

**SPOUSES JULIO V. CUI AND ARESIA OBSIOMA-CUI, COMPLAINANTS,
VS. JUDGE JOB B. MADAYAG, RTC, BR. 145, MAKATI, RESPONDENT.***A.M. No. RTJ-94-1150. June 05, 1995*

Ponente: BELLOSILLO, J.

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Judge Job B. Madayag, RTC, Br. 145, Makati, is charged administratively with ignorance of the law, grave misconduct and oppression relative to Civil Case No. 91-683, "Ma. Louisa Theresa T. Bernasconi, et al. v. Ma. Christina C. Bernasconi, et al.," for partition and reconveyance, and Civil Case No. 91-684, "Ma. Louisa T. Bernasconi, et al. v. Jorge C. Bernasconi, et al.," for support.

It appears that on 22 April 1991, before Civil Cases Nos. 91-683 and 91-684 were re-raffled to respondent Judge, a writ of preliminary injunction was already issued by Judge Teofilo Guadiz, Jr., prior to his inhibition in Civil Case No. 91-683. After these cases were reassigned to respondent Judge, defendants therein filed a motion dated 5 November 1991[1] for the lifting of the writ of preliminary injunction and for the dismissal of the cases on the grounds stated in their Motion For Preliminary Hearing And For Consideration Of Their Affirmative Defenses Constituting Grounds For A Motion to Dismiss, filed on 3 May 1991.[2] The motion of defendants of 5 November 1991 as well as that of 3 May 1991 did not contain the requisite proof of service to plaintiffs. Nonetheless, respondent Judge set for hearing on 15 November 1991[3] the first prayer in defendants' motion, i.e., to lift the writ of preliminary injunction. Plaintiffs received the Motion of 5 November on 11 November 1991. But the notice of hearing intended for plaintiffs, although prepared on 7 November 1991, was mailed only on 14 November 1991 and received by them on 21 November 1991.

On 15 November 1991, despite the non-appearance of plaintiffs, respondent Judge allowed defendants to argue their motion ex-parte. On 25 November 1991 defendants filed a Manifestation (with Urgent Motion) praying for the approval of the counter-injunction bond and the lifting of the writ of preliminary injunction. On 28 November 1991 respondent Judge motu proprio issued an order approving the counter-injunction bond and dissolving the writ. On 11 December 1991 plaintiffs sought to reconsider the order. At the same time, they filed a separate motion for inhibition of respondent Judge pointing out that the latter's cognizance of defendants' motion dated 5 November 1991 and the delayed service of the notice of hearing of 15 November 1991 led them to believe that respondent had lost the "cold neutrality of an impartial judge." [4] On 18 February 1992 respondent Judge denied both motions.[5]

In the interim, respondent Judge granted the other prayer in the motion of 5 November 1991 and set on 3 December 1992 the reception of defendants' evidence in support of their Motion for Preliminary Hearing And For Consideration Of Their Affirmative Defenses Constituting Grounds For A Motion To Dismiss. The grounds for dismissal cited by defendants were lack of cause of action and lack of legal capacity to sue. On 3 December 1992, despite notice to the parties, only defendants appeared so that the hearing was reset to 10 December 1992. In the afternoon of 3 December 1992 counsel for plaintiffs filed a Manifestation and Motion explaining that his absence at the hearing was due to illness and praying that the hearing on 10 December 1992 be cancelled and reset in view

of his prior engagement before the RTC of Baguio City.

On 10 December 1992 plaintiffs and their counsel failed to appear. Hence, respondent issued an order granting defendants' prayer to be allowed to present their evidence ex-parte in support of their motion and that plaintiffs be deemed to have waived presentation of evidence, and noting defendants' intention to submit a formal offer of evidence and memorandum in support of their motion to dismiss.[6]

On 23 December 1992 plaintiffs filed a Motion For Reconsideration[7] of the Order of 10 December 1992 to which a Joint Opposition[8] was filed by defendants. Plaintiffs also filed a Second Motion For Inhibition on grounds of bias and oppression.[9] On the other hand, defendants filed a Memorandum[10] but did not file a formal offer of evidence. On 10 March 1993 respondent Judge issued an order which (a) denied the separate motions of plaintiffs for reconsideration of the order of 10 December 1992 and for his inhibition; (b) ordered plaintiffs to inform the court whether they desired to adduce evidence controverting the evidence of defendants presented in the hearing of 10 December 1992; and, (c) opined that plaintiffs' Manifestation and Motion of 3 December 1992 had been rendered moot and academic with the presentation of defendants' evidence on 10 December 1992.[11]

Thereupon, plaintiffs filed with this Court a petition for certiorari and prohibition assailing the Order of 10 March 1993. On 5 May 1993 the petition was dismissed upon a finding that no grave abuse of discretion was committed by respondent Judge.[12] On 6 August 1993 the trial court dismissed the consolidated cases. Plaintiffs then went to the Court of Appeals for recourse.

Complainants, who are the legal guardians of plaintiffs, charge respondent Judge with ignorance of the law. According to them, defendants' alleged ground of dismissal are in reality and effect based only on one ground, that is, lack of cause of action. There being only one ground, material allegations of the complaint are deemed hypothetically admitted by defendants. Consequently, respondent ought not to have allowed defendants to disprove the allegations of the complaint in line with the rules of procedure, much less consider the testimony of defendants' witness as well as the documents presented in the hearing of 10 December 1992 because defendants failed to make a formal offer of their evidence.

Complainants likewise impute to respondent Judge grave misconduct and oppression. They assert that from his actuations, respondent Judge was determined to rule in defendants' favor from the time the cases were assigned to him.[13]

In his comment respondent Judge maintains that he had faithfully observed procedural law in dissolving the writ of preliminary injunction issued by Judge Guadiz, Jr., on the basis of the counter-injunction bond filed by defendants, and that the delayed receipt by plaintiffs of the notice of hearing set on 15 November 1991 was a "chance case of mere inadvertence on the part of the court's personnel and was not meant to deprive plaintiffs of their day in court." According to him, upon being made aware of this circumstance, he refrained from immediately resolving the motion and waited for plaintiffs' responsive pleading; on 15 November 1991 plaintiffs filed a Manifestation explaining their absence during the hearing but did not submit any comment or opposition. Subsequently, defendants filed a Manifestation (with Urgent Motion) praying for the dissolution of the writ of preliminary injunction on the basis of a counter-bond which in effect practically abandoned their previous motion insofar as their prayer for dissolution of the writ was concerned. Upon failure of plaintiffs to file their comment and after being convinced that the rights of the parties, particularly of plaintiffs, were fully secured and protected, he resolved to grant defendants' prayer. He submits that his action was also in line with this Court's ruling upholding the exercise of a trial judge's sound discretion in dissolving a preliminary injunction.

Respondent Judge further claims that on 10 December 1992 he allowed defendants to present their evidence

ex-parte on their affirmative defenses constituting grounds for a motion to dismiss without prejudice to the right of plaintiffs to present and submit their own controverting evidence; that plaintiffs' Manifestation And Motion praying for the cancellation of the 10 December 1992 hearing was belatedly filed and became moot and academic since the court had already reset the hearing on defendants' Motion for Preliminary Hearing from 3 December to 10 December 1992 in its case calendar; that besides, plaintiffs ought not to presume that their motion would be automatically granted; that considering that it was a law firm that was appearing for plaintiffs a lawyer should have been sent by the firm as a courtesy to the court and a sign of good faith; that defendants' failure to file a written offer of exhibits was a trivial oversight because the testimony of the witness in connection with the exhibits was duly recorded; that despite his order granting plaintiffs the opportunity to adduce controverting evidence, the latter failed to submit any for eight (8) months; and, that in the absence of plaintiffs' evidence, he dismissed the cases on 6 August 1993.

Respondent Judge opines that the matters treated in the complaint are judicial in character and complainants can still appeal to the appropriate appellate court to question his order dismissing the civil cases.[14]

On 20 December 1993 plaintiff filed a petition for certiorari and prohibition with the Court of Appeals assailing the Order of 6 August 1993[15] but on 22 June 1995 the petition was dismissed. The case is now with us on a petition for certiorari with prayer for temporary restraining order and/or writ of preliminary injunction.

In the resolution of 6 July 1994 the instant case was referred to Mme. Justice Pacita Cañizares-Nye of the Court of Appeals for investigation, report and recommendation.[16] At the initial hearing before the Investigating Justice, the parties agreed to submit the case on the basis of the annexes attached to their respective pleadings.[17]

On 7 September 1994 Mme. Justice Cañizares-Nye submitted her report.[18] While the investigating Justice declined to comment on the orders of respondent Judge denying the motions for inhibitions for being sub judice, she passed upon the propriety of his order lifting the writ of preliminary injunction and approving the counter-injunction bond. Considering however that this order is among those assailed in the petition before this Court, the same cannot be taken up in an administrative proceeding. We shall therefore confine our discussion to the findings of the investigating Justice relating to the administrative aspect of the complaint.

In her report, the investigating Justice faults respondent Judge's cognizance of defendants' Motion To Dismiss in Civil Case No. 91-684 and the Motion For Preliminary Hearing And For Consideration Of Affirmative Defenses Constituting Grounds For A Motion To Dismiss in Civil Case No. 91-683 which did not comply with Secs. 4, 5 and 6, Rule 15, of the Rules of Court. The pertinent portion of her report reads -

Finally, both the Motion To Dismiss filed in Civil Case No. 91-684 and the Motion For Preliminary Hearing And For Consideration of Affirmative Defenses Constituting Grounds For A Motion To Dismiss filed in Civil Case No. 91-683 should not have been entertained for failure to contain the mandatory Notice of Hearing (Annexes "C" and "G").

On page 16 of the Motion To Dismiss is a Notice of Hearing addressed to the Clerk of Court, RTC, Makati, Br. 147, which reads:

NOTICE OF HEARING

The Clerk of Court
Regional Trial Court
National Capital Judicial Region
Makati, Metro Manila
Br. 140

GREETINGS:

Please set the foregoing 'Motion To Dismiss' for the consideration and approval of this Honorable Court on 26 April 1991 at 8:30 A.M.

(SGD)

COPY FURNISHED:

SANTOS, PILAPIL & ASSOCIATES

Counsel for the Plaintiffs
7th Floor, Padilla-delos Reyes
Building
232 Juan Luna, Manila
(p. 68, rollo.)

In like manner, the Notice of Hearing appearing at the bottom page of the Motion for Preliminary Hearing And For Consideration Of Affirmative Defenses Constituting Grounds For A Motion To Dismiss (Annex "G") states:

NOTICE OF HEARING

The Clerk of Court
Regional Trial Court
National Capital Judicial Region
Branch 147
Makati, Metro Manila

GREETINGS:

Please set the foregoing 'Motion For Preliminary Hearing and Consideration Of Affirmative Defenses Constituting Grounds For A Motion To Dismiss' on 06 May 1991 at 8:30 A.M. for the consideration and approval of this Honorable Court.

(SGD)

(pp. 134-135, rollo.)

Both pleadings do not bear proof of service of copies thereof upon adverse counsel." [19]

The investigating Justice supports her findings by citing our rulings which stress that a notice of hearing addressed to the Clerk of Court and not to the parties is no notice at all, and that a motion which fails to comply with Secs. 4, 5 and 6 of Rule 15 of the Rules of Court is nothing but a useless piece of paper which should be disregarded and ignored. [20] The investigating Justice then recommends that "respondent Judge be REPRIMANDED and admonished to be more circumspect in the discharge of his functions and duties as such in order to avoid any impression of impropriety that could erode the faith and trust reposed by the public at large and the litigants in particular in the dispensation of justice."

We approve the findings of the Investigating Justice. However, we differ on the imposable penalty. Indisputably, any motion that does not contain proof of service of notice to the other party is not entitled to judicial cognizance. [21] For such motion is nothing but a scrap of paper. The procedural requirements of motions are elementary rules. Hence, respondent Judge is expected and presumed to possess such basic knowledge.

In taking cognizance of the defective motion to lift the writ of preliminary injunction, respondent Judge explains that he has the discretion to act on the motion without need of conducting a hearing. He contends that he dissolved

the writ only after waiting in vain for the comment of plaintiffs and on the belief that the rights of the parties, particularly of plaintiffs, were fully secured and protected.

While a trial judge may have discretion to dissolve the writ of preliminary injunction ex-parte or only after notice and hearing, yet, he must first be absolutely certain that the motion praying for the dissolution of the writ is in due form. In this case, respondent Judge carelessly overlooked the basic procedural requirement of proof of service of notice of the motion to the other party. The failure of respondent Judge to attach importance to the standard and fundamental procedure mandated by the Rules of Court renders him administratively liable.

In several cases, we have imposed the penalty of fine upon erring judges who failed to comply with fairly elementary legal principles, such as declaring a party guilty of indirect contempt without giving her the opportunity to rebut the charges and without serving her summons;^[22] requiring complainant who is not a counter-protestant in an election case to pay a cash deposit;^[23] and, ordering the arrest of accused on the basis of mere affidavits of the offended party and without conducting the preliminary investigation.^[24]

The case of respondent Judge should be no different. For judges are called to exhibit more than just a cursory acquaintance with statutes and procedural laws. They are not "common men and women, whose errors men and women forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed."^[25] Most importantly, respondent Judge is required by Canon 3, Rule 3.01 of the Code of Judicial Conduct to be faithful to the law and maintain professional competence. As we held in one case, there will be faith in the administration of justice only if there be a belief on the part of the litigant that the occupants of the bench cannot justly be accused of deficiency in their grasp of legal principles.^[26]

As regards the Motion for Preliminary Hearing, it is worthy to note that plaintiffs had ironically cured the absence of proof of service of the motion to them. The aforesaid motion had been filed with the sala of Judge Guadiz, Jr., as early as 6 May 1991. Despite the defect in defendants' motion, plaintiffs filed their opposition to the aforesaid motion on 10 May 1991. As a result, Judge Guadiz, Jr., set the motion for reception of evidence on 24 May 1991 which did not proceed due to his inhibition from further hearing the cases. Thus, respondent Judge merely reactivated the Motion for Preliminary Hearing which remained pending for more than one and one-half (1-1/2) years.^[27]

Anent the charge of gross misconduct and oppression, we find no evidence to sustain the accusation. Apparently, respondent Judge acted as he did because the civil cases have been pending since 1 March 1991. Moreover, the parties stipulated prior to the re-raffle of the cases before him as then Executive Judge that, in the interest of the early resolution of these civil cases, they would earnestly avoid delaying the proceedings by filing motions which would delay its termination.

Lastly, we are appalled that a simple notice of hearing of 15 November 1991 prepared on 7 November 1991 slept for seven (7) days in respondent's court before it was mailed to plaintiffs on the eve of the hearing. Such display of laxity and inefficiency on the part of the court personnel militates against the management skills of respondent Judge. It indicates that he has not been meticulous and zealous as he should have been in organizing and supervising the work of his subordinates as required by Canon 3, Rule 3.09 of the Code of Judicial Conduct. This impression is reinforced by respondent's failure to check from the records whether notice of hearing was served on plaintiffs before conducting the hearing on the motion to lift preliminary injunction. It was only upon plaintiffs' Manifestation that he came to know the reason for their absence at the hearing.

While respondent Judge attributed clerical oversight as the cause of the delayed transmittal, he has not however shown that he had admonished the erring personnel or that corrective measures in his court had been taken so as to stress the importance of complying with the requirement of due process. His leniency over the carelessness of

his subordinates led to a subsequent incident of delay in the service of a court order in 1992 involving another case for which he was severely reprimanded and warned.[28]

Evidently, disorderliness in releasing court notices and orders had already begun to affect his court in 1991, as demonstrated in this case, but respondent Judge neglected to take notice of this budding problem and eliminate it. Again, respondent should be reprimanded for such negligence in not scrupulously supervising the work of his subordinates. He is strictly admonished to adopt measures in his court for the prompt and efficient release of court orders and notices as well as for the effective monitoring of such releases to the parties to satisfy the requirement of due process. In the face of these incidents of inefficiency in the court of respondent Judge, a repetition of a similar act of carelessness hereafter will merit a more stringent penalty.

WHEREFORE, respondent Judge Job B. Madayag, RTC, Br. 145, Makati, is FINED P5,000.00 for his disregard of Sec. 6, Rule 15, of the Rules of Court, and for violation of Canon 3, Rule 3.01 of the Code of Judicial Conduct, with STERN WARNING that the commission of a similar act in the future will be dealt with more severely.

Respondent Judge is further REPRIMANDED for the delay in the service of the Notice of Hearing in Civil Cases Nos. 91-683 and 91-684 and ADMONISHED to faithfully observe the explicit mandate of Canon 3, Rule 3.09 of the Code of Judicial Conduct, not only by adopting measures in his court for the prompt and efficient release of court orders but also by establishing an effective system of monitoring of such releases to the parties, in order to strictly comply with the requirement of due process. Let copy of this Resolution be attached to the personal records of respondent Judge.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Quiason, J., on official leave.

[1] rollo, p. 149.

[2] Id., p. 112.

[3] Id., p. 173.

[4] Id., p. 175.

[5] Id., p. 187.

[6] Id., p. 190.

[7] Id., p. 191.

[8] Id., p. 200.

[9] Id., p. 195.

[10] Id., p. 215.

[11] Id., p. 214.

[12] Id., p. 3.

[13] Id., p. 25.

[14] rollo, pp. 1-7.

[15] Id., p. 262.

[16] Id., p. 315.

[17] Id., p. 333.

[18] Id., p. 368.

[19] rollo, pp. 393-394.

[20] Id., pp. 394-397.

[21] See Del Castillo v. Aguinaldo, G.R. No. 57127, 5 August 1992, 212 SCRA 169, 174.

[22] Lim v. Domagas, Adm. Matter No. RTJ-92-899, 15 October 1993, 227 SCRA 258, 263.

[23] Roa, Sr. v. Imbing, Adm. Matter No. RTJ-93-935, 11 March 1994, 231 SCRA 57.

[24] Ortiz v. Palaypayan, Adm. No. MTJ-93-823, 25 July 1994, 234 SCRA 391.

[25] Office of the Court Administrator v. Bartolome, Adm. Matter No. RTJ-90-446; Medina v. Bartolome, Adm. Matter No. RTJ-90-494; Office of the Court Administrator v. Bartolome, Adm. Matter No. RTJ-90-504; Ramon Tulfo's Column "On Target," Adm. Matter No. 90-1-021 RTC; and, Letter-Request dated July 24, 1990 of Provincial Governor Leonardo B. Roman, Bataan-Seeking The Transfer of Judge Jose T. Bartolome To Another Station, Adm. Matter No. RTC-90-8-1909-RTC, all prom. on 7 November 1991, 203 SCRA 328, 337.

[26] Libarios v. Dabalos, Adm. Matter No. RTJ-89-286, 11 July 1991, 199 SCRA 48, 56.

[27] rollo, pp. 4-6.

[28] Tan vs. Madayag, Adm. Matter No. RTJ-93-995, 11 March 1994, 231 SCRA 62.

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