JOSEFINA MERONTOS VDA. DE SAYSON, COMPLAINANT, VS. JUDGE OSCAR E. ZERNA, RESPONDENT.

A.M. No. RTJ-99-1506. August 09, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A temporary restraining order (TRO) may be issued ex parte by an executive judge in matters of extreme emergency, in order to prevent grave injustice and irreparable injury. Because such issuance of a TRO shall be effective only for seventy-two hours therefrom, as provided under Administrative Circular No. 20-95, the ex parte issuance of a 20-day TRO is unauthorized and may make the judge administratively liable.

The Case

Before us is an administrative case arising from a verified Letter-Complaint[1] dated February 25, 1997, filed by Josefina Merontos vda. de Sayson against Judge Oscar E. Zerna of the Regional Trial Court of Lanao del Norte, Branch 7. In a letter[2] dated March 3, 1997, Public Attorney II Vermin M. Quimco of the Public Attorney's Office, Iligan City, endorsed the Complaint to then Court Administrator Alfredo L. Benipayo. Attorney Quimco requested an investigation of the charges leveled against respondent; namely, gross ignorance of the law, gross misconduct and grave abuse of authority.

The Facts

The facts of this case are as follows.

On June 7, 1996, respondent issued a Temporary Restraining Order[3] in Civil Case No. 07-373 in favor of the plaintiff, Napoleon Lee Sr.; and against the defendants -- Francisco Lumayag, Jose Bravo and Ricardo Sayson -- as well as their agents, heirs and representatives. The Order directed defendants to refrain from entering the parcel of land covered by OCT No. P-11750, registered under the plaintiff's name in the Registry of Deeds of Lanao del Norte. The disputed lot, which is situated in Barangay Gumagamot, Lala, Lanao del Norte, has an area of 10,741 sq m. It is bounded southeast, southwest, and northwest by the Gumagamot River; and northeast by the property claimed by herein complainant.

On June 9, 1996, the TRO was served upon complainant by Deputy Sheriff Conrado Hingco Jr., who thereafter entered her two-hectare fishpond and harvested prawn and fish products from it.

In her verified Letter-Complaint, complainant sought injunction and damages from respondent, whom she charged with bad faith in the issuance of the TRO without notice and hearing. She claims that the TRO was issued "with patent violation and disregard of the constitutional right of due process of the undersigned who is not even a party to the case," and that it was a "clear disregard and disobedience to Supreme Court Circular No. 20-95 prohibiting judges from issuing Temporary Restraining Orders (TROs) without the observance of the mandatory requirement of notice and summary hearing of the parties concerned." In her words:

> "That on or about the second week of June 1996, while he was actually acting and performing his functions and duties as [p]residing [j]udge of RTC Branch 07, Tubod, Lanao del Norte, with apparent and manifest bias in favor of the plaintiff in Civil Case No. 07-373, in the person of Napoleon Lee Sr., and with patent violation and disregard of the constitutional right of due process of the undersigned who is not even a party to the case, said Judge Oscar Zerna, wilfully, wrongfully, and if not with gross ignorance of the constitution and pertinent law, and clear disregard and disobedience to Supreme Court Circular No: 20-95 prohibiting judges from issuing Temporary Restraining Orders (TROs) without the observance of the mandatory requirement of notice and summary hearing of the parties concerned, did actual[ly] issue and promulgate a temporary restraining order. A certified copy of said restraining order which would speak for itself is hereto attached as Annex A of this verified complaint.
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> "That is the very same temporary restraining order utilized by Sheriff Conrado Hingco Jr. the [p]rovincial [s]heriff of Judge Oscar Zerna, in entering x x x the land that I possessed and titled to my name, right after the issuance of said TRO, and capitalizing on my ignorance/innocence about legal process, he deceived me and my family to believe that such order authorize[d] him to harvest the prawn and fishpond products we introduced in my said fishpond. x x x.
>
> "That as the restraining order speaks for itself, neither [complainant] nor any of the defendants were afforded by Judge Zerna x x x due process which includes the opportunity to be notified and heard in a summary hearing as required by the cited Supreme Court circular before issuance of the same."[4]

In his Comment dated July 15, 1997, respondent denied that the TRO was issued with ignorance of the law and abuse of authority. He contended:

> "On June 7, 1996, a complaint was filed by plaintiff Napoleon T. Lee, Sr. versus Francisco Lumayag, Jose Bravo alias `Joe' and Ricardo Sayson for Injunction and Damages. The plaintiff alleged that he [was] an owner of a certain parcel of land at Barangay Gumagamot with an area of 10,741 sq. m., which is bounded on the S.E., S.W., and N.W., along lines 1-2-3-4-5-6-7-8-9 by Gumagamot River and on the N.E., along lines 9-10-11-12-13-14-1[, a] property claimed by Josefina Sayson. - Plaintiff further alleged that he ha[d] title of ownership over the land as evidenced by OCT No. (KATIBAYAN NG ORIGINAL NA TITULO) No. P-11,750, Kaloob na Patente Blg. 123509-195-216, as registered in the Registry of Deeds of Lanao del Norte x x x.
>
> "Upon receipt of the complaint and finding [that] the subject matter of this case was the harvest of the prawn over the lot in question, the Court issued a Temporary Restraining Order as prayed for considering the perishable nature of the prawn and the ready buyer during the harvest by enjoining the defendants for a period of 20 days from harvesting the same. The defendants complained of the issuance of Temporary Restraining Order even charging the [c]ourt of ignorance of the law by citing Administrative Circular No. 20-95-that the [c]ourt did not conduct summary hearing with notice within 24 hours[;] however the [c]ourt did not also [lose] sight of the fact that in his opinion the matter was of extreme urgency considering the perishable nature of the prawn and its ready buyer. This is also provided for in par. 3 of said Circ. No. 20-95 in that if the matter is of extreme urgency and that grave injustice and irreparable injury will arise, the [e]xecutive [j]udge shall issue a Temporary Restraining Order effective only for 20 days from its issuance."[5]

Recommendation of the Court Administrator

After evaluating the pleadings and the records filed by the parties, the court administrator found that respondent was remiss in the performance of his duties. He granted the TRO effective, not for seventy-two hours as prescribed by law in cases of extreme urgency, but for the maximum of 20 days; and he did so without conducting beforehand a summary hearing, as required under Administrative Circular No. 20-95.

He recommends that respondent judge be fined P5,000 and "sternly warned that a repetition of the same or similar

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offense will be dealt with more severely."[6]

The Court's Ruling

We agree with the court administrator. Administrative Circular No. 20-95 requires that an application for a TRO shall be acted upon, only after all parties are heard in a summary hearing. It clearly provides:

> "SUBJECT: RE: SPECIAL RULES FOR TEMPORARY
>
> RESTRAINING ORDERS AND PRELIMINARY
> INJUNCTIONS.
>
> "1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading shall be raffled only after notice to the adverse party and in the presence of such party or counsel.
>
> "2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.
>
> "3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing [o]n the pending application for preliminary injunction can be conducted. In no case shall the total period x x x exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge.
>
> x x x x x x x x x."

The Circular aims to restrict the ex parte issuance of a TRO only to cases of extreme urgency, in order to avoid grave injustice and irreparable injury.[7] Such TRO shall be issued only by the executive judge and shall take effect only for seventy-two (72) hours from its issuance. Furthermore, within the said period, a summary hearing shall be conducted to determine whether the Order can be extended for another period until a hearing on the pending application for preliminary injunction can be conducted.

Untenable is respondent judge's contention that the Circular allows an executive judge, in case of extreme urgency, to issue an ex parte TRO effective for twenty days. Judges should be diligent in keeping abreast of developments in law and jurisprudence, consistent with the mandate that the study of law is a never-ending process.[8]

In Golangco v. Villanueva,[9] the Court held that the judge's disregard of the Supreme Court's pronouncement on TROs was not just ignorance of the prevailing rule, but also misconduct and grave abuse of authority. To be punishable, however, ignorance of the law must be motivated by bad faith, fraud, dishonesty or corruption.[10] We find bad faith and dishonesty on the part of respondent judge. He avers in his Comment that there was extreme urgency in the ex parte TRO because the prawns, which were subject to spoilage were perishable; and the buyer was already waiting for the harvest. But Napoleon Lee's Complaint did not contain such allegations. Nowhere was there any mention of the immediate need of harvesting prawns or any produce from the disputed property. Obviously, respondent is now clutching at straws. He had no justifiable reason at all in immediately issuing the 20-day TRO.

Besides, the TRO was clearly rushed. Just a day after the plaintiff's Complaint was filed on the afternoon of June

7, 1996 the TRO was issued and served on herein complainant, without any effort to notify the defendants or to schedule a summary hearing.

WHEREFORE, Judge Oscar E. Zerna is hereby found LIABLE for gross ignorance of the law, misconduct and grave abuse of discretion and FINED P5,000 with a WARNING that a repetition of the same or a similar offense will be dealt with more severely.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Rollo, pp. 2-3.

[2] Ibid, p. 1.

[3] Ibid, pp. 4-5.

[4] Rollo, pp. 8-9.

[5] Rollo, p. 8.

[6] Rollo, p. 24.

[7] Abundo v. Manio Jr., 312 SCRA 1, 19, August 6, 1999.

[8] Hold Departure Order Issued by Judge Felipe M. Abalos, 319 SCRA 131, 133, November 25, 1999; Gacayan v. Pamintuan, 314 SCRA 682, 702, September 17, 1999; Domingo v. Reyes, 308 SCRA 537, 542, June 21, 1999.

[9] 278 SCRA 414, 422-423, September 4, 1997. See also Adao v. Lorenzo, 316 SCRA 570, 579, October 13, 1999.

[10] Abundo v. Manio Jr., supra, pp. 19-20.

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