

SERGIO F. DEL CASTILLO, PETITIONER, VS. MANUEL H. JAVELONA, JUSTICE OF THE PEACE OF BAGO, ETC., ET AL., RESPONDENTS.

G.R. No. L-16742. September 29, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

This is a petition for Certiorari and Mandamus.

It appears that on October 7, 1959, Sergio F. del Castillo filed a complaint for breach of contract and damages against the Ma-ao Sugar Central Co., Inc. (Civ. Case No. 330), before the Justice of the Peace Court of Bago, Negros Occidental, presided over by Justice of the Peace Manuel H. Javelona. Before the defendant company could answer, JP Javelona filed a petition with Hon. Jose Querubin, the Executive Judge of the Occidental Negros CFI, requesting that he (Javelona) be authorized to inhibit himself from hearing the case on the ground that counsel for defendant company, Atty. Emilio Y. Hilado, is his first degree cousin. Judge Querubin designated respondent Luis G. Torres, Pulupandan JP to hear Civil Case No. 330. In the interim, the defendant company had filed its answer and JP Torres had set the case for hearing. No hearings were held, however, due to the absence of JP Torres and/or postponements asked by defendant. On January 27, 1960, plaintiff therein (now petitioner), filed a motion for the reconsideration of the order of Judge Querubin, alleging that relationship between Judge and counsel is not a legal basis for inhibition, citing Section 1 of Rule 126 of the Rules and American cases. JP Javelona answered the motion for reconsideration stating: (1) That he inhibited himself from presiding over the trial of Civil Case No. 330 in the Bago JP Court on the ground that he is a first degree cousin of defendant's counsel; (2) that he candidly believes that such relationship might cast some suspicion in his integrity as a JP if and when his first cousin wins, and bring unpleasant consequences, if he loses; and (3) that a JP of Sagay, Negros Occidental, was dismissed from the service on the same ground of relationship, with the party or with the adverse attorney.

On February 12, 1960, Judge Jose F. Fernandez, then the Executive Judge, same CFI, handed down the following Order:

"Although it is true as stated in the motion for reconsideration that the reason advanced by Judge Javelona is not one of those specified in Sec. 1, Rule 126 of the Rules of Court, nevertheless, it appears that the matter in question is one of 'inhibition', and 'disqualification'. And it appearing that the reason advanced by Judge Javelona is a valid cause for inhibition, the motion for reconsideration is hereby denied."

Questioning the jurisdiction of respondent Torres to try the case, alleging that the order designating him to preside over the case is contrary to law, petitioner del Castillo brought the matter to us and prays:

1) That after due hearing, this Court render judgment declaring that Rule 126 of the Rules provides for the only valid grounds which a judge may avail to disqualify himself; that apart from said rule, there is no other law providing for ground of inhibition as distinguished from disqualification and that relationship to counsel is not a valid and legal ground for disqualification or inhibition;

- 2) That accordingly, respondent Manuel H. Javelona cannot, lawfully disqualify himself from hearing Civil Case No. 330 and the Executive Judge of the Court of First Instance can, neither lawfully disqualify respondent Javelona from presiding over said case and designate respondent;
- 3) That the orders issued by respondent Executive Judge designating, and the one sustaining the designation of respondent Torres to preside over said Civil Case No. 330 be declared null and void;
- 4) That this Court declare, all the actuaciones of respondent Torres in said civil case are null and void; and
- 5) That respondent Javelona be compelled to hear said Civil Case No. 330.

The petition does not allege lack of jurisdiction on the part of the respondent Executive Judge to grant the petition to inhibit. No excess of jurisdiction or grave abuse of discretion is attributed to said respondent Executive Judge. Even on this score alone, certiorari does not lie because the respondent Judge in granting JP Javelona's petition to inhibit might have only made an erroneous conclusion of law or of facts, which can not be corrected by certiorari (Gov't. vs. Judge of First Instance of Iloilo, 34 Phil., 157). The apprehension of petitioner that the designated JP may not be legally clothed with jurisdiction, and Civil Case No. 330 would again be retried before respondent Javelona, thereby entailing waste of time, effort and money, is also without valid basis so as to entitle him to the relief prayed for.

Leaving aside, however, the procedural aspect of the controversy, let us take up the question of the legality of the inhibition by JP Javelona and the order authorizing the same issued by respondent Judge. Admittedly, the law governing disqualification or inhibition of judges is Rule 126, which provides:

"Sec. 1.—Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

The question posed, therefore, is whether or not, in the absence of any challenge directed against him by either party to a case, a judge, may voluntarily request that he be allowed to inhibit himself from hearing and deciding a case, where the lawyer for one of the parties is his "first degree cousin" or on grounds of similar nature. Obviously, Rule 126 enumerates the grounds for disqualification of a judge upon being challenged and under which he should disqualify himself. The rule, however, has never been interpreted to prohibit a judge from voluntarily inhibiting himself, in the absence of any challenge by either party, due to his close blood relationship with counsel for one of said parties. Considering the spirit of the Rule, it would seem that cases of voluntary inhibition, based on good, sound and/or ethical grounds, is a matter of discretion on the part of the judge and the official who is empowered to act upon the request for such inhibition.

In the case of *Gutierrez vs. Hon. A. Santos, et al.* 112 Phil., 184, the judge had inhibited himself on the ground that the opinion expressed by him in a letter addressed by him as counsel for Manuel Borja and others, to the then Secretary of the Interior "might, some way or another, influence his decision in the case at bar" and expressed his fear of not being able to render a truly impartial judgment. This Court, interpreting the Rule said:

"Petitioner invoking the provisions of Section 1, Rule 126 of the Rules of Court, argues that the case of respondent Judge does not fall under any one of the grounds for the disqualification of judicial officers stated therein. Assuming arguendo that a literal interpretation of the legal provision relied upon justifies petitioner's contention to a certain degree, it should, not be forgotten that, in construing and applying said legal provision, we cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer,

which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge (30 Am. Jur. p. 767). Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law—stated in general terms—that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent (30 Am. Jur. Supra) because—

"* * * However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed ex-parte may still linger to affect unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or can not under the rules of evidence. No effort of the will can shut out memory; there is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process * * * (Ann. Cas. 1917A, p. 1235).

Little need be commented on the salutary ruling, just quoted, except to add that if in the instant case, counsel for respondent company, will win the case, the petitioner could not be prevented from applying the saying that "Blood is thicker than water", and from thinking and suspecting that respondent Javelona was biased and prejudiced. The courts should administer justice free from suspicion of bias and prejudice; otherwise, parties litigants might lose confidence in the judiciary and destroy its nobleness and decorum.

In the cases cited by the petitioner, the qualification of the trial judge was challenged by one of the parties thereto and not one has ruled upon the question of voluntary inhibition, like the case at bar. We do not wish to dwell on semantics, by establishing a distinction between inhibition and disqualification. They may mean the same thing and bring the same result, in the final analysis. For while the judge who is disqualified under said Rule 126 may and should inhibit himself; he who remains qualified may be inhibited or may inhibit himself on some other grounds. In other words, while Rule 126 provides for disqualification, it does not include nor preclude cases and circumstances for voluntary inhibition which depends upon the discretion of the officers concerned.

We should also be mindful of the supervisory duties of the Court of First Instances over the justice of the peace courts, which includes the power to reprimand the justice of the peace or recommend his removal and disqualification from holding office or suspend him from office pending action by the President (Sec. 97 Judiciary Act of 1948). And the Court of First Instance, in proper cases "shall advise and instruct them whenever requested, or when occasion arises, and such justices shall apply to him and not to the Secretary of Justice for advise and instructions * * * "(section 96, ditto), which simply go to show that the respondent JP Javelona and Torres and the respondent Executive Judge, have all acted within the discretionary powers and duties vested upon them by law, in the exercise of which, they have not abused, gravely or otherwise.

The respondents have taken a bold step towards the strengthening of the judicial and ethical precepts discussed in this opinion, and this court can not but spouse their cause and declare that mandamus does not likewise lie, because the petitioner has not established a clear right to compel respondents to act in accordance with his petition.

Having reached this conclusion, we find it superfluous to rule on the admissibility or not of the petitioner's deposition.

Wherefore, the petition is hereby dismissed for lack of merits, with costs against herein petitioner, Sergio F. del Castillo.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, and Makalintal,

JJ., concur.

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