even ignore a judicial pro-nouncement of the highest tribunal. Of course, he apologized for said remark when this Court heard this case on November 7, 1968. But the harm is there. It intrudes deep into the respect due this Court. Want of intention to offend is no excuse; at best, it extenuates liability.[12]

In *Commissioner of Immigration vs. Cloribel*, L-24139, August 31, 1967,[13] this Court, in a per curiam resolution, spoke vigorously on the importance of a judge's obedience to lawful processes:

"3. As early as 1903, *Weigall vs. Shuster*, 11 Phil. 340, 354, has reminded us that 'maintenance of public order and the existence of the commonwealth itself, depend upon the enforcement of the mandates of the courts and require prompt obedience to them, not only by private citizens, but in a special manner by the Government officers who are particularly charged with a knowledge of the law and with the duty of obeying it.' Respondent is a judge of a superior court. But his official character will not insulate him from punishment for insubordination of an order of the highest Tribunal of the land. When he took his oath of office as a judge, he swore that he would 'obey the laws, legal orders, and decrees promulgated by the duly constituted authorities.' Canon 22 of the Canons of Judicial Ethics should have re-minded him that '(t)he judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.' As Mr. Justice Malcolm once said: 'It would seem hardly necessary to add that judges should respect the orders and decisions of an appellate court.' A fundamental principle in our democratic system of government is that no official, no matter how high, is above the law. It is in this context that we say that respondent judge is accountable for the contempt committed by him."

It would not then be out of place to restate a truism long accepted: "(T)he Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decision all other courts should take their bearings." [14] Accordingly, respondent judge should have known that "(a) becoming modesty of inferior courts demands realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." [15]

In the end, we say that it is not impermissible for a judge of first instance to impress upon lawyers and the public the weight of his authority in court. It should be evident, however, that he may not do so at the expense of the dignity of a higher tribunal. We prefer to think that restraint still is a trait desirable in those who dispense justice.

Upon the view we take of this case, we vote -

- (1) To set aside the respondent judge's order of August 10, 1968;
- (2) To direct private respondents Maria Aldecoa de Ysasi and Jon Ysasi to promptly comply with the preliminary mandatory injunction issued by the respondent judge on August 5, 1968 and forthwith to turn over to petitioner the "possession and control of Hacienda Manucao-A, and all the agricultural machinery, implements, work animals, and other properties used in the operation of the hacienda, as well as its records, papers, documents and books of accounts";
- (3) To declare private respondents Maria Aldecoa de Ysasi and Jon Ysasi in contempt of this Court and, accordingly, to sentence them to pay a fine each in the sum of P1,000; and
- (4) To warn respondent judge that further commission of any act in derogation of the dignity of this Court will be dealt with accordingly.

SO ORDERED.

Concepcion, Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, and Capistrano, JJ., concur.

[1] See: *Dimaunahan vs. Aranas*, 74 Phil. 455; 28 Am. Jur. 485.

[2] See: *Harden vs. Peña*, 87 Phil. 620, 624.

[3] See: *Canlas vs. De Aquino*, L-16815, July 24, 1961.

[4] *De la Cruz vs. Tan Torres*, L-14925, April 30, 1960.

[5] Not in any way operative here is Article 168 of the Civil Code where the husband expressly authorizes the wife in a public instrument to administer the conjugal properties; or Article 178(3) of the same Code where the husband has abandoned the wife with-out just cause for at least one year, in which case the wife may ask for administration of the conjugal properties; or in cases enumerated in Article 196 of the same Code.

[6] 43 Phil. 333, 337.

[7] 28 Am. Jur. 504, citing cases.

[8] *Mendoza vs. Parungao*, 49 Phil. 271, 275; *Perkins vs. Perkins*, 57 Phil. 205, 211; *Leuterio vs. Municipal Councils of Pinamalayan*, 57 Phil. 1003; *Director of Lands vs. Abarca*, 57 Phil. 1014; *Diwa Ng Pagka-kaisa-PAFLU vs. Filtex International Corp.*, L-23960, February 20, 1968, 1968A Phil. 616, 618-619.

[9] Tr., August 10, 1968, pp. 4-5, Annex G to petitioner's Urgent Motion; emphasis supplied.

[10] Tr., August 10, 1968, pp. 5-7, Annex G to petitioner's Urgent Motion; emphasis supplied.

[11] Tr., August 10, 1968, pp. 7-9, Annex G to petitioner's Urgent Motion; emphasis supplied.

[12] *Salcedo vs. Hernandez*, 61 Phil. 724, 729-730; *Rheem of the Philippines, Inc. vs. Ferrer*, In re Contempt Proceedings Against Alfonso Ponce Enrile, et al. (Resolution), L-22979, June 26, 1967, 1967B Phil. 638, 642, citing In re Franco, 67 Phil. 312, 316, and *Paragas vs. Cruz* (Resolution), L-24438, July 30, 1965.

[13] In re Contempt Proceedings Against Hon. Gaudencio Cloribel, 1967C Phil. 575, 580.

[14] *Albert vs. Court of First Instance*, L-26364, May 29, 1968, 1968B Phil. 857, 870.

[15] *People vs. Vera*, 65 Phil. 56, 82, cited in *Albert vs. Court of First Instance*, supra.

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