

**RUFINO IGNACIO, COMPLAINANT, VS. HON. MANUEL E. VALENZUELA, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXIX, PASAY CITY, RESPONDENT.**

*Adm. Case No. 2252-CFI. January 18, 1982*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

The issue in this administrative case is legality versus propriety. It should be obvious that propriety should prevail.

Respondent Manuel Valenzuela, judge of the Court of First Instance at Branch XXIX in Pasay City, stands charged of serious misconduct by Rufino Ignacio, a litigant in respondent's sala. Capsulated, the charge is that the respondent took an undue personal interest in a case by resolving favorably a motion to quash a temporary restraining order despite the fact that he was on vacation.

It all started when Rufino Ignacio, among other persons, filed an action for damages in the Court of First Instance of Rizal. The case which was docketed as Civil Case No. 7159-P also prayed for a restraining order to maintain the status quo pending the hearing on the merits. The Executive Judge (not the respondent) issued a restraining order on May 2, 1979 and set the case for hearing on May 4, 1979. Two days later, the defendants in the case filed a motion to quash the restraining order which was duly opposed by the plaintiffs. In the meantime, the case was raffled to Branch XXIX presided by the respondent who was on vacation from May 1 to 31, 1979, as shown in his certificate of service - New Judicial Form No. 86.

On May 8, 1979, the respondent heard the motion to quash the restraining order in his chambers wearing only a polo jacket and on the next day he granted the motion. It should be noted that on both days the respondent was on leave as stated in his certificate of service.

Rufino Ignacio and his co-plaintiffs questioned the legality of the respondent's act quashing the restraining order in the Court of Appeals. In CA-G.R. No. 09226-SP, the appellate court upheld the respondent judge; it said, among other things, the following:

"The petitioners, in their memorandum filed before this Court, also maintain that the order of May 9, 1979, is null and void because it was issued by the respondent judge at a time when he was supposed to be on official leave of absence (Rollo, pp. 77-78). There is no showing, however, that the respondent judge had a replacement who had taken over the performance of his functions. Even assuming that the respondent judge officially continued to act on the case despite his replacement, he cannot simply be considered to be totally without proper authority when he issued the questioned order. Thus, in an analogous case decided by the Supreme Court, it was held that, in even assuming the erroneous designation of a judge to act as Justice of the Peace whereby he took cognizance of a case, it cannot be denied that he was and have acted, at least, as a de facto judge, and his erroneous designation did not in any way affect the jurisdiction of the court he presided (Bacabac vs. Delfin, 1 SCRA 1194)."

We now quote the well-written report of Justice Vicente V. Mendoza of the Court of Appeals who investigated the case:

"On the basis of these facts, it is charged that the respondent Judge manifested undue personal interest in Civil Case No. 7159-P. The evidence does not warrant a finding that the interest shown by respondent Judge proceeded from some corrupt motive. It is believed that at most he is guilty of impropriety in acting on a case when he was on leave.

"Indeed, the excerpt from the calendar of cases for May 1979 of Branch XXIX of the Court of First Instance of Rizal, over which the respondent Judge presides, bears opposite each case the handwritten notations 'No hearing,' 'Judge on vacation,' and 'No hearing, Judge on leave,' except with respect to Civil Case No. 7159-P (Rufino Ignacio v. Remedios Tan) opposite which the notation 'hearing' appears. (Exh. I, Exh. 10) The excerpt was duly certified by the Branch Clerk of Court, Basilio B. Bolante. (Transcript, pp. 39-40, Oct. 1, 1981) It thus appears that out of 71 cases calendared during the period May 2 to May 9, 1979, only Civil Case No. 7159-P was heard.

"During the investigation, the respondent Judge explained that very often not all cases calendared for a day are heard. Thus, he testified:

**[INVESTIGATOR:]**

Q There were many cases scheduled for that date, May 8, 1979 . . . are you saying that only one case was heard?

A Yes, sir, it is my experience that even if there are 20 cases calendared for hearing, we can only hear one or two at most.

(Transcript, pp. 33-34, Oct. 1, 1981)

"But the notations on the calendar of cases (Exh. I; Exh. 10) indicate that there was no hearing because the Judge was on vacation and not because of lack of time. Moreover, it has not been explained why Civil Case No. 7159-P, which is listed as No. 14, should be heard ahead of other cases listed first in the calendar of the same date. It does not appear that the hearing in those cases was postponed either by the court or at the request of any of the parties. This is evident from the following portion of the transcript of stenographic notes of the hearing on October 1, 1981:

**QUESTIONS FROM THE COURT:**

Q This exhibit shows that there were 16 cases scheduled for that day and cc 7159-P entitled IGNACIO vs. Remedios Tan, No. 14, a motion was the only one heard, do you mean to tell us that no hearing was held whatsoever on cases 1 to 13?

A Yes, Your Honor.

Q Nor was there any hearing on cases Nos. 15 and 16?

A None, Your Honor. It takes LRC cases to be published for quite some time.

Q Are these cases preceding cc 7159-P particularly the case of Lourdes Poral vs. Lacson and Corazon M. vs. Antonio for ejection, this should be heard first?

A They submitted their cases, Your Honor.

Q You heard these cases if only briefly?

A Sometimes they just see my Clerk of Court.

Q What about the pre-trial?

A I don't remember, it is quite a long time ago, Your Honor.

(Transcript, pp. 37-38, Oct. 1, 1981)

"The respondent Judge asserts that he had to hear the motion to quash the restraining order and the opposition because, while it was true he had applied for vacation leave for the period May 1-31, 1979 (Exh. J), until May 8, 1981 he had not been notified of the approval of his application.

"The evidence shows that respondent Judge's application for vacation was approved on March 19, 1979 (Exh. K). Notice of the approval of the application, according to the records of the Supreme Court, was sent by ordinary mail to the respondent on April 20, 1979. (Exh. M; Transcript, pp. 8-9, Oct. 6, 1981) The respondent does not deny that he received the notification of the Supreme Court. What he claims is that he did so after May 8, 1979. (Transcript, pp. 35-36, Oct. 1, 1981) However, the mail was posted in Manila and addressed to respondent's court in Pasay City. Even granting the present sorry state of our postal service, mail sent from Manila to Pasay City would not take more than 18 days to reach the addressee, as the respondent claims. The Rules of Court provide that service by ordinary mail is complete upon the expiration of 5 days. (Rule 13, sec. 8) That is based on the estimated period of time a letter sent by mail reaches its destination anywhere in the Philippines, except in a few instances and that is when a court may provide for a special period. (1 Moran, Rules of Court 427 [1979]) Here there is no basis for providing a special period considering the destination of the mail. Indeed, the fact that cases calendared on May 2, 1979 (that is, 12 days after April 20, 1979) were not heard because the 'judge [is] on leave' indicates that the respondent Judge had received notice of the approval of his application for leave on or before May 2. Moreover, that the hearing on May 8 was held in chambers, with the Judge dressed casually (in polo jacket), would seem to indicate that the court was not open for regular business precisely because the Judge was on vacation.

"The respondent's claim that the hearing in chambers was held by agreement of the parties and that at any rate the performance of judges should not be based on 'sartorial elegance' misses the point. For these circumstances are not cited as independent grounds for disciplinary action but rather as proof of the fact that the respondent Judge knew he was not supposed to hear cases because he was on vacation -- as in fact he did not hear other cases -- but that, in the case of Civil Case No. 7159-P, he made an exception.

"Respondent Judge invokes the decision of the Court of Appeals x x x.

"As already noted, the case was filed by the complainant to nullify the order of May 9, 1979 of the respondent Judge.

"One thing, however, is legality; another is propriety. A judge's performance is to be measured not only by its conformity to the law but to propriety as well. He must avoid all appearance of partiality or interest. Such quality of detachment and disinterestedness must be nourished in fact and in appearance.

"In the case at bar, the holding of the hearing in Civil Case No. 7159-P in chambers, with the conformity of the parties, is not unlawful. (See *Garcia v. Domingo*, 52 SCRA 143 [1973]) And since there were no other persons except the wife of one of the parties and the counsel and the court personnel present, the informal attire of the respondent could be excused. Neither was his order issued the next day after the hearing illegal, having been issued in the exercise of jurisdiction, as the Court of Appeals ruled in the action for certiorari, prohibition and mandamus. Nonetheless, because he held a hearing in Civil Case No. 7159-P while he was on vacation, while cancelling the scheduled hearings of other cases, the respondent Judge opened himself to suspicion that he was personally interested in the case before him.

"As the Supreme Court held in *Tan v. Gallardo*, 73 SCRA 306, 315 (1976) 'judges should not only be impartial but should also appear impartial . . . [and] while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality.' This ruling was reiterated in

Fernandez v. Presbitero, 79 SCRA 60 (1977), where a municipal judge was found guilty of grave misconduct, partiality, and oppression and ordered to pay a fine equivalent to two months salary for conducting a preliminary investigation of a criminal case at night and at the residence of a relative of the political opponent of the complainant's father, and thereafter issuing a warrant of arrest against the complainant knowing that the next days were holidays when government and private offices would be closed, thus precluding the timely filing of a bail bond.

"As already stated, the evidence does not warrant a finding that the respondent took undue personal interest in the case before him. The legality of his order was in fact sustained by the Court of Appeals.

"Nevertheless in his memorandum, dated October 16, 1981, the complainant calls attention to additional evidence of partiality and personal interest on the part of the respondent. According to the complainant, following the decision of the Court of Appeals in CA-G.R. No. 09226-SP, 'Ignacio v. Valenzuela,' and the resumption of hearing in Civil Case No. 7159-P, the plaintiffs, one of whom is the complainant, asked the respondent Judge to inhibit himself from the case for the same reason that he had inhibited himself from trying another case filed by the complainant against another party, but that the respondent Judge refused; on the contrary, he granted a writ of execution for the demolition of the building being leased by the complainant, prompting the latter on October 9, 1981 to file another petition for certiorari and prohibition (CA-G.R. No. SP-13171) with the Court of Appeals, where the case is at present pending.

"It will suffice to say that since this question is the subject of review by the Court of Appeals in which the validity of the order of respondent Judge is being questioned, this matter cannot properly be taken up in these administrative proceedings. (See *Bonjoc v. Tupas*, 67 SCRA 277 [1975]; *Barroso v. Arche*, 67 SCRA 161 [1975]; *Lucman v. Hontanosas*, 70 SCRA 449 [1976]).

"Recommendation

"The impropriety committed by respondent Judge is not as serious as that found to have been committed in *Fernandez v. Presbitero*, 79 SCRA 60, where a fine equal to two months' pay was imposed.

"ACCORDINGLY, it is RECOMMENDED that respondent Judge be ordered to pay a fine equal to his salary for one month."

We agree with the investigator that the respondent is guilty of impropriety.

WHEREFORE, as recommended, the respondent judge is hereby ordered to pay a fine equivalent to his salary for one month. He is further warned that misconduct on his part in the future will place him in grave peril.

### **SO ORDERED.**

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Fernandez, Melencio-Herrera, Plana, and Escolin, JJ., concur. Guerrero, De Castro, and Ericta, JJ., no part. Concepcion, Jr., J., on leave.

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