MELQUIADES A. ROBLES, COMPLAINANT, VS. 1) CLERK OF COURT V DUKE THADDEUS R. MAOG, REGIONAL TRIAL COURT, BRANCH 155, PASIG CITY, 2) SHERIFF IV DOMINGO R. GARCIA, JR., REGIONAL TR...

A.M. No. P-15-3304 (Formerly OCA I.P.I No. 11-3670-P). July 01, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

This resolves the Motion for Partial Reconsideration[1] filed by Clerk of Court Atty. Duke Thaddeus R. Maog (COC Maog).

The instant administrative matter stemmed from the Complaint-Affidavit[2] dated 12 February 2007 filed by then Administrator Melquiades A. Robles (Administrator Robles) of the Light Rail Transit Authority (LRTA) before the Office of the Ombudsman (Ombudsman) against COC Maog and Sheriff Domingo C. Garcia (Sheriff Garcia), both of the Regional Trial Court (RTC), Pasig City, for violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and falsification of public document. The complaint was in relation to the Writ of Preliminary Injunction (Writ) issued in Civil Case No. 71029, entitled "Metro East Grand Transport Federation, Inc., represented by Engr. William J. Juan v. Melquiades Robles, et al."

Since both respondents are employees of the court, the Ombudsman deemed it proper to dismiss the complaint and refer the matter to the Supreme Court for appropriate action. The referral was in consideration of the Court's ruling in Maceda v. Vasquez[3] and Judge Caoibes v. Hon. Ombudsman[4] and in compliance with the Office Memorandum dated 31 July 2003 issued by the Ombudsman.[5]

In the Resolution[6] dated 18 February 2015, the Court adopted and approved the findings of fact, conclusions of law, and recommendations of the Office of the Court Administrator finding COC Maog guilty of simple misconduct for arrogating unto himself judicial authority in the issuance of the Writ of Preliminary Mandatory Injunction dated 30 January 2007. He was suspended for a period of one (1) month, effective immediately upon receipt of notice, with a warning that a repetition of the same or similar act will be dealt with more severely. The other charges against COC Maog and Sheriff Garcia were dismissed for lack of merit and for being judicial in nature.

Hence, this Motion for Partial Reconsideration filed by COC Maog. COC Maog maintained that there was sufficient basis for him to include the phrase and turn over the possession and operation of the subject terminal to plaintiff in the Writ as the phrase was actually a part of the prayer stated in plaintiff MEGATRAF's application, which was granted unqualifiedly by the trial court. Although the phrase "turn over the possession and operation" was not included in the dispositive portion of the Order, COC Maog contended that the preservation of the status quo ante between the parties, as dictated in the beginning of the dispositive portion of the Order, necessarily included the turn-over of possession and operation of the terminal to MEGATRAF.

This is because MEGATRAF had the possession and operation of the transportation terminal under its Lease Agreement with LRTA before it was unilaterally and untimely terminated by the latter. He argued that if he

excluded the phrase, then the issuance of the order and the writ would have been for naught. Plaintiffs application would not, in effect, be granted since the status quo ante between the parties would not have been preserved.

For clarity, we quote the entire order dated 11 January 2007 issued by Judge Luis R. Tongco (Judge Tongco), to wit:

> Acting on the application for a Writ of Preliminary Mandatory Injunction filed by plaintiff on the ground that its rights under Section 12 of a Lease Agreement (Annex A of Complaint) dated 15 July 2005 has been violated by defendant Light Rail Transit Authority (LRTA) in view of the latter's forcible takeover of the subject leased premises resulting in plaintiffs inability to conduct its regular business therein, and it appearing further that while the aforecited Section of the Lease Agreement provides that plaintiff is entitled to notice of at least thirty (30) days prior to any change thereof, defendant LRTA immediately denied plaintiff access to the subject premises on November 1, 2006 despite serving notice of pre-termination of the agreement (Annex "E", Ibid.) only on October 30, 2006, and it appearing further that a party is entitled to a writ of preliminary injunction if it has sufficiently shown that (1) it has a right in esse or a right to be protected, and (2) the act against which injunction is to be directed is a violation of such right (Sales v. Securities and Exchange Commission, 169 SCRA 109), and it appearing in the instant case that plaintiffs legal right to due process under the subject Lease Agreement has not been respected in accordance with the terms thereof, thus exposing its business to irreparable injury and damage, the instant application is hereby GRANTED.
>
> WHEREFORE, in view of the foregoing, and without delving into the merits of the principal action but only to preserve the status quo ante, let a Writ of Preliminary Mandatory Injunction be issued in the instant case COMMANDING defendants, their representatives, agents or any person or persons acting in their behalf to open the VC Compound (vacant lot) of the LRTA Line 2 Santolan Terminal, Marcos Highway, Santolan, Pasig City and provide plaintiff free and unhampered ingress and egress from the subject leased premises conditioned upon posting of a bond by plaintiff and approval thereof by this Court in the amount of Two Million Pesos (Php 2,000,000.00), to be executed in favor of defendants to answer for any damage that the latter may sustain in the event that the Court should finally decide that plaintiff is not entitled to the injunctive writ, under Section 4(b), Rule 58 of the 1997 Rules of Civil Procedure.[7]

Pursuant to the aforesaid directive, COC Maog issued the following Writ:

> IT IS HEREBY ORDERED that UNTIL FURTHER ORDERS from this Court, you, the said defendants Melquiades A. Robles, Atty. Elmo Stephen P. Triste, Edgardo R. San Juan, Light Rail Transport Authority, and all person or persons acting in their behalf are HEREBY ENJOINED to open the vacant lot compound (VC) of the Light Rail Transit Line 2 (LRT-2) Santolan Terminal, Marcos Highway, Santolan, Pasig, and allow plaintiff free and unhampered ingress to and engress from herein subject leased premises and turn over the possession and operation of the subject terminal to plaintiff.[8] (Emphasis supplied)

It is clear from the foregoing that COC Maog overstepped the bounds of his authority. Instead of just quoting the dispositive portion of the order, he included the phrase and turn over the possession and operation of the subject terminal to plaintiff to allegedly give more meaning to an otherwise vague order. Despite his noble intention, by doing so, COC Maog arrogated unto himself a function which is reserved solely for members of the bench. We reiterate that clerks of court perform only administrative, not judicial, functions.[9] In the issuance of writs, the duties of clerks of court are governed by Section 4 of Rule 136 of the Rules of Court, which provides:

> SEC. 4. Issuance by clerk of process. The clerk of a superior court shall issue under the seal of the court all ordinary writs and process incident to pending cases, the issuance of which does not involve the exercise of functions appertaining to the court or judge only; and may, under the direction of the court or judge, make out and sign letters of administration, appointments of guardians, trustees, and receivers, and all writs and process issuing from the court.

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If there is a need to clarify an order of the court, such clarification may be done only through the issuance of an amended order by the judge. In this case, the sole authority to do so belongs to Judge Tongco. He can issue an amended order if he deems it proper. Unfortunately, even without any motion from any of the parties or a directive from the judge, COC Maog, at his own instance, included what he believed was a clarificatory phrase.

Even if no bad faith can be attributed to COC Maog in view of his honest belief that the writ conformed with the trial court's order, we still find him administratively liable. Be that as it may, there are facts and circumstances in this case which would justify the temperance or reduction of the penalty imposed upon respondent.

The misfeasance of COC Maog may be attributed to the fact that he was barely five months as clerk of court when he issued the subject writ. In fact, he admitted that the writ was the first of its kind that he had issued. Such shortcoming may be considered as a rookie mistake on the part of COC Maog. Moreover, he is not entirely to be blamed for the failure of the court to issue a clarification of the order or correction of the alleged error in the writ. Administrator Robles, instead of calling the attention of the court regarding the inconsistency between the order and the writ, filed an administrative complaint before the Ombudsman. Unfortunately, although the Ombudsman dismissed the complaint on 13 March 2007, it was referred to the Office of the Court Administrator for appropriate action only on 21 June 2011. By that time, the order and writ had already attained finality. Further, Judge Tongco who could have vouched that the writ was consistent with his order and not excessive, had already retired. In fact, Judge Tongco had already passed away in 2010.

We further note that the instant administrative matter is the first offense of COC Maog and that no other administrative action had been filed against him in all his twelve (12) years in the judiciary.

In previous rulings, the Court has refrained from imposing the actual administrative penalties prescribed in view of the presence of mitigating factors. Among the circumstances that may be allowed to modify the penalty are: (1) length of service in the government; (2) good faith; and (3) other analogous circumstances. We find the following mitigating circumstances in the case of COC Maog valid grounds for the adoption by the Court of the same compassion: (1) he acted in good faith in issuing the writ; (2) the incident occurred while he was a newly-appointed clerk of court; (3) this is his first offense; (4) no other administrative complaint has been filed against him; (5) he has been with the judiciary for twelve (12) years; and (6) over and above this questioned writ as well as the order that occasioned the writ had become final when the complaint against respondent reached the Court, over four years after the act complained about. Clearly, the writ issued by respondent was not judicially questioned.

Accordingly, we temper the previous penalty of suspension for one (1) month we imposed upon respondent COC Maog and instead impose the penalty of reprimand in view of the aforesaid extenuating circumstances.

WHEREFORE, in the light of the foregoing, the motion for partial reconsideration is GRANTED. The resolution of this Court dated 18 February 2015 imposing upon Clerk of Court Atty. Duke Thaddeus R. Maog the penalty of suspension for a period of one (1) month is hereby SET ASIDE. Instead, Clerk of Court Maog is REPRIMANDED with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely. He is further REMINDED to be circumspect in the exercise of his functions so as not to give the impression that he is arrogating unto himself judicial functions.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 81-93.

[2] Id. at 5-12.

[3] G.R. No. 102781, 22 April 1993, 221 SCRA 464.

[4] 413 Phil. 717 (2001).

[5] Issued by then Ombudsman Simeon V. Marcelo.

[6] Id. at 68-69.

[7] Id. at 13-14.

[8] Id. at 15-16.

[9] Nones v. Ormita, 439 Phil. 370, 375 (2002).

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