

HADJI ESMAYATEN LUCMAN, COMPLAINANT, VS. HON. AGAPITO HONTANOSAS, RESPONDENT.

Adm. Matter No. 252-J. April 30, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

The administrative charges filed by Hadji Esmayaten Lucman against Hon. Agapito Hontanosas, Judge of First Instance of Cebu (Branch XI) for alleged "knowingly rendering unjust decisions and orders, gross ignorance of the law and oppression", after a formal investigation conducted by Associate Justice Ramon C. Fernandez of the Court of Appeals who found that the "totality of the evidence of record has failed to establish the charges contained in the original complaint dated September 4, 1972", are recommended to "be dismissed and that the respondent judge be exonerated".

I – Charges

The basis of the charges are:

1. Complainant Lucman was the assignee of a foreign corporation, the Allied Oversea Commercial Co., Ltd. of Hongkong, of a certain money obligation (P450,553.00) owed by Uy Tian Kiu alias Ben Uy Rodriguez of Cebu City to said corporation;
2. That before the assignment of the credit was done by the Allied Oversea Commercial Co., Ltd. in favor of the complainant Lucman, the corporation brought suit against Ben Uy Rodriguez in the Court of First Instance of Manila for collection of the amount of P450,553.00 and in the process secured a preliminary attachment, with the Pioneer Insurance and Surety Corporation having posted the bond;
3. That the Court of First Instance of Manila dismissed the civil complaint on the ground of improper venue, and Ben Uy Rodriguez filed a motion for damages in the Manila Court (C.F.I.) against the Pioneer Insurance and Surety Corporation on its attachment bond but said claim was later on withdrawn;
4. That instead, Ben Uy Rodriguez filed a civil complaint against Allied Oversea Commercial Co., Ltd. as assignor of complainant Lucman and the Pioneer Insurance and Surety Corporation in the Court of First Instance of Cebu (Civil Case No. R-12069) and had the case assigned to respondent judge;
5. That the civil complaint in the Cebu court was amended to include complainant Lucman as additional defendant on the allegation that Lucman is the agent and attorney-in-fact of the foreign corporation, Allied Oversea Commercial Co., Ltd., and Ben Rodriguez insisted on serving summons to the foreign corporation through Lucman;
6. That the Pioneer Insurance and Surety Corporation filed an answer with affirmative defenses in Civil Case No. R-12069, questioning the jurisdiction of the respondent judge in entertaining the complaint against it on the ground that the bond it posted was before the C.F.I. of Manila and any action for damages based on the bond must be brought before the C.F.I. of Manila;

7. That complainant Lucman as defendant in Civil Case No. R-12069 filed a motion to dismiss on the ground that another action (Civil Case filed in Pasig, Rizal C.F.I.), between the same parties and involving the same issues, was pending in another court, but said motion to dismiss was denied by respondent judge;
8. That on December 24, 1971, or on the 15th day from receipt of the said order of denial (December 9, 1971) complainant Lucman filed his answer ad cautelam;
9. That respondent judge declared complainant Lucman in default as defendant in Civil Case No. R-12069 on the ground that his answer was filed way past the remaining period of 15 days within which to file an answer, in gross ignorance of the New Rules of Court;
10. That respondent judge rendered a decision based on ex-parte presentation of evidence by Ben Rodriguez against Lucman only notwithstanding that co-defendant Pioneer Insurance and Surety Corporation filed an answer on time and has not been declared in default, in gross violation of the New Rules of Court which directs that no separate judgment can be rendered in case the other defendant had answered and the trial against the answering defendant has not yet been concluded;
11. That upon motion by complainant Lucman in Civil Case No. R-12069, respondent judge set aside the order of default;
12. That respondent judge directed his Clerk of Court to send telegrams to counsel for defendants and complainant Lucman setting for pre-trial the said (C.C. R-12069) "as previously scheduled" when no such scheduling of pre-trial was earlier communicated to the defendants or their counsel;
13. That notwithstanding that defendants filed an urgent motion for postponement by registered air mail special delivery alleging as ground thereof lack of notice and that their counsel had a previous scheduled hearing in Manila on the same date fixed for the hearing in Civil Case No. R-12069, two orders were issued by respondent judge declaring defendants in default;
14. That nine (9) days thereafter, respondent judge rendered his decision in Civil Case No. R-12069, said decision condemning complainant Lucman to pay Ben Rodriguez "enormous sums of money";
15. That a verified motion for reconsideration filed by the defendants was ignored by respondent judge;
16. That when the defendants appealed the case to the Court of Appeals and when Ben Rodriguez opposed the voluminous record on appeal filed by complainant Lucman and his co-defendants in C.C. No. R-12069, they were given only 10 days by respondent judge to amend the record on appeal;
17. That in a criminal case (No. CU-356) also assigned before the respondent judge and arising from the same issues involved in Civil Case No. R-12069, wherein Ben Rodriguez accused complainant Lucman of alleged falsification, on at least three occasions in his chambers in Cebu City, respondent judge told complainant Lucman "that he will dismiss said criminal case or acquit complainant (Lucman) therefrom if the latter will only settle with Ben Rodriguez the Civil Case (R-12069) by delivering to respondent judge the check involved in said case in the amount of P450,553.00, so he, respondent judge, can deliver the same to the naturalized Chinese (Ben Rodriguez) for the latter to tear said check", "otherwise respondent judge will be forced to convict complainant (Lucman) of the crime with which he is charged before him (respondent judge)".

III – Defenses

In his defense, the respondent alleged that even if he might have committed errors in his questioned orders and decision, "there is no proof to show that he acted in bad faith, maliciously and/or for illegal consideration". On his alleged intervention to settle the criminal case filed by Ben Rodriguez against Lucman, respondent judge stated that "the respondent was requested by the accused (Lucman) to explore the possibility of amicably settling once and for all the civil and criminal cases; that considering that Atty. Remotigue (counsel for Rodriguez) was inside

the chambers, the respondent asked him if he could suggest any valid way of settlement and Atty. Remotigue told the court that he would advise his client to settle the case in Cebu City and also that in Pasig, Rizal by the return of the check allegedly forged by complainant Lucman and his Chinese companion; that then the respondent asked the complainant (Lucman) if he was agreeable to return the check and complainant (Lucman) answered that he could not as he has a name and face to protect, besides, according to him, (Lucman), he needs the check in the trial of the case filed by him against Benjamin Rodriguez in the Court of First Instance of Pasig, Rizal."

The supplemental complaint filed by Lucman on June 11, 1973, against the same respondent for his alleged wrongful acts in Criminal Case No. CU-356, entitled "People vs. Hadji Esmayaten Lucman, et al", We resolved on Sept. 17, 1973, to dismiss.

III – Discussion

A. On the charge of "knowingly rendering unjust and arbitrary orders and decision" and "gross ignorance of the law", respondent admitted having acted in violation of the Revised Rules of Court as applied in *Matute vs. Court of Appeals*, 26 SCRA 768, in declaring the complainant in default in Civil Case No. R-12069. The answer of complainant (defendant in that case) was filed within the reglementary period. The only explanation of the respondent is that he was misled by the arguments of the plaintiffs in Civil Case No. R-12069 and that he overlooked the pertinent provision of the Revised Rules of Court "since this provision is new, it did not register in my mind" (T.S.N. pp. 41-42, January 11, 1974). He states, however, that to mitigate the error done, he immediately reconsidered his order declaring complainant in default in Civil Case No. R-12069 and that he allowed the answer of complainant to stay on record.

Regarding, respondent's alleged error in rendering a separate decision against the complainant (defendant in Civil Case No. R-12069) notwithstanding that there was a co-defendant in that case who filed an answer to the complaint, again respondent admitted his error and explained "that although he has read the Revised Rules of Court from cover to cover" and "is not ignorant of the provisions of said Rules that where there are two or more defendants and one of them is in default while the other has answered, the trial should proceed against the defendants, including the one in default, on the basis of the answer filed by the answering defendant and render judgment on the basis of the evidence submitted", he "has a heavy load" and "he thought at the time he rendered the disputed decision against the complainant that there was no answering defendant". Again, to mitigate the error, respondent stated that no prejudice was caused to complainant because he set aside the decision in question and rendered another decision against both answering and defaulting defendants.

As to the alleged, "railroading of the decision" by the respondent when "with abuse and under suspicious circumstances he rendered the decision on Civil Case No. R-12069 only nine (9) days after the plaintiffs had presented their evidence ex-parte", he explained that "there is no law preventing a judge from rendering a decision as soon as possible" and "the Judiciary Act encourages a judge to dispose of his case as early as he can". He stated "moreover there was already an earlier decision which was rendered on the same case against defaulting complainant which had been set aside; that hence, it was easier for respondent judge to prepare the decision in question which is practically based on the earlier decision that had been set aside; and that the evidence is not controversial hence it is obvious that it would not take time for any judge to render a decision therein."

Respondent's candid admission of his procedural errors is to his credit. Being entitled to the presumption of good faith rather than malice in his judicial acts and considering his creditable record of service in the judiciary, he shall be admonished to observe greater care and circumspection in the exercise of his judicial functions in order to avoid such errors and uphold the exacting standards of competence and excellence that are attached to the position of judge of a court of record.

The other charges under this heading in effect question the propriety and correctness of respondent's second decision in Civil Case No. R-12069 dated March 9, 1972 and would cast doubt upon his motives and objectivity in rendering the same. The said decision was however appealed by complainant to the Court of Appeals and is pending determination in that Court. It will be readily seen that we cannot here in this administrative case pass upon respondent's judicial acts affecting the merits of the case (Civil Case No. R-12069) without prejudging the issues pending in the appeal. These charges will therefore be dismissed as having been prematurely filed.

B. On the charge of "oppression" constituting alleged intervention and threat by respondent judge to convict complainant Lucman in Criminal Case No. CU-356 C.F.I. Cebu, unless the latter surrender the "original check" subject matter of that criminal case to Ben Rodriguez, complainant presented evidence to prove that on October 19, 1971, at about 10:00 o'clock in the morning that said intervention and threat was made by respondent inside his chambers in the presence of complainant and his lawyer, Atty. Alonzo. Complainant also presented evidence that on March 6, 1972, at about 7:40 o'clock in the morning when he appeared in respondent's court to attend the trial of Criminal Case No. CU-356, respondent allegedly "told complainant that he had decided the civil case against the Pioneer Insurance and Surety Corporation as consuelo de bobo for Ben Rodriguez who had spent much"; "that complainant had nothing to lose as said respondent had an understanding with Ben Rodriguez that said Rodriguez must not demand the P80,000.00 he (the judge) decided" against complainant. Complainant also tried to prove that on March 24, 1972, when he was in Cebu for the trial of Criminal Case CU-356, respondent called him to his office and told him among others "that because respondent judge pities complainant, respondent judge had suggested an amicable settlement", "that it was better to come across with the written amicable settlement as offered, as this is the only way he could help complainant"; "that complainant told respondent, this is the second time you have asked me to surrender the original check and how can I get it when it is in the possession of Atty. Ignacio and according to him he had it annexed with the case (Civil Case No. 14351) in Pasig, Rizal."

Respondent denied that he had any conversation on October 17, 1971, with the complainant about an offer to settle the case by returning the check but respondent admitted that on October 19, 1971, during "some sort of pre-trial" in the chambers of the respondent, in the presence of complainant and his counsel and Atty. Alonzo and Atty. Francisco Remotigue, counsel for Ben Rodriguez, "complainant proposed the amicable settlement of his cases with Ben Rodriguez"; "that the respondent judge suggested to Atty. Remotigue to submit a proposal for amicable settlement in writing"; "that Atty. Remotigue prepared the proposed amicable settlement, Annex "Q-2", and handed the same to respondent for delivery to complainant". Respondent likewise flatly denied that he ever threatened to convict complainant of falsification in Criminal Case No. CU-356 if complainant did not agree to settle the case by surrendering the check in question.

The charge of oppression cannot be deemed substantiated: While the prosecution of public offenses cannot be the subject matter of amicable settlement, it appears that respondent obviously took into consideration that the criminal case was intertwined with the civil cases since the questioned check in the criminal case is the basis of complainant's complaint in the civil case in Pasig (Civil Case No. 14351, Court of First Instance of Rizal) and was trying to explore the possibility of amicable settlement of all the cases between the parties in this light.

C. The remaining charges are insubstantial and We do not find any reason to disagree with the findings of the Investigator, to wit:

"That the respondent judge gave the complainant only ten (10) days within which to submit an amended record on appeal in Civil Case No. 12069 is not oppression. The complainant was free to ask for an extension of the period of ten (10) days if he could not finish redrafting the voluminous record on appeal during said period.

"The charge that the respondent judge took cognizance of Criminal Case No. CU-356 without being raffled to

him is not supported by the overwhelming evidence. The certification by the Clerk of Court of C.F.I. of Cebu shows that Criminal Case No. CU-356 was raffled in the regular procedure to Branch XI of said court presided by respondent judge. There was nothing irregular in the assignment of said criminal case to Branch XI of C.F.I. of Cebu.

"The alleged irregularity in sending a telegram to the counsel of defendant and complainant setting the pre-trial of Civil Case No. R-12069 'as previously scheduled' is too minor to merit discussion. Moreover, no evidence was presented by complainant that respondent judge had any hand in the 'mix-up'. On the contrary, the evidence shows that the respondent judge exerted efforts in notifying the complainant and his counsel of the pre-trial.

"Having failed to appear at the pre-trial despite the fact that the complainant's counsel was notified on February 22, 1972, said complainant cannot complain that he was declared in default for failure to appear at the pre-trial held on February 28, 1972."

IV – Conclusion

In view of all the foregoing considerations, and with the admonition hereinabove given in the body of the decision, the charges against respondent are dismissed.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

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