

**JUAN YSASI, PETITIONER, VS. HON. JOSE F. FERNANDEZ, AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL (BACOLOD CITY, BRANCH V), MARIA ALDECOA DE
YSASI AND J...**

G.R. No. L-28593. January 30, 1970

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

For the third time this case is before this Court. The first was when we decided it on the merits. The second was when private respondents were declared in contempt of court. And now we have to act on another contempt charge against the same respondents.

It will be recalled that when the main petition (certiorari with preliminary mandatory injunction) was decided by this Court on June 25, 1968, we voted, amongst others, to "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, sand 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." [1]

Accordingly, on August 5, 1968, respondent judge issued a writ of preliminary mandatory injunction directing "plaintiff Maria Aldecoa de Ysasi and third-party defendant Jon Ysasi" to turn over to herein 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." [2]

When, on August 6, 1968, the injunctive writ was served by the deputy provincial sheriff upon Maria Aldecoa de Ysasi, the latter did not comply, her excuse being that her son Jon Ysasi was not present. And, on August 10, 1968, upon motion of private respondents, respondent judge dissolved the writ upon a P60,000-counterbond of private respondents.

Aggrieved by the foregoing turn of events, petitioner complained to this Court in an "Urgent Motion" filed on August 21, 1968. He accused respondent judge of grave abuse of discretion in issuing the August 10, 1968 order, and prayed that it be overturned and a show-cause directive require respondents to explain why they should not be dealt with for contempt of this Court. By our order of September 20, 1968, respondent judge was "RESTRAINED from approving plaintiffs' (respondents' herein) counterbond in the amount of P60,000.00, or if the same has already been approved, from enforcing your [the judge's] order of August 10, 1968, in Civil Case No. 8306 of the Court of First Instance of Negros Occidental, entitled 'Maria A. de Ysasi, plaintiff, versus Juan de Ysasi, defendant.'" [3]

The record of this case further discloses that on October 11, 1968, Juan Ysasi "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 acknowledgment receipt therefor, Petitioner reiterated his prayer that private respondents be held in contempt." [4]

After hearing, this Court, on December 16, 1968, resolved "(1) [t]o set aside the respondent judge's order of August 10, 1968; (2) [t]o 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 Manuca-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) [t]o 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) [t]o warn respondent judge that further commission of any act in derogation of the dignity of this Court will be dealt with accordingly." [5]

On January 16, 1969, petitioner came back to this Court praying that private respondents be again cited for contempt of this Court. The facts that gave-rise to this new contempt move are as follows:

On December 23, 1968, respondent judge issued an order directing the provincial sheriff to execute the December 16, 1968 resolution of this Court. [6] This order was first carried out by Damian C. Rojas, Deputy Provincial Sheriff of Negros Occidental. Private respondents Maria Aldecoa de Ysasi and Jon Ysasi were served this order on December 23 and 24, 1968, respectively. [7] Inventory of the hacienda's properties was made on December 23, 1968.

Deputy Sheriff Rojas was unsuccessful in effecting a complete turnover of the hacienda and its properties. On January 2, 1969, upon petitioner's motion, respondent judge appointed a special sheriff, Atty. Mariano Natu-el of the Office of the Sheriff of Bacolod City, to effectuate compliance with the trial court's order of December 23, 1968.

On January 8, 1969, Atty. Natu-el filed his return (1st Indorsement, January 8, 1969) with the trial court. His first attempt to execute the court order fell short of full compliance thereof. He reported that private respondents refused to surrender to petitioner a number of items which he listed, despite demand made by him. [8]

It was only on February 3 and 10, 1969 that private respondents turned over those items, except the following: one jeep, bearing Plate No. J-11280, and one airplane "Cessna" 140 PIC-461, [9] as to which ownership is claimed for respondent Jon Ysasi; books of accounts for 1964-1965, and books of accounts for 1966 to 1968, which allegedly are not in private respondents' possession.

For the delay in turning over some of the properties of the hacienda and the failure or refusal to surrender the rest of the properties, should private respondents be held in contempt of court? This question turns on the validity of their excuses.

1. Amongst the things which private respondents did not immediately turn over to petitioner are: one automobile, bearing Plate No. L-17034; one typewriter, Remington Rand, serial No. 53148107; one calculator, Remington Rand, serial No. 23943; one office desk, executive type (steel); one typewriter stand (Oesco); one secretarial chair (Oesco); one projector with serial No. 53542; and three intercom-telephones installed at their residence.

Private respondent Maria Aldecoa de Ysasi explains that she retained possession of these properties "on the honest belief that the same were conjugal properties and that as conjugal partner she has the right to use the same." She also avers that the document "Convenio de Arreglo y Venta" allegedly executed between her and petitioner and filed in Civil Case No. 8306 strengthened her belief that she could use said properties and that she further thought that since "the hacienda has other cars and sufficient number of office equipments for the use and operation of the hacienda, she can use the same properties while they are not needed for the hacienda's operation."

The explanation falls far short of being satisfactory. Maria Aldecoa de Ysasi cannot honestly entertain these beliefs. She knows only too well that the question of possession of conjugal properties is the very essence of the instant suit as well as the one pending below. And she knows, too, that this Court has ruled that petitioner, the administrator of the conjugal assets, is entitled to the possession thereof.

Neither may Maria Aldecoa de Ysasi be insulated from the effects of her contemptuous conduct by a reference to the "Convenio de Arreglo y Venta". She cannot expect petitioner to honor the terms thereof. She is fully aware of the fact that petitioner has challenged the validity of said document not only in the trial court but also in incidents brought to this Court. More, she herself is still in doubt whether or not petitioner would abide by the said agreement.[10]

Nor may the bare claim that there are other cars, and sufficient number of office equipments for the use of the hacienda be considered a legitimate excuse. Whether these cars and equipments are necessary or not for the operation of the hacienda is a matter for the administrator, the herein petitioner, to decide. Private respondents may not just assume that the administrator had no need for those properties. There is a court order commanding private respondents to turn them over. Such order cannot be defeated on the basis of a mere assumption.

With reference to the hacienda's books of accounts for the years 1962-1963 and 1963-1964, private respondents deliberately delayed the surrender thereof. When notified on December 23, 1968 at Hinigaran, Negros Occidental of the court order, enforcing the writ of preliminary injunction, Jon Ysasi, one of the private respondents, explained to the Deputy Provincial Sheriff, Damian C. Rojas, that the books of accounts "are in the possession of their Atty.'s in Manila, and they are getting photostatic copies of the said records and as soon as they can secure the same all those records will be delivered by their attorneys direct to the Supreme Court not later than January 9, 1969." [11] According to the return of Special Sheriff Natu-el dated January 8, 1969, he requested private respondents to surrender the books of accounts of the hacienda. Again, no book of accounts was presented by private respondents. Their excuse this time was that the books of accounts from 1962-1963 to the present were with their accountant Mr. Apolonio N. Sumbingco who allegedly refused to surrender them unless his professional fees and the expenses advanced by him were paid.

The marked difference in the two excuses does not speak well of private respondents' credibility. In reality, they had a good opportunity to readily comply with the writ when the books of accounts were still in the hands of their lawyers. All they had to do then was to get them from their attorneys and turn them over to the sheriff. But they did not. Their lame excuse, as of January 8, 1969, was that the books of accounts for 1962-1963 to the present (1969) were with their accountant who allegedly demanded payment of his fees as a quid pro quo for the return thereof.

It was only on February 3, 1969 that the books for 1962-1963 and 1963-1964 were turned over to the special sheriff.

The failure to surrender the books of accounts for 1964-1965 and 1966-1968 will hereinafter be separately treated. It will suffice for the present to say that said books are not yet in petitioner's possession.

A case that bears similarity to the one at hand is *Pacis vs. Averia*, L-22526, November 29, 1966, 18 SCRA 907. There, we issued on April 22, 1964 a writ of preliminary mandatory injunction commanding the provincial sheriff of Cavite, *Proceso P. Silangcruz*, to take possession of M/B "Bukang Liwayway", a vessel caught carrying untaxed foreign made cigarettes, and to keep the same under his custody until further orders from this Court. The sheriff received a copy of the writ on April 28, 1964. For more than one month, said provincial sheriff did not make a return to the writ. It was only after June 3, 1964 when the Solicitor General filed a motion charging him with contempt of court for noncompliance with the writ that he made a return informing this Court that he could not enforce the same because the vessel was out on a fishing expedition. The period when the writ stayed frozen in the hands of the sheriff made it possible for interested parties to whisk away the boat. We held the sheriff in contempt of court. We said:

"On the foregoing premises, We are constrained to conclude that respondent Sheriff's failure to enforce the writ and his failure to make a return thereof for quite a time had in effect prevented this Court from taking possession over M/B 'Bukang Liwayway', thus directly interfering, impeding or obstructing the processes of this Court. The respondent Sheriff's non-performance has resulted in the frustration of the mandates of this Court and the setback of the administration of justice. This Court can not tolerate evasion of its commands, by any omission, negligence, artifice or contrivance of any kind, nor would it countenance any disregard of its authority. For it is essential to the effective administration of justice that the processes of the courts be obeyed." [12]

What is readily seen from all the foregoing is that private respondents are bent on systematically frustrating not only the directives of the lower court but also the mandate of this Court. They had intentionally obstructed compliance with the directive of this Court. They are guilty of contempt of court.

2. We now take stock of the items which private respondents allegedly refuse to surrender.

First to be considered are the jeep and the airplane. Petitioner claims that they belong to the hacienda.

Private respondents, on the other hand, exhibited to Special Deputy Sheriff Natu-el - on or before February 10, 1969 - documents which purport to show ownership of both jeep and airplane in Jon Ysasi. Apparently, the special sheriff was convinced. For, he did not take the said properties into custody. He reported instead that: "The following properties [the jeep and the airplane "Cessna" 140 PIC-461] were not taken by the undersigned [Atty. Natu-el, Special Deputy Sheriff] from Jon Ysasi as these properties do not belong to the hacienda on the basis of documents evidencing ownership thereof; x x x."

A question of ownership is here presented. Contumacious disobedience is wanting. The contempt charge cannot prosper on this score. As this Court has held in *Esparagoza vs. Tan*, 94 Phil. 754, "[c]ourts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised. A bona-fide misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." [13]

We turn to the books of accounts.

We first look into the books for the crop years 1964-1965. Averment is made that these books are with Cipriano Manaois, a former Bureau of Internal Revenue examiner and, later, Mayor of Dagupan City. Private respondents presented a photostat copy of the receipt issued by Manaois acknowledging receipt of the hacienda's General Ledger for the year 1965. [14]

But there is petitioner's claim that when he verified at the Bureau of Internal Revenue Office at Bacolod City whether said books of accounts were there, he was surprised to learn from the Revenue District Officer, Santiago C. Lim, that "[w]ith regards to the 1965 books of accounts, it is informed that this office has no knowledge about

the said books having been taken by Mr. Cipriano M. Manaois. Neither did Manaois turn over the books to this office when he resigned from the B.I.R. service sometime in 1967." [15]

Private respondents' rejoinder is this: "It is procedural in the Bureau of internal Revenue that a BIR agent verifying a taxpayer's account has exclusive control and custody of the documents subject of his examination. It is, therefore, the BIR agent's sole responsibility to issue receipt for documents in his custody and consequently his office would not be in a position to know that the documents are in his custody." [16] They added that they have "made representation with the BIR to verify from their bodega if the books of accounts above-mentioned are still there."

Nothing clear, nothing definite there is as to the actual possession of the 1964-1965 books of accounts. A contempt charge on this score would then appear premature. "An inability to obey an order," this Court once said, "is a good defense to a charge of contempt, unless the person charged voluntarily and contumaciously brought the disability to himself." [17]

As for the books of accounts for the crop years 1966-1968, there is the belated claim of private respondents that Apolonio N. Sumbingco; their accountant, is retaining possession of the same because his professional fee and miscellaneous expenses he has advanced totalling P9,000 have not been paid by the hacienda. Sumbingco promises the special sheriff, Atty. Natusel, that as soon as his lien of P9,000 is paid, he will turn over the books of accounts to whoever is the administrator of Hacienda Manucao-A. [18]

It will not avail respondents any to say that the 1966-1968 books of accounts are with Sumbingco. Get those books they must. As to the expense therefor, that is their concern. The order of the court must be complied with; it cannot be sidetracked.

IN VIEW OF THE FOREGOING, the Court hereby finds private respondents Maria Aldecoa de Ysasi and Jon Ysasi guilty of contempt of court and they are hereby sentenced to pay a fine of P1,000 each within ten (10) days from notice of this resolution. Said private respondents are hereby further ordered to deliver the 1966-1968 books of accounts to petitioner within ten (10) days from notice hereof. Upon private respondents' failure to so deliver, let an order issue commanding the arrest of the aforesaid private respondents Maria Aldecoa de Ysasi and Jon Ysasi and their confinement in jail until they surrender said books of accounts.

SO ORDERED.

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

[1] Decision of June 25, 1968, Rollo, p. 263.

[2] Rollo, p. 304.

[3] Rollo, pp. 366-367.

[4] Rollo, p. 480.

[5] Resolution of December 16, 1968, Rollo, pp. 491-492.

[6] Rollo, p. 509.

[7] See: Return of Service executed by Deputy Provincial Sheriff Damian C. Rojas on January 8, 1969, Rollo, p. 606.

[8] 1st Indorsement of Special Deputy Sheriff, January 8, 1969, Rollo, p. 515.

[9] An airplane "Piper Cub" PIC-190, now registered in the name of one Rosauro Colmenares, was said to have been exchanged with the "Cessna" 140; Rollo, p. 549.

[10] See: Rollo, pp. 547-548.

[11] See: Annex A of private respondents' "Rejoinder to Petitioner's Reply dated March 15, 1969", Rollo, pp. 606, 608, and Annex B of petitioner's Motion for Contempt of January 16, 1969, Rollo, p. 510.

[12] *Pacis vs. Averia*, supra, at p. 919.

[13] Citing *Gamboa vs. Teodoro*, 91 Phil. 270; cited also in *Manila Railroad Company vs. Yatco*, 23 SCRA 735, 751.

[14] See: Annex E of Answer to Motion for Contempt, Rollo, p. 540.

[15] See: Petitioner's Reply to private respondents' Answer, Annex F, Rollo, p. 577.

[16] See: Private respondents' Rejoinder to petitioner's Reply dated March 15, 1969, Rollo, p. 604.

[17] *People vs. Rivera*, 91 Phil. 354, 357.

[18] See: Affidavit of Apolonio Sumbingco, Rollo, p. 542.

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