

**JOSE C. LUCIANO, COMPLAINANT, VS. HON. HERMINIO C. MARIANO,
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH X,
RESPONDENT.**

Adm. Case No. 181-J. March 31, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

The respondent Judge Herminio C. Mariano of the Court of First Instance of Rizal, Branch X, is charged with gross misconduct and inefficiency in connection with his actuations in two cases wherein the complainant Jose C Luciano is either the defendant or the accused.

The written complaint before us is somewhat jumbled and confusing, not to mention the array of palpable errors in dates and case references. The allegations are littered with useless invectives, obscuring the ultimate facts which even the complaint should principally concern itself with.

From a painstaking and laborious reading of the said complaint, the following appears to be the burden of Luciano's complaint against the respondent judge:

- In issuing a temporary restraining order against Luciano and others in civil case 11802 (Ciriaco Alano and Maximo Estrella vs. Jose Luciano), the respondent judge committed (a) partiality, bias and discrimination, (b) overzealousness in protecting the guilty parties, and (c) inefficiency through gross ignorance of the law;
- In suspending Luciano from the mayoralty of Makati in criminal case 19346 (People vs. Jose Luciano, Et al.), the respondent judge committed (a) partiality, bias and discrimination, (b) overzealousness in prosecuting and harassing the innocent, and (c) inefficiency through gross ignorance of the law;
- In issuing, in the same criminal case, an order which held the suspension of Luciano as unrevoked even when the latter had already sought the intervention of this Court, the respondent judge prejudiced and injured Luciano's rights; and
- In issuing a press release which stated that Luciano's suspension still stood notwithstanding the latter's action filed with this Court, and that technically Luciano could be arrested for continuing to hold office, the respondent judge (a) prejudiced and injured Luciano's rights, and (b) exposed his (the judge's) gross ignorance of the law.

Except for the last concerning the alleged press release, the other charges enumerated by Luciano rest solely upon the intrinsic validity of the various orders issued by the respondent judge and the circumstances surrounding the issuance of each. The background facts are thus essential to a full understanding of the case.

An examination of the records of this and related cases which have found their way to this Court show that following the conviction of Maximo Estrella and others on May 17, 1969 by the Court of First Instance of Rizal (presided then by Judge Andres Reyes) for violation of the Anti-Graft and Corrupt Practices

Act, a power struggle ensued between Estrella's camp on the one hand and that of the complainant Luciano on the other over the mayoralty of Makati, Province of Rizal, sparked by an order, contained in the decision of Judge Reyes, suspending Estrella and others from office.

On May 20, 1969, Estrella and one Ciriaco Alano commenced civil case 11802 in the Court of First Instance of Rizal, an action for injunction against Luciano. The petition filed therein "averred inter alia that although the decision of Judge Reyes ordered the removal from office of Mayor Estrella and his other co-accused within 24 hours after receipt of the decision, they appealed to the Court of Appeals on the same day that the decision was promulgated; that in view of the appeal, said decision had not become final and executory and could not be executed in any way; that said appeal notwithstanding, petitioner Luciano had publicly announced that he would assume on that day, May 20, the post of Mayor in the company of Philippine Constabulary soldiers, sheriffs and other agents and men with the threat of using force and violence; that such forcible assumption was improper and contrary to law because there was no vacancy to be filled, and even if there was, it was the provincial governor who could fill up the vacancy by appointment; and that petitioner Luciano also threatened to dismiss therein petitioner Ciriaco Alano." [1]

The respondent judge, in whose sala civil case 11802 fell by raffle, set the hearing of the petition for May 27, 1969 and directed that:

"In the meantime, and in order to maintain the status quo, respondent Jose Luciano and any and all Philippine Constabulary officers and soldiers, sheriffs, agents, and all persons acting for and in their behalf, are hereby temporarily restrained from performing the acts sought to be enjoined, to wit, from removing or attempting to remove, in any mode or manner, the petitioners and defendants in Crim. Case No. 18821 from their respective offices, from molesting or impeding them in the performance of their duties in any way, and from installing or placing respondent Luciano or any other persons in their offices in any way, until further orders from this court."

The hearing of May 27, 1969 took place but civil case 11802 was dismissed by the respondent judge upon joint petition by the parties.

The main conflict between Estrella and Luciano was subsequently resolved by this Court in L-30306 on June 20, 1969. The suspension of Estrella and company was affirmed and Luciano's right to succeed as mayor of Makati was upheld. In the decision rendered therein, this Court, notwithstanding that the temporary restraining order issued by the respondent judge in civil case 11802 had already become *functus officio*, held that the same was null and void. Said this Court:

"x x x Long familiar is the rule that a judge of a branch of a court may not interfere with the proceedings before a judge of another branch of the same court. Pointedly applicable is the statement of this Court found in *Lacuna vs. Ofilada* that: 'But the rule is infringed where the Judge of a branch of the court issues a writ of preliminary injunction in a case to enjoin the sheriff from carrying out an order of execution issued in another case by the Judge of another branch of the same court'."

In the same decision this Court passed upon the charge made by the ousted officials that an information for violation of the Anti-Graft and Corrupt Practices Act had in the meantime been filed against Luciano himself by the provincial fiscal of Rizal; and that, as a result thereof, Luciano had in fact been suspended by the provincial governor. This Court held that only the court in whose sala the information has been lodged (here, that of the respondent judge) can validly order any suspension in connection with that criminal information.

Because of our ruling in L-30306, Luciano assumed the post of acting mayor of Makati.

It should be mentioned here that during the pendency of L-30306 in this Court, another petition, docketed as

L-30544 was lodged with us wherein Luciano and one Florentino Rolls questioned the validity of an information filed against them by then Provincial Fiscal Benjamin Aquino on May 30, 1969 for violation of the Anti-Graft and Corrupt Practices Act. On June 5, 1969, this Court dismissed that petition but without prejudice to Luciano's filing with the court below an appropriate motion for the holding of a preliminary investigation and for the staying of the criminal proceedings pending that investigation.

On September 13, 1969, the provincial fiscal of Rizal granted Luciano's request for reinvestigation, the court below being notified thereof. On September 15, Luciano entered a plea of not guilty to the charge. Thereupon the respondent judge set the trial of the case for October 15, 1969 without prejudice to the outcome of the reinvestigation. Finally, in a written manifestation dated December 15, 1969 the provincial fiscal informed the respondent judge that he had conducted a preliminary investigation and/or reinvestigation of the anti-graft charge against Luciano and Florentino Rolls, with proper notice to them, and found that sufficient evidence exists to establish prima facie their guilt. On the same date, December 15, the respondent judge issued an order suspending Luciano from public office, "it appearing that the information charging the accused is sufficient in form and substance and the validity of said information is apparent." Even as Luciano filed a motion for reconsideration of the suspension order, Councilor Johnny Wilson took his oath of office as acting mayor of Makati.

On December 16, 1969, Luciano brought suit in this Court against Wilson and the provincial governor of Rizal to beat the suspension order but this Court, while giving due course on the same day to the petition, directed the inclusion of the respondent judge as party respondent. In the court below, on the following day, the respondent judge held in abeyance further proceedings in criminal case 19346 to give Luciano time to implead him (the judge) in the petition pending with this Court. The respondent judge's order, however, stated that Luciano's suspension as directed by him still stood.

On December 18, 1969, the same date that Luciano amended his petition as directed by us, a news item appeared in the issue of the Philippine Herald of that day, attributing to the respondent judge the statement that technically his suspension order still stood since he had not as yet been included in Luciano's action before this Court, and that technically the respondent judge could order Luciano's arrest for continuing to hold office. On the following day, this Court issued a restraining order enjoining the respondent judge from carrying out his suspension order and from causing the arrest of Luciano.

While Luciano's amended petition, docketed as L-31347 was pending in this Court, Wilson moved to withdraw his answer and memorandum. In a resolution dated August 31, 1970, this Court, after considering the basic stand of Luciano as assented to by Wilson, held that the court below should have first conducted a hearing on the validity of the information filed against Luciano, "conformable to the spirit of the law and taking into account the serious and far reaching consequence of a suspension of an elected public official even before his conviction."^[2] This Court thus granted Wilson's motion which would enable the respondent judge to hold a hearing on the validity of the information in criminal case 19346.

On December 15, 1970, after hearing, the respondent judge issued an order holding that the information filed against Luciano and Florentino Rolls was valid, or, at all events, its defects were cured by the subsequent reinvestigation conducted by the provincial fiscal. This order of the respondent judge is the subject of another certiorari action (L-32950) now pending before this Court.

In resolving the issues posed by the complaint at bar, we limit ourselves to the pleadings of the parties before us as well as the records of the related cases involving the parties which we have adjudicated in the past. The manner by which we dispose of the present case, therefore, can have no relevance to or effect on the controversy now still pending between the same parties in L-32950 mentioned above.

In disposing of the present administrative case, we need not scrutinize the written answer of the respondent judge to the mixed charges of inefficiency and gross misconduct office. All that we need to do is to proceed with the consideration of the complaint at bar, and determine if we can exact from it such a prima facie case against the respondent judge as would warrant further proceedings.

Of the three court orders which the complainant places in issue, two have been previously stricken down by this Court either for being contrary to law or gravely abusive of judicial discretion. The first is the temporary restraining order issued in civil case 11802 enjoining Luciano and certain police agencies from "removing" Estrella and other officials from the government posts occupied by them; the second is the order of December 15, 1969 suspending the complainant Luciano on the ground that a criminal information has been filed against him. As the complainant would now have it, the fact that these two orders have been subsequently annulled by this Court proves the incompetency and inefficiency of the respondent judge. This, to us, is a hasty, nay, unfair indictment of the actuations of the judge. Firstly, only the temporary restraining order seems to run counter to settled jurisprudence. The other order suspending Luciano from public office bears no questions not previously resolved by us. Secondly, this Court is not wont to discipline judges for inefficiency on account merely of occasional mistakes or errors of judgment committed by them. If this Court were to use the latter as the sole test for eliminating or retaining judges, shunting aside reasonable allowances for difficult questions of law or want of physical facilities and material time for exhaustive studies, then indeed we would have very few judges left in our courts. And, finally, an aggrieved litigant can always avail himself of the remedies provided by law for the correction of unjust orders and decisions affecting him. The best illustrations of this last point are of course the reversals of the orders of the respondent judge which the complainant has so far obtained from this Court.

To allege partiality, bias and discrimination or overzealousness in siding with the guilty as against the innocent is one thing, but to show basis for the same is quite another. The facts which the complainant alleges are the basis for his charges turn out, after a careful reading of the complaint, to be the same facts already recited above. Our own understanding of the events, however, does not point to any unmistakable indication of mischief on the part of the respondent judge nor of anything that would persuade us to agree with the inference reached by the complainant. The mere fact that a judge has erroneously ruled against the same litigant on two or three occasions does not create in our minds' a decisive pattern of malice on the part of the judge against that particular litigant. This is not an unusual occurrence in our courts, and unless something in addition is alleged and proved, this Court is not inclined to disregard the presumption of good faith in favor of the actuations of courts. Not even the order of December 17, 1969 issued by the respondent judge (wherein the judge declared that Luciano's suspension stood notwithstanding the pendency of a related suit in this Court) would, in our opinion, support the theory that the judge had joined forces with the complainant's adversaries for the purpose of harassing and injuring the interests of the complainant. The mere declaration that the court's suspension order stood was nothing but a statement of a technically correct fact and could not have made the complainant's predicament at that time any worse. Lest it be overlooked, the order in question was mainly directed at holding the proceedings in criminal case 19346 in abeyance to give the complainant Luciano ample time within which to implead the respondent judge in his petition (docketed as L-31347) then pending in this Court. If the respondent judge were really bent on harassing the complainant, he would have forced the issue of suspension considering that at that time no restraining order addressed to him had yet issued from this Court.

While this Court takes a dim view at the issuance by judges of press releases respecting cases pending before them, we cannot give due course to the complainant's charge that the respondent judge was responsible for the news item which appeared in the December 18, 1969 issue of the Philippine Herald. Considering the repudiation by the same judge of the press statements attributed to him, the complainant's case, resting as it is solely upon the newspaper's account of where it obtained its information, cannot stand in a proceeding such as the present. (The

complainant lists as his evidence only his testimony and the records of the various cases involved in his protracted fight for the mayoralty of Makati and no more.)

All the above notwithstanding, the impression abides with us that the respondent judge acted with inordinate haste in issuing the order suspending Luciano from office on the very same day that he received the official report of the provincial fiscal to the effect that a preliminary re-investigation of the anti-graft charge against Luciano and Rolls had been conducted and that there was enough evidence to establish prima facie their guilt. The environmental circumstances, were, to our mind, sufficient to give the respondent judge reason for pause, and he should thereafter have proceeded with a degree of circumspection normally expected of a judicial magistrate.

In sum, we find and so hold that there is nothing in the present indictment against the respondent Judge Herminio Mariano that would support a prima facie finding of inefficiency, or misconduct in office, or bias, or ignorance of the law, as would warrant further proceedings.

ACCORDINGLY, the present complaint is dismissed.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

[1] Luciano vs. The Provincial Governor, et al., L-30306, June 20, 1969.

[2] Luciano vs. Wilson, L-31347, August 31, 1970.

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