NORMANDY R. BAUTISTA, COMPLAINANT, VS. ASSOCIATE JUSTICE HAKIM S. ABDULWAHID, COURT OF APPEALS, RESPONDENT.

A.M. OCA IPI NO. 06-97-CA-J. May 02, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant administrative complaint stems from the verified Complaint-Affidavit filed by Normandy R. Bautista charging Court of Appeals (CA) Associate Justice Hakim S. Abdulwahid with gross ignorance of the law and procedure relative to CA-G.R. SP NO. 83601 entitled Spouses Marietta Pascua and Rufino Pascua, Jr. et al. v. Hon. Apolinario D. Bruselas, Jr., Acting Presiding Judge of the Regional Trial Court (RTC), National Capital Region, Branch 221, Quezon City, Metro Manila and Spouses Ruth Bautista & Normandy R. Bautista. The complainant is one of the respondents in the case, which originated from the ejectment case filed before the Municipal Trial Court (MTC) of Quezon City, Branch 40. The aggrieved parties appealed the decision to the RTC which affirmed the decision in toto. The case was then elevated to the CA, which, on May 31, 2004, issued a Resolution (penned by Justice Abdulwahid) dismissing the petition on the ground that it was defective for (a) not having been signed by the other co-petitioners; and (b) failure to submit copies and documents pertinent to the petition.

According to the complainant:

> - That petitioners through counsel filed an Omnibus Motion and Urgent Motion for the Issuance of Temporary Restraining Order [TRO] and/or Preliminary Injunction filed on June 22, 2004 and August 11, 2004 respectively. However, without awaiting for our comment or opposition to the Urgent Motion for Issuance of Temporary Restraining Order and/or Preliminary Injunction considering that it was filed by the petitioners on August 11, 2004 which at that point in time our counsel have not received it (sic), the Honorable Justice Hakim S. Abdulwahid being the ponente of the petition and now being a member of the 1st Division incredibly issued on August 16, 2004, just less than 24 hours before the implementation of the Writ of Execution issued by [Municipal Trial Court] Branch 40 Quezon City against the petitioners, a resolution reinstating the case with a temporary restraining order herein attached as Annex "B".
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> - That the Honorable Judge Hakim S. Abdulwahid issued ex-parte the said temporary restraining order effective for sixty (60) days without any requirement of any bond stated therein in violation of Section 4[,] par. [b] Rule 58 of the 1997 Rules of Civil [Procedure] and that the Honorable Justice Hakim S. Abdulwahid failed to determine within the period of sixty (60) days effectivity of the [TRO] whether to grant or not the preliminary injunction and failed to issue the corresponding order in violation of the mandatory requirement of Section 5 Rule 58 of the 1997 Rules of Civil [Procedure] that "within the said [twenty-day] period (in this case sixty days), the court must order said party or person to show cause, at a specified time and place xxx, determine within the same period whether or not the preliminary injunction shall be granted xxx" (emphasis ours).
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> - That we wrote a letter to the Honorable Justice Hakim S. Abdulwahid attached here as Annex "C" asking for an immediate resolution of the motion of the petitioner for the preliminary injunction on [March] 16, 2005

> considering that the lower court MTC Branch 40 of Quezon City held in abeyance the implementation of the writ of execution while waiting for the Court of Appeals to resolve the issue of injunctive relief being sought by the petitioners, however up to this point in time no resolution yet was ever issued practically denying us of the justice we have long been seeking on this ejectment case which the two lower courts have already decided in our favor and more so that this case is of summary in nature which seems to have evaded the thinking of the honorable justice, so that eventually we can bring this case to its next phase.

According to the complainant, Justice Abdulwahid's failure to resolve the issue of injunctive relief within 60 days rendered him guilty of violating Sections 4 and 5 of Rule 58 of the Revised Rules of Civil Procedure and Rules 1.02 and 3.05 of the Code of Judicial Conduct; as such, the CA Justice was guilty of acts prejudicial to the best interest of the service.

Justice Abdulwahid, for his part, denies the allegations against him. He outlines the antecedents that led to the filing of the instant case:

> - On May 31, 2004, acting on the petition in CA-G.R. SP No. 83601, the undersigned Justice, with the concurrence of the other members of the Former Special Third Division, issued a Resolution dismissing outright the said petition based on technical grounds.
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> - On August 16, 2004, acting on the motion for reconsideration of the petitioners in CA-G.R. SP No. 83601 through their Omnibus Motion filed on June 22, 2004, the undersigned Justice, this time with the concurrence of the other members of the former First Division of the Court of Appeals, issued the Resolution granting the motion for reconsideration and reinstated the dismissed petition.
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> - The same Resolution of August 16, 2004 also granted the petitioners' application for a temporary restraining order (TRO) effectively enjoining for a period of sixty (60) days the private respondents from enforcing the judgment in the ejectment case against the petitioners in CA-G.R. SP No. 83601.
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> - Herein complainant BAUTISTA was one of the private respondents enjoined by the TRO in CA-G.R. SP No. 83601.
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> - In its Resolution promulgated on March 2, 2005, the Court considered the case submitted for decision and ordered that the application for writ of preliminary injunction shall be resolved together with the main case considering that the matter of whether the petitioner has a right in esse to the ancillary remedy prayed for is intricately connected with the merits of the case.
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> - On August 31, 2005, the undersigned Justice as ponente, together with the other Associate Justices who composed the members of the Former Special Former First Division, rendered the Decision in CA-G.R. SP No. 83601 in favor of the private respondents, one of whom is not herein complainant BAUTISTA.
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> - The petitioners in CA-G.R. SP No. 83601 moved for reconsideration of the aforesaid Decision dated August 31, 2005, but the same was denied for lack of merit through the Resolution issued by the undersigned ponente on January 5, 2006.

Justice Abdulwahid contends that there are three instances when a TRO may be issued ex parte: (a) if the matter is of extreme urgency and the applicant will suffer grave or irreparable injury; (b) where the summons could not be served personally or by substituted service despite diligent efforts; and (c) where the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident defendant. In this case, the Urgent Motion For Issuance of Temporary Restraining Order and/or Preliminary Injunction alleged that "a copy of the sheriff's final notice to vacate directing them to vacate the premises subject of the ejectment case was served on them on August 10, 2004, but no copy of the order issued by the court of origin on August 3, 2004 affirming the writ of execution issued on June 22, 2004, as well as the same final notice to vacate, was served on petitioners' counsel." Given the

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proximity of the dates pertinent to the ejectment case, there could not have been any other sound, reasonable and timely way to enjoin the private respondents from enforcing the aforesaid final notice to vacate against the petitioners without rendering the action sought to be enjoined moot and academic.

Justice Abdulwahid further points out that contrary to the allegation of complainant, the issuance of a TRO without a bond is not ipso facto a violation of Section 4 (b), Rule 158 of the Rules of Civil Procedure, as under the said rule, the issuing court in its discretion is empowered to determine whether to exempt the applicant from posting the requisite bond, considering the extreme urgency of the issue. Moreover, complainant's allegation that no resolution was issued relative to the injunctive relief prayed for by petitioners in the said case is belied by the records. According to Justice Abdulwahid, the complainant has no one but himself to blame, as he should have taken the necessary steps to enforce the writ of execution before the court of origin after the lapse of the 60-day period of the TRO thus:

> While the aforesaid Order [of the MTC] is clearly in deference to the hierarchy of courts, the penultimate paragraph of Section 5 of Rule 58 provides that in the event that the application for a writ of preliminary injunction is denied or not resolved within the period as provided, the TRO is deemed automatically vacated, and further, the effectivity of a TRO is not extendible without need of any judicial declaration to that effect. The TRO having been deemed vacated automatically, complainant BAUTISTA should have taken into account that the court of origin is not legally precluded from enforcing the writ of execution, notwithstanding the pendency of the petition and the application by the petitioners in CA-G.R. SP No. 83601 for a writ of preliminary injunction.

Justice Abdulwahid further points out that the complainant filed the instant administrative case against him on July 15, 2005, before the decision in CA-G.R. SP No. 83601 was rendered.

In its Report dated March 17, 2006, the Office of the Court Administrator (OCA) declared that the court issuing the TRO, acting on the extreme urgency of the issue, is given the discretion to exempt the applicant from posting the requisite bond. It also opined that there is no showing that the complainant was not notified or given a chance to be heard on the matter. Thus, the OCA recommended that the instant complaint be 'dismissed for lack of factual and legal bases,' considering that the issuance of the TRO ex parte was the most reasonable way to enjoin the enforcement of the final notice to vacate issued by the MTC without rendering the action sought to be enjoined moot and academic.

We agree.

The Court stresses that an administrative complaint is not the appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for certiorari, unless the assailed order or decision is tainted with fraud, malice, or dishonesty.[1] In this case, the remedy of complainant as the prevailing party in the case was to file a motion in the trial court for the implementation of the writ of execution issued by the MTC in the ejectment case.

It is also a settled principle that magistrates are not expected to be infallible in their judgments.[2] A judge cannot be held administratively accountable for every erroneous rule or decision rendered, as it would be nothing short of harassment, making the position doubly unbearable.[3] Consequently, the failure to interpret the law or to properly appreciate the evidence presented does not necessarily render a judge administratively liable.[4]

It is likewise a settled rule in administrative proceedings that the burden of proving the allegations in the complaint with substantial evidence falls on the complainant. Charges based on mere suspicion and speculation cannot be given credence.[5] The Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before a judge can be branded the stigma of being biased and partial.[6] Thus, in the absence of

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evidence to the contrary, the presumption that the respondent judge has regularly performed his or her duties will prevail. Even in administrative cases, if a magistrate should be disciplined for a graver offense, the evidence against the magistrate sought to be held liable should be competent and derived from direct knowledge.[7]

It is also imperative to state that the Resolution dated May 31, 2004 was not rendered by Justice Abdulwahid alone, in his individual capacity. The Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation.[8] Thus, we have held that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that a collective decision is "unjust" cannot prosper.[9] Consequently, the filing of charges against a single member of a division of the appellate court is inappropriate.[10]

Contrary to the allegations of the complainants, Section 5,[11] Rule 58 of the Revised Rules of Court provides the instances where a temporary restraining order may be issued ex parte, without need of hearings.

CONSIDERING THE FOREGOING, the administrative complaint against Court of Appeals Associate Justice Hakim S. Abdulwahid is DISMISSED for lack of merit.

SO ORDERED.

Panganiban, C. J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, and Garcia, JJ., concur.
Puno, J., on leave.
Chico-Nazario, J., on official leave.
Velasco Jr., J., no part due to prior action of OCA.

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[1] De Guzman v. Pamintuan, 452 Phil. 963, 970 (2003).

[2] De la Rosa v. Court of Appeals Justices, 454 Phil. 718, 726 (2003).

[3] Cordero v. Enriquez, A.M. No. CA-04-36, February 18, 2004, 423 SCRA 181, 187.

[4] Mina v. Judge Gatdula, 426 Phil. 371, 384 (2002).

[5] Lambino v. De Vera, 341 Phil. 42 (1997).

[6] See Abdula v. Guiani, 382 Phil. 757 (2002).

[7] Montes v. Mallare, A.M. No. MTJ-04-1528, February 6, 2004, 422 SCRA 309, 315, citing Urgent Appeal/Petition for Immediate Suspension & Dismissal of Judge Legaspi, 453 Phil. 459, 464 (2003).

[8] Rondina v. Bello, Jr., July 8, 2005, A.M. No. CA-05-43, 463 SCRA 1, 12.

[9] See In Re: Wenceslao Laureta, March 12, 1987, 148 SCRA 382.

[10] Rondina v. Bello, supra.

[11] SEC. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior to notice to the party or person sought to be enjoined. If it shall appear from the facts shown by affidavits or by 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 ex parte 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

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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 the provision 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 be the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if 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. A restraining order issued by the Supreme Court or a member thereof shall be effective until further

orders.

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