

**BAGONG WEST KABULUSAN 1 NEIGHBORHOOD ASSOCIATION, INC.
REPRESENTED BY ITS ACTING PRESIDENT WENEFREDO S. QUEDOR
COMPLAINANT, VS. JUDGE ALBERTO L. LERMA RESPONDENT.**

A.M. NO. RTJ-05-1904 (FORMERLY OCA IPI NO. 01-1249-RTJ). February 18, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Judge Alberto L. Lerma, Presiding Judge of Branch 256 of the Regional Trial Court (RTC) of Muntinlupa, stands charged in a complaint^[1] dated September 21, 2001 filed by the Bagong West Kabulusan Neighborhood Association, Inc. (the Association) for falsification of court records, gross violation of the Code of Judicial Conduct, gross neglect of duty, and gross ignorance of the law with manifest bias and partiality.

The facts which spawned the filing of the complaint are as follows:

CST Enterprises, Inc. filed before the Muntinlupa Metropolitan Trial Court (MeTC) thirty eight (38) complaints for ejectment against 39 individuals^[2] (the defendants) who were occupying lots located at West Kabulusan, Barangay Cupang, Muntinlupa City and covered by TCT Nos. 124275 and 157581 (the lots). The cases, which were raffled to Branch 80 of the MeTC, were docketed as Civil Case Nos. 4678-4715.

Branch 80 of the Muntinlupa MeTC, by decision of March 17, 2000, rendered judgment in favor of CST Enterprises, Inc., ordering the defendants to vacate the lots and surrender possession thereof to CST Enterprises, Inc.^[3] The judgment became final and executory following which writs of execution were issued and served on the defendants on June 14, 2000.^[4]

It appears that the defendants refused to vacate the lots. Thus, by Order of November 8, 2000, the MeTC directed the defendants to demolish their “respective structures” within 5 days from notice thereof.^[5] A writ of demolition^[6] dated November 9, 2000 was accordingly issued directing the sheriff to remove and demolish the houses and improvements introduced by the defendants on the lots.

On December 11, 2000, the Association, claiming to represent the underprivileged and homeless residents of the lots, but without naming the defendants in Civil Case Nos. 4678-4715, filed a Complaint against MeTC Sheriff Armando M. Camacho, for “Injunction with Very Urgent Petition for the Issuance of Restraining Order to Preserve and Maintain the Status Quo,” docketed as Civil Case No. 00-233. ^[7]

The Complaint for injunction alleged that under R.A. No. 7279 (URBAN DEVELOPMENT AND HOUSING ACT OF 1992), it is mandatory that before demolition or eviction can be effected, adequate relocation, whether temporary or permanent, be undertaken by the City of Muntinlupa and the National Housing Authority with the assistance of other concerned government agencies.^[8] It thus prayed that service of the notice to vacate and demolish be held in abeyance until the provisions of R.A. 7279 have been complied with and that, in the meantime, a Temporary Restraining Order (TRO) be issued to preserve and maintain the status quo.^[9]

On motion of the Association, a special raffle of Civil Case No. 00-233 was set on December 15, 2000.^[10]

Meanwhile, in a petition filed by the defendants before the Court of Appeals, docketed as CA-G.R. SP No. 61991, assailing among other things, the MeTC judgment in the ejectment cases which was sought to be annulled, the appellate court, by Resolution of December 12, 2000, issued a TRO enjoining the enforcement of the writ of demolition.[11]

The Association's complaint for injunction in Civil Case No. 00-233 was raffled to Branch 256 of the Muntinlupa RTC presided by respondent, Judge Alberto Lerma. Summons dated January 2, 2001 was thereafter issued to Sheriff Camacho requiring him to enter his appearance and answer the Association's petition within 15 days from service thereof, which summons was served on him on January 15, 2001.[12]

Notice dated January 8, 2001 setting for hearing on January 17, 2001 the Association's prayer for a TRO was issued.[13] The notice addressed to Sheriff Camacho was, however, served on him the day after the hearing or on January 18, 2001.[14] As he was not present during the hearing, respondent, on motion of the Association, considered the matter of the issuance of TRO submitted for resolution.[15]

By Order[16] of February 5, 2001, respondent denied the Association's prayer for a TRO, he finding that no great or irreparable injury would result if a TRO is not issued immediately. Copies of this order were sent to the parties by registered mail on February 16, 2001.[17] In the meantime, notice of hearing of the application for Preliminary Injunction on March 9, 2001 was issued.

On February 21, 2001, the Association filed a "Motion to Resolve the Pending Incident of Temporary Restraining Order with Motion to Declare the Defendant in Default" which was set by the movant for hearing on February 28, 2001.[18] By Order of February 28, 2001, upon motion of the Association, the "Motion to Resolve Temporary Restraining Order and to Declare Defendant in default" was submitted for resolution.[19]

During the hearing of the application for the issuance of a Writ of Preliminary Injunction on March 9, 2001, respondent noted Sheriff Camacho's absence.

The Association later filed a Motion for Reconsideration of respondent's Order of February 5, 2001 (denying the Motion for the issuance of a TRO) which was denied by Order of March 13, 2001.[20]

Meanwhile, due to procedural infirmities and for lack of merit, the Court of Appeals, by Resolution of March 19, 2001, dismissed CA-G.R. SP No. 61991.[21]

On motion of the Association, the hearing of "the main case for injunction" in Civil Case No. 00-233 was set for hearing on April 19, 2001[22] during which the defendant sheriff again failed to show up. The hearing was thus reset[23] to June 22, 2001 during which respondent, on motion of the Association, declared its "Motion to Declare Defendant in Default" submitted for resolution.[24]

On September 14, 2001, the Association filed a "Very Urgent Motion to Resolve Complaint for Injunction," setting the motion for hearing on September 17, 2001.[25] The Association was later to allege in its present complaint that the staff of respondent refused to set the said motion for hearing.[26]

Alleging that respondent, "with manifest bias and partiality and with gross ignorance of R.A. 7279 and gross neglect of duty, deliberately delayed the resolution of [Civil Case No. 00-233] in order for . . . [Sheriff] Camacho [to] EFFECT THE DEMOLITION before the resolution of [said] case so that [it] will be rendered moot and academic,"[27] the Association, through its Acting President, Wenefredo S. Quedor, filed on September 24, 2001 the present complaint against respondent before the Office of the Court Administrator.

In the affidavit of the Acting President of the Association (hereinafter referred to as complainant), it is averred that respondent violated Supreme Court Administrative Circular No. 20-95 requiring him to act on the application

for a TRO after all parties are heard in a summary hearing conducted within 24 hours after the records are transmitted to the branch selected by raffle, he having set for hearing the prayer for TRO only on January 17, 2001 or 33 days after the complaint was raffled to his sala.[28]

It is further averred in the said affidavit that respondent maliciously and unlawfully falsified court records by making it appear that he already resolved the pending incident re the application for the issuance of a TRO by issuing the Order of February 5, 2001 when in fact the Motion to Resolve the application was not yet resolved when it was heard on February 28, 2001.[29]

Respondent, in his Comments[30] dated November 29, 2001, claimed that several actions were instituted by complainant and/or the defendants to stop at all cost the enforcement and implementation of the decision rendered by the MeTC in Civil Case Nos. 4678-4715;[31] that on August 23, 2000, before the filing of Civil Case No. 00-233, he dismissed a petition of the defendants against the MeTC Branch 80 judge, for “Certiorari and Prohibition or Annulment of Judgment in Civil Case Nos. 4678-4715 with prayer for Writ of Preliminary Injunction,” docketed as SP Civil Case No. 00-085, and denied their motion for reconsideration of the dismissal;[32] that the defendants elevated the case on December 4, 2000 to the Court of Appeals via petition for annulment of judgment with injunction and very urgent motion for the issuance of a restraining order (CA-G.R. SP No. 61991)[33] challenging (1) the MeTC Decision dated March 17, 2000 in Civil Case Nos. 4678-4715; (2) the RTC Order dated August 23, 2000 dismissing on motion of CST Enterprises, Inc. the petition for certiorari in S.P. Civil Case No. 00-085; (3) the RTC Order dated October 18, 2000 in S.P. Civil Case No. 00-085 denying the motion for reconsideration filed by the defendants; (4) the MeTC Order dated November 8, 2000 in Civil Case Nos. 4678-4715 granting the motion for the issuance of a writ of demolition; (5) the MeTC Writ of Demolition dated November 9, 2000 in Civil Case Nos. 4678-4715; and (6) the Notice to Vacate and Demolish dated November 20, 2000 issued by MeTC Sheriff Camacho in Civil Case Nos. 4678-4715.

Respondent further claimed that a week after the defendants filed their petition before the appellate court or on December 11, 2000, complainant again filed the Complaint for “Injunction with Very Urgent Petition for the Issuance of Restraining Order to Preserve and Maintain the Status Quo” (Civil Case No. 00-233); that on December 12, 2000, the Court of Appeals issued in CA-G.R. SP No. 61991 a Resolution enjoining the enforcement of the writ of demolition for a period of 60 days from the date of its issuance, or until February 10, 2001[34] on account of which the Notice to Vacate and Demolish dated November 20, 2000, all addressed to the defendants, was temporarily suspended.[35]

Respondent furthermore alleged that on August 27, 2001, five months after the Court of Appeals dismissed CA-G.R. SP No. 61991, complainant filed a motion to suspend proceedings in Civil Case Nos. 4678-4715 before Branch 80 of the MeTC for the same purpose, that is, to hold in abeyance the enforcement of the notice to vacate and demolish dated November 20, 2000;[36] that again, on September 24, 2001, the same day complainant filed the present administrative case against him and while the motion to suspend proceedings in Civil Case Nos. 4678-4715 remained pending, the defendants filed before the RTC a complaint, docketed as Civil Case No. 01-268, for illegal eviction/demolition, loss of property and damages, injunction and temporary restraining order, relocation/restitution/benefits with prayer for *lis pendens*, which was raffled and assigned to Branch 276, presided by Judge N.C. Parelo, again praying, among other things, to restrain Sheriff Camacho from enforcing the notice to vacate and demolish;[37] and that the motion to suspend proceedings in Civil Case Nos. 4678-4715 was denied on November 9, 2001.[38]

In the main, respondent stressed that all these cases filed after a writ of demolition was issued by the MeTC were filed for the purpose of restraining the sheriff from enforcing the notices to vacate and demolish, in violation of the rule against forum-shopping under Rule 7, Section 5 of the 1997 Rules of Civil Procedure, they involving the

same parties, causes of action, and reliefs.[39]

Respondent went on to stress that all his actions and findings in Civil Case No. 00-233 were in accordance with the Rules and the Canons on Judicial Ethics, with cold judicial impartiality, and with no other objective but to uphold the rule and majesty of the law.[40]

In its memorandum[41] of August 18, 2003, the OCA opines that respondent should not have deferred the resolution of the pending incidents lest he be accused of delay. And it finds that respondent offered no explanation why the order denying complainant's application for a TRO is dated February 5, 2001 when the hearing thereon occurred on February 28, 2001.[42]

To recall, the Court of Appeals in CA-G.R. SP No. 61991, issued a Resolution on December 12, 2000 a day after Civil Case No. 00-233 (which also prayed for a TRO) was filed on December 11, 2000, enjoining the enforcement of the writ of demolition against the defendants for a period of 60 days or until February 10, 2001. As respondent was one of the respondents in said CA-G.R. SP No. 61991, his Order dismissing SP Civil Case No. 00-085 being among those challenged in said case, it is assumed that he was served a copy of said Resolution.

Consequently, when Civil Case No. 00-233 was raffled to respondent's sala on December 15, 2000, complainant's prayer for a TRO had been rendered moot, such relief having been already afforded the defendants by the appellate court in its Resolution of December 12, 2000. To further act on the therein petitioners' prayer for a TRO would thus serve no useful purpose, that is, if respondent was actually notified of the TRO issued by the appellate court.

Assuming arguendo that, as respondent alleged, complainant was guilty of forum shopping, respondent should have dismissed Civil Case No. 00-233 in accordance with Rule 7, Section 5 of the Rules of Court.[43]

It would appear though that, to avert the possibility of complainant's Complaint in Civil Case No. 00-233 being dismissed on the ground of forum shopping, it made it appear that the parties therein and in CA-G.R. SP No. 61991 are not one and the same.

A perusal of the allegations embodied in the complaint in Civil Case No. 00-233 shows, however, that the Association-herein complainant actually represented the defendants- petitioners in CA-G.R. SP No. 61991:

Under date of November 17, 1999, CST Enterprises Inc. filed with the Metropolitan Trial Court of Muntinlupa City presided by Hon. Noli C. Diaz 39 (sic) ejectment cases against herein plaintiffs and docketed as Civil Case Nos. 4678 to 4715 xxx.[44]

If indeed the Association-herein complainant represented the underprivileged and homeless citizens of West Kabulusan, Brgy. Cupang in Civil Case No. 00-233, it failed to comply with the requirements set forth under Rule 3, Section 3 of the Rules of Court[45] that when an action is prosecuted by a representative, the beneficiaries shall be included in the title of the case and shall be deemed as the real parties in interest. On that score alone, the complaint could have been dismissed – for lack of cause[46] under Sec. 1(d) of Rule 16.

More. In the complaint in Civil Case No. 00-233, complainant did not implead the Presiding Judge of Branch 80 of the MeTC who issued the writ of demolition dated November 9, 2000 and CST Enterprises Inc. which stood to be adversely affected in case a TRO was issued by respondent. On the other hand, the duty of Sheriff Camacho, who was the sole defendant in the said case, to execute the writ of demolition was purely ministerial. In the absence of a directive to the contrary, he was expected to proceed with reasonable promptness to implement the writ according to its mandate.

Complainant faults respondent for violating Supreme Court Administrative Circular 20-95 for failure to call for a

hearing on its application for a TRO within 24 hours after the case had been raffled to his sala on December 15, 2001, he having set the same for hearing only on January 17, 2000. Upon the assumption that the appellate court's Resolution granting a TRO had not yet come to the notice of respondent at the time Civil Case No. 00-233 was raffled to him, what is mandatory in the circular is the giving of notice and opportunity for the adverse party to be heard and interpose objections in a summary hearing, before a prayer for a TRO is acted upon. The period within which to conduct a summary hearing is not 24 hours after the case has been raffled but 24 hours after the records are transmitted to the branch to which it is raffled.

Pertinent paragraphs of Supreme Court Administrative Circular No. 20-95 are quoted hereunder:

- 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.
- 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.

xxx (Emphasis and underscoring supplied)

This circular is now incorporated in the present Rules of Court as Rule 58, Section 4 as follows:

SEC. 4. Verified application and bond for preliminary injunction or restraining order. - A preliminary injunction or temporary restraining order may be granted only when:

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(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multi-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person sought to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

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(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty four (24) hours after the sheriff's return of service and/or records are received by the branch selected by raffle and to which the records shall be transmitted immediately. (Underscoring supplied)

Clearly, the circular and the Rules of Court seek to minimize the ex-parte,[47] precipitate and improvident issuance of TROs.[48]

Again, granting arguendo that respondent may have erred in not taking a more suitable course of action, given the circumstances surrounding the case, not to mention the palpable intent of the defendants to trifle with judicial processes, any lapse on his part can be seen as mere error of judgment, of which he may not be held administratively liable in the absence of a showing of bad faith, malice, or corrupt purpose.[49]

As for complainant's imputation to respondent of falsification of court records by making it appear that he already resolved the application for the issuance of a TRO as early as February 5, 2001 when the application was yet to be heard on February 28, 2001: The records before this Court disclose that the February 5, 2001 Order denying complainant's prayer for a TRO was sent to the parties by registered mail on February 16, 2001.[50]

It is thus possible that when complainant filed on February 21, 2001, its “Motion to Resolve the Pending Incident of Temporary Restraining Order with Motion to Declare Defendant in Default,” the hearing of which motion was set by complainant-movant on February 28, 2001, complainant had not yet received the February 5, 2001 Order of the Court.

Respecting the charge that respondent exhibited gross ignorance of the provisions of R.A. 7279 with manifest bias and partiality, such allegation remains unsubstantiated.

IN LIGHT OF THE FOREGOING, for insufficiency of evidence, the administrative complaint against respondent is hereby DISMISSED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 1-8.

[2] Marivic Alforque, Jerry Arquilon, Riselda Azucena, Adela Baliados, Lucena Bantilo, Lennie Barrios, Hernani Barrios, Edgardo Barrios, Erlinda Brobos, Gerlie Buenaventura, Imelda Compasivo, Edgardo Compasivo, Ludivina Estreja, Gina Guanzon, Lourdes Hagunos, Shirley Hermidalla, Evelyn Halnin, Doris Hermidalla, Bernard Hunsay, Belen Montero, Nelly Moradas, Rosalie Montero, Manuela Nasarate, Lito Novio, Jun Nadal, Criselda Nacional, Janet Olano, Precy Poral, Rosemarie Padayogdog, Wenfredo Quidor, Jr., Warren Raquino, Bing Rubido, Nida Samson, Judy Se, Rolando Ticod, Analyn Tomarong, Joerito Tolico, Florencia Yang-Yang, John and Jane Do[e]s.

[3] Rollo at 33-35.

[4] Id. at 68.

[5] Id. at 66-69.

[6] Id. at 72-74.

[7] Id. at 57-64.

[8] Id. at 61.

[9] Id. at 63.

[10] Id. at 75-76.

[11] Id. at 126. The Court of Appeals erred in holding that the temporary restraining order expires 60 days from its issuance. Vide, Rule 58, Section 5 which provides that “[i]f issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined (as amended by En Banc Resolution of February 17, 1998).

[12] Id. at 80.

[13] Id. at 82.

[14] Ibid.

[15] Id. at 84.

[16] Id. at 89.

[17] Ibid.

[18] Id. at 85-86.

[19] Id. at 87-88.

[20] Id. at 95.

[21] Id. at 124-128.

[22] Id. at 96.

[23] Id. at 99.

[24] Id. at 101.

[25] Id. at 108-109.

[26] Id. at 7.

[27] Ibid.

[28] Id. at 3-4.

[29] Id. at 4.

[30] Id. at 119-122.

[31] Id. at 119.

[32] Ibid.

[33] Id. at 120; vide Rollo, 124-125.

[34] Ibid.

[35] Ibid.

[36] Id. at 120-121.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Id. at 122.

[41] Id. at 131-136.

[42] Id. at 136.

[43] SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not thereto commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[44] Rollo at 58.

[45] SEC. 3. Representatives as parties. – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. xxx

[46] F. Regalado, REMEDIAL LAW COMPENDIUM at 249 (7th ed., 1997) citing *Casimiro v. Roque*, 98 Phil. 880 (1956).

[47] *Adao v. Lorenzo*, 316 SCRA 570, 578 (1999).

[48] *Dela Cruz v. Villalon-Pornillos*, A.M. No. RTJ-04-1853, June 8, 2004.

[49] *Araos v. Luna-Pison*, 378 SCRA 246, 252-253 (2002).

[50] Vide photocopy of February 5, 2001 Order bearing photocopy of Registry Receipt, Rollo at 89.

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