

TIRSO P. MARIANO, COMPLAINANT, VS. JUDGE ZEIDA AURORA B. GARFIN, CLERK OF COURT JESUSA I. MAMPO, SHERIFF IV SEBASTIAN T. BOLIVAR, RESPONDENTS.

A.M. NO. RTJ-06-2024 (FORMERLY OCA IPI NO. 06-2410-RTJ). October 17, 2006

Ponente: TINGA, J.

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TINGA, J.:

Under consideration is the administrative complaint[1] dated 29 November 2005 filed by Tirso P. Mariano (complainant) charging Judge Zeida Aurora B. Garfin (Judge Garfin) with grave abuse of judicial discretion and gross ignorance of the law; and Clerk of Court Jesusa I. Mampo (Atty. Mampo) and Sheriff IV Sebastian T. Bolivar (Bolivar) with abuse of authority relative to the issuance and implementation of a writ of execution ("Writ") in Civil Case No. RTC 99-4467 entitled "Heirs of the Late Macario A. Mariano v. Tirso Mariano" for unlawful detainer ("civil case").

Complainant was the defendant in the aforementioned civil case that was commenced at the Metropolitan Trial Court in Cities (MTCC), Naga City, Branch 2. In a Decision[2] dated 8 October 1999 of the MTCC, he was ordered to vacate the subject premises, surrender the possession thereof to the plaintiffs, demolish the improvements introduced thereon and pay the corresponding rentals.[3] He then appealed the decision to the Regional Trial Court (RTC) of Naga City and the case was raffled to Branch 19 with which all herein respondents are connected. Branch 19 affirmed the MTCC's Decision through its then Pairing Judge, Marino S. Bodiao, Sr. (Judge Bodiao).[4]

While complainant's appeal was pending before the Court of Appeals (CA), the RTC ordered the issuance of a writ of execution on 18 January 2001 upon plaintiff's motion.[5] However, in a subsequent Resolution[6] dated 13 March 2001, the RTC quashed the writ after complainant moved for reconsideration on the ground that he had been religiously and promptly depositing with the clerk of court the required periodic rentals of the subject premises.

Two years later, the plaintiffs filed a second motion for execution dated 12 July 2003. It was denied by the RTC in an Order[7] dated 29 December 2003 issued by Judge Garfin, who took over from Judge Bodiao, on the ground that the incident had already been previously ruled upon by the court.

On 11 February 2005, the plaintiffs filed a motion for reconsideration, seeking the court to apply Sections 19 and 21 of Rule 70, and stating that complainant as defendant had not been religiously and promptly paying the required periodic rentals and had in fact failed to make rental payments from September 2003 up to the filing of the motion per the certification issued by the Office of the Clerk of Court on 10 February 2005.[8] Judge Garfin granted the motion on 28 March 2005 and ordered the issuance of the subject Writ without prejudice to complainant's pending appeal with the Court of Appeals.[9] Complainant's motion for reconsideration was denied, so he elevated the case to this Court via a petition for review on certiorari under Rule 45. In the meantime, respondent Clerk of Court, Atty. Mampo, issued a Writ on 15 July 2005 pursuant to Judge Garfin's order. On 18

November 2005, respondent sheriff Bolivar proceeded to eject complainant from the subject premises.[10]

Complainant essentially anchors his complaint on the alleged spurious and anomalous issuance and implementation of the Writ. First, he avers that it was issued beyond the five (5)-year period provided in Section 6,[11] Rule 39 of the Rules of Court. Second, it was issued when the case had already been appealed to this Court, thus violative of Section 2,[12] Rule 39. Third, he alleges that he was not notified of the motion for execution which led to the issuance of the Writ. He concludes that the issuance of the Writ was contrary to the still standing Orders dated 13 March 2001 and 29 December 2003.

Complainant also impugns Bolivar for "forcibly and tremendously"[13] implementing the Writ when the latter allegedly demolished a portion of complainant's house and fence when the only subject of the Writ was the possession of the premises.

In her Comment[14] dated 27 February 2006, Judge Garfin prays for the outright dismissal of the complaint for utter want of factual and legal basis. She avers that the questioned orders were issued in accordance with law, specifically Section 21, Rule 70 of the Rules of Court, which provides that the judgment of the RTC shall be immediately executory and shall not be stayed by the mere continuing deposit of monthly rentals by the dispossessor during the pendency of the appeal. She adds that when she issued the 29 December 2003 Order denying plaintiff's second motion for execution, she mistakenly sustained the erroneous 13 March 2001 Order of Judge Bodiao. Said order was based on Section 10, Rule 70 of the 1964 Rules of Court that allows the stay of execution of the RTC decision if an appeal is made when the appellant deposits the required rentals. Judge Garfin maintains that the opportunity to correct the error presented itself when plaintiffs filed a motion for reconsideration, which she aptly treated as a motion for execution pursuant to Section 6,[15] Rule 135 providing for the court's inherent power to correct its orders. She further argues that complainant harps on the wrong premise that the questioned Writ was issued beyond the allowable time frame of five (5) years. Section 6, Rule 39 which complainant invokes applies to a final and executory judgment or order. The basis of the questioned Writ is Section 21, Rule 70 that allows immediate execution on appeal.

Judge Garfin claims that complainant's remedy lies with the proper court through a proper judicial action and not with the Office of the Court Administrator (OCA) by means of an administrative complaint. She likewise contends that the complaint is baseless as it does not allege fraud, dishonesty or corruption on her part and does not show that she acted in bad faith or with deliberate intent to do injustice in issuing the assailed orders.

Anent the implementation of the Writ, she states that no information reached her nor was there any formal complaint filed by complainant with the RTC concerning any irregularity allegedly committed by Bolivar. She posits that this baseless allegation is a mere attempt to give more teeth to the instant complaint.

Meanwhile, Atty. Mampo in her Comment[16] dated 22 February 2006, basically avers that she issued the Writ pursuant to the 6 June 2005 Order of Judge Garfin. Thus, she cannot be faulted for performing a purely ministerial duty falling under Section 4,[17] Rule 136 of the Rules of Court and prescribed in the Manual for Clerk of Courts. Moreover, the Court of Appeals where complainant's petition for review was pending at that time, did not issue a temporary restraining order or injunction enjoining her from issuing it. The complaint being utterly baseless, Atty. Mampo prays not only for its dismissal but also for complainant to be required to show cause why he should not be cited in contempt for filing this baseless and malicious complaint against her.

For his part, Bolivar narrates in his Comment[18] dated 22 February 2006 that he went to complainant's house on 17 November 2005 accompanied by a policeman to implement the Writ. He was allowed to enter the gate of the house after which he courteously and respectfully explained to complainant who is a lawyer and officer of the court, the contents of the Writ he is duty bound to implement. When furnished a copy, complainant refused to

acknowledge receipt thereof for unknown reasons.

In its Report,[19] the OCA found no merit in the complaint. It observed that the charges against Judge Garfin are judicial in nature for which there is an appropriate judicial remedy. In fact, complainant availed of such remedy when he assailed the orders before this Court. His petition for review, docketed as G.R. No. 168775, was denied in a Resolution[20] dated 14 September 2005. It was considered closed when this Court denied complainant's motion for reconsideration.[21]

Furthermore, it found no showing of bad faith, fraud, dishonesty or corruption on the part of Judge Garfin in issuing the assailed orders to hold her administratively liable. It stressed that no magistrate is infallible and not every erroneous act of a judge in her judicial capacity is subject to disciplinary action.

As to the charge of abuse of authority against Atty. Mampo and Bolivar, the OCA found the same to be without basis. It was Atty. Mampo's ministerial duty to issue the Writ pursuant to Judge Garfin's 6 June 2005 Order. As to Bolivar, the OCA observed, thus:

Other than the bare allegation that he "forcibly and tremendously (sic) executed" the writ of execution dated July 15, 2005 and that he demolished a portion of complainant's property when the only subject of the writ of execution was possession of the property, complainant miserably failed to offer competent evidence that would overcome the presumption enjoyed by respondent that he regularly performed her [sic] duty. Besides, there is no truth to complainant's claim that the subject writ of execution was only possession of the property as it is very clear from the dispositive portion of the judgment that [sic] was executed that the structure introduced by the complainant is likewise ordered demolished by the court.[22]

As to Atty. Mampo's prayer that complainant be required to explain the filing of a clearly unfounded complaint against her, the OCA found the same justifiable under this Court's Resolution[23] prescribing measures to protect members of the Judiciary from baseless and unfounded administrative complaints considering that complainant is a lawyer who has the sworn duty to support meritorious causes only. The OCA further noted it too cunning of complainant to present only the facts that would favor his complaint and withhold those that would help in the fair resolution of the case.

Hence, the OCA submitted the following recommendation:

Respectfully submitted for the consideration of the Honorable Court is our recommendation that the instant administrative complaint against the respondents be DISMISSED for lack of merit and that complainant Tirso P. Mariano be required to SHOW CAUSE why he should not be held in contempt of court for filing a clearly baseless and unfounded administrative complaint.[24]

We adopt the findings and recommendations of the OCA with some modifications as regards Atty. Mampo's prayer that complainant be required to show cause why he should not be held in contempt of court.

Time and again, we have ruled that the acts of a judge pertaining to his judicial functions are not subject to disciplinary action unless they are tainted with fraud, dishonesty, corruption or bad faith.[25] These, however, are absent in this case. The assailed acts of Judge Garfin being judicial in nature may not be the proper subject of an administrative complaint. It is axiomatic that, where some other judicial means is available, an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular.[26] Furthermore, this Court denied on 14 September 2005 complainant's petition for review assailing Judge Garfin's orders for want of "any special and important reason to warrant the exercise by this Court of its judicial discretion to grant the petition pursuant to Section 6, Rule 45 of the Rules"[27] and denied his motion for reconsideration with finality on 14 December 2005, "no compelling reason having been adduced to warrant the reconsideration sought."[28] Thus, the charges of grave abuse of judicial discretion and gross ignorance of the law against Judge Garfin have

no leg to stand on.

Neither will the complaint prosper against Atty. Mampo and Bolivar.

There is clearly nothing irregular with Atty. Mampo's issuance of the Writ. The function of ordering the execution of a judgment devolves upon the judge whereas another person, viz., the clerk of court can perform the act of issuing the writ of execution. As the rule now stands, the clerk of court may, under the direction of the court or judge, make out and sign all writs and processes issuing from the court. When Judge Garfin issued an order granting the plaintiff's motion for reconsideration and directing the issuance of the Writ, Atty. Mampo was left with no choice but to issue the Writ as directed, it being a ministerial duty on her part as provided in the Manual for Clerks of Court[29] and in accordance with Section 4, Rule 136 of the Rules of Court. Complainant even admits this in his complaint, thus:

Obviously, the issuance of the Writ of Execution by the Branch Clerk of Court dated 15 July 2005, was in compliance of [sic] the Order dated June 6, 2005 of the herein respondent judge and the same executed by the deputy sheriff on November 17, 2005.[30]

We likewise find no irregularity in Bolivar's implementation of the Writ as complainant failed to adduce an iota of evidence in support of his allegations. In administrative proceedings, it is axiomatic that the complainant must prove by substantial evidence, the allegations in the complaint.[31] Since he failed in this regard, Bolivar enjoys the presumption of regularity in the performance of his duties.

We cannot, however, sustain the OCA's observation that Atty. Mampo's plea that complainant be required to explain the filing of a clearly unfounded complaint against her finds justification under A.M. No. 03-10-01-SC. Said resolution covers administrative complaints against justices and judges only. While it applies to Judge Garfin, Atty. Mampo cannot avail of it.

Nevertheless, we cannot let complainant go unscathed. He has to explain the filing of what appears to be a clearly baseless suit against respondents and the withholding from the Court of important facts relative to the suit, i.e., that the Writ involved not only the possession but also the demolition of the structures found in the premises, the filing of plaintiff's motion for reconsideration dated 11 February 2005 and the basis therefor, as well as the basis for Judge Garfin's 6 June 2005 Order granting the motion. Thus, the concealment of the facts made it appear that Judge Garfin issued the order injudiciously, and that Bolivar overstepped his bounds in implementing the Writ. It may have degraded the administration of justice and may amount to indirect contempt.[32] As a lawyer and an officer of the court, complainant owes candor, fairness and good faith to the court[33] for he has a responsibility in the proper administration of justice.

WHEREFORE, the recommendation of the OCA is APPROVED. The administrative complaint against Judge Zeida Aurora B. Garfin, Clerk of Court Jesusa I. Mampo and Sheriff IV Sebastian T. Bolivar is DISMISSED for lack of merit. Complainant Tirso P. Mariano is hereby required to SHOW CAUSE why he should not be held in contempt of court for filing what appears to be a clearly baseless and unfounded administrative complaint against herein respondents and for withholding from this Court important information relative to the suit, within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 1-8.

[2]Id. at 67-74.

[3]Id. at 74.

[4] In an Order dated 27 October 2000; id. at 75-78.

[5] Id. at 80-81.

[6] Id. at 21.

[7] Id. at 22.

[8]SEC. 19. Immediate execution of judgment; how to stay same. - If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. x x x

x x x Should the defendant fail to make the payments above prescribed from time to time, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

x x x x [emphasis supplied].

SEC. 21. Immediate execution on appeal to Court of Appeals or Supreme Court. - The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[9] Rollo, pp. 23-24.

[10] Id. at 48.

[11] SEC. 6. Execution by motion or by independent action. - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

[12] SEC. 2. Discretionary execution. -Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court, while it has jurisdiction over the case and is in possession of either the original record or the record on appeal as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of judgment or final order even before the expiration of the period to appeal.

[13] Rollo, p. 3.

[14] Id. at 98-109.

[15] SEC. 6. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial

officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these Rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

[16] Rollo, pp. 32-36.

[17] 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.

[18] Rollo, pp. 41-42.

[19] Id. at 110-117.

[20] Id. at 90.

[21] Id. at 91.

[22] Id. at 116.

[23] A.M. No. 03-10-01-SC, entitled "Resolution Prescribing Measures to Protect Members of the Judiciary From Baseless and Unfounded Administrative Complaints," which took effect on 4 November 2003.

[24] Rollo, pp. 116-117.

[25] *Martin v. Judge Guerrero*, 375 Phil. 584, 593 (1999).

[26] *Atty. Hilario v. Hon. Ocampo III*, 422 Phil. 593, 606 (2001) citing *Santos v. Orlino*, Adm. Mat. No. RTJ-98-1418, 296 SCRA 101, September 25, 1998.

[27] Resolution dated 14 September 2005.

[28] Id.

[29] THE 2002 REVISED MANUAL FOR CLERKS OF COURT, Chapter VI.F.

[30] Rollo, p. 5.

[31] *Morales, Sr. v. Judge Dumlao*, 427 Phil. 56, 62 (2002).

[32] RULES OF COURT, Rule 71, Sec. 3(d).

[33] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 10.

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