

**MELISSA DOMONDON, ALMIRA BASALO, AND CLEO VILLAREIZ,
COMPLAINANTS, VS. JUDGE PERCIVAL MANDAP LOPEZ,
RESPONDENT.**

A.M. No. RTJ-02-1696. June 20, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an administrative complaint against Judge Percival Mandap Lopez of the Regional Trial Court, Branch 78, Quezon City for undue delay and gross ignorance of the law in the resolution of a case filed by complainants.

Complainants were students of the AMA Computer College in Quezon City and members of the editorial board of the official school publication called Dataline. It appears that on December 7, 1996, complainants published a spoof edition of the Dataline, which they called Amable Tonite. After conducting an investigation, the student Disciplinary Tribunal of the college recommended the expulsion of complainants from the school.[1]

On March 14, 1997, complainants and other members of the Dataline editorial board filed a complaint for damages with prayer for the issuance of a writ of preliminary mandatory injunction against AMA Computer College and Mauricia Herrera, Dean of Student Affairs. The case was filed in the Regional Trial Court of Quezon City, where it was docketed as Civil Case No. Q-97-30549 and assigned to respondent judge of Branch 78. Complainants alleged that they had been expelled from the defendant school in a despotic and oppressive manner in violation of their constitutional rights to due process and to free speech as well as the provisions of R.A. No. 7079, otherwise known as the Campus Journalism Act of 1991. They sought an award of damages in their favor and the issuance of a temporary preliminary mandatory injunction to enjoin the defendant school in the meantime to allow them to attend their classes and take their examinations.[2]

On March 25, 1997, AMA Computer College and Mauricia Herrera filed an “Opposition,” contending that the articles in the spoof edition which complainants had published were slanderous and derogatory; that R.A. No. 7079 itself enjoins student publications to observe the pertinent laws and school policies in the selection of articles for publication; that complainants had been given the opportunity to controvert the charges against them before they were expelled; and that complainants were guilty of using indecent language, committing vulgar and obscene acts, libel, and unauthorized disbursement of Dataline funds in the amount of P25,000.00.[3]

On April 3, 1997, complainants filed a reply, contending that the issue in the case was not the alleged defamatory nature of the questioned publication but the legality of their expulsion because they were expelled solely on the basis of their activities as members of the editorial board of Dataline and claiming that they were deprived of their right to due process.[4]

On June 2, 1997, defendants AMA Computer College and Mauricia Herrera filed a rejoinder, opposing complainants’ prayer for the issuance of a writ of preliminary injunction. They contended that, under R.A. No. 7079, editorial policies of the student publication should take into account the pertinent laws as well as the school policies in the selection of articles for publication; that the Amable Tonite was not a legitimate issue of the

Dataline; and that complainants could have submitted their grievances to the Commission on Higher Education (CHED) but the fact was that their complaint was dismissed because of their failure to attend a hearing previously set.[5]

On June 7, 1997, complainants pressed their request for the immediate resolution of their application for preliminary mandatory injunction before the end of the enrollment period. They alleged that the delay in the resolution of the writ was due to the defendants' failure to submit their rejoinder within the period given to them as the rejoinder was actually filed more than a month after the prescribed period had lapsed.[6]

On June 14, 1997, on the basis of the pleadings of the parties, respondent judge issued a resolution dismissing the case itself after finding that the expulsion of the complainants from the school was for cause and was effected only after an investigation during which they were duly heard.

Complainants moved for a reconsideration on the ground that the dismissal of the complaint could not be made solely on the basis of the parties' pleadings and affidavits and that trial must first be conducted to receive the evidence of the parties before the case was decided. They reiterated their allegation that a writ of preliminary injunction was necessary because they were expelled from the school solely on the basis of the articles published in their lampoon edition.[7]

Complainants then sought the disqualification of respondent judge on the following grounds: (a) that he had deliberately delayed the resolution of the injunctive writ which tended to arouse suspicion as to his ability to decide the case with fairness and integrity; (b) that he dismissed their complaint without legal or procedural basis and thus deprived them of their day in court; and (c) that they filed an administrative case against him with this Court.[8]

On September 26, 1997, respondent judge denied complainants' motion for reconsideration and motion to inhibit him for lack of merit. Respondent judge said he had conducted a hearing on the motion for preliminary mandatory injunction after which the parties were given time to file their pleadings and only after that did he resolve the case.[9]

Complainants blame respondent Judge Lopez for allowing the question of whether an injunction should be issued become moot by failing to resolve their motion before the start of the enrollment period on the first week of June 1997. In addition, they charge respondent judge with gross ignorance of the law in dismissing their case considering that: (a) no answer or motion to dismiss had been filed by the defendant school; (b) the pleadings and evidence, if any, on record referred only to the issuance of a temporary preliminary mandatory injunction and none of the defendant's pleadings which averred additional factual matters was verified; and (c) they were not given an opportunity to present their evidence.[10]

In his comment, respondent judge denied that he was guilty of undue delay in resolving complainants' application for injunction. He claimed that it took him only eight days to render his resolution after the issue of the injunction was submitted for resolution on June 6, 1997, the date of the filing of the defendants' rejoinder. He denied that he acted with malice in resolving the matter, claiming that he saw no urgency for the writ of preliminary injunction because (a) complainants' expulsion was for cause, the articles written by complainants being indecent and obscene; (b) complainants had been duly heard before they were expelled; (c) not all of the complainants were graduating students; and (d) the status quo at that point was that complainants were already expelled from the defendant school and such should not be disturbed in the absence of proof of their claims. As for his dismissal of the case on the merits, respondent judge justified his decision on the ground that the defendants' rejoinder contained a prayer for the same. He contends that this was tantamount to a motion to dismiss filed on the ground of lack of cause of action on the part of the complainants.[11]

Complainants filed a “Supplement to the Complaint for Dismissal/Separation from Service,” dated November 19, 1998, insisting that no hearing had actually been held on March 31, 1997 as both respondent judge and the defendants’ counsel failed to appear during the said date and that respondent judge did not show up despite being contacted by his clerk of court by telephone. Moreover, complainants claim that, although the resolution dismissing their case was dated September 26, 1997, it was actually received by them only on February 19, 1998, almost five months after its supposed issuance, raising the suspicion that the resolution had been antedated by respondent judge to make it appear that it was issued prior to the filing of the present administrative complaint.[12]

Respondent judge filed his comment, making a general denial of the charges against him.[13]

The Office of the Court Administrator (OCA), to which this case was referred, found respondent judge guilty of undue delay and gross ignorance of the law in his handling of Civil Case No. Q-97-30549 and recommended that he be ordered to pay a fine of P2,000.00 with warning that repetition of the same or similar offenses shall be dealt with more severely.

We find the recommendation, except as to the penalty, to be on the main well taken.

First. As regards the charge of delay in resolving the injunction issue raised by complainants, respondent judge says that the Rules of Court does not provide a period within which to resolve a prayer for a preliminary injunction. However, as the OCA well observed:

Judge Lopez cannot invoke the absence of any provision prescribing a period within which to resolve an application for a writ of injunction. He should have been guided by the exigencies of the situation. He knew that complainants were seeking the writ of preliminary mandatory injunction precisely because they wanted to be readmitted by the college and for them to be able to enroll in the first trimester of school year 1997-1998. This is evident from the affidavit of Merit attached to the complaint. (Rollo, pp. 15-16) The least that respondent Judge could have done was to resolve immediately the application for injunctive relief after the defendants failed to submit their Rejoinder on time so as to allow the complainants enough time to seek recourse to a higher court. As it is, even if he granted the application, considering that it was done only on June 14, the same would have been useless because complainants could no longer enroll since, according to them, the period to enroll expires on the second week of June 1997. (Rollo, p. 17)[14]

We agree with this observation and only add that Canon 3, Rule 3.05 of the Code of Judicial Conduct in fact enjoins judges to “dispose of the court’s business promptly and decide cases within the required periods.”[15] That respondent judge found the application for mandatory injunction to be without merit is of no moment. What was important is that he should have resolved the matter before the start of the enrollment for the first semester of the school year 1997-1998 so that complainants could avail themselves of other remedies if they were not satisfied with the ruling. Complainants repeatedly urged respondent judge to resolve the issue of the injunctive writ with utmost dispatch considering the little time left for them to enroll for the coming semester. But respondent judge failed to heed their plea.

Respondent judge says that the delay was due to the defendants’ failure to file their rejoinder on time but he lost no time promulgating his resolution dismissing the complaint as it was in fact issued only eight days after the filing of the rejoinder. This contention has no merit. If this excuse of respondent judge were accepted, all it would do for a party favored by a delay would be to mark time before filing his pleading until an event (e.g., the end of the enrollment period) supervenes to render the issue moot.

As respondent judge admits, the defendants’ rejoinder was filed only on June 2, 1997, although the last day for submission of the same was on May 9, 1997.[16] Respondent judge should have considered the defendants to

have waived the filing of their rejoinder and resolved the issue of injunction promptly. Respondent judge's procrastination only opens him to suspicion that he was favoring the defendants.[17]

Second. It is undisputed that no trial was ever conducted by respondent judge before issuing his resolution, dated June 14, 1997, dismissing the complaint in Civil Case No. Q-97-30549 for lack of merit. Respondent judge, however, justifies his action on the ground that the defendants' rejoinder sought the dismissal of the case for lack of merit and the same was in the nature of a motion to dismiss the case for lack of cause of action.

To be sure, the defendants did not file a motion to dismiss. What they filed was an "Opposition," dated March 25, 1997, in which they raised factual matters and affirmative defenses to answer the allegations in the complaint against them and prayed for the denial of the writ prayed for. The fact that the defendants filed a responsive pleading seeking affirmative relief and setting up defenses[18] negates the intent on their part to file a motion to dismiss.

It is apparent that respondent judge failed to distinguish between a motion to dismiss for failure of the complaint to state a cause of action and a motion to dismiss based on lack of cause of action. The first is governed by Rule 16, §1(g), while the second by Rule 33 of the 1997 Revised Rules of Civil Procedure.[19] The distinction between these two has been explained thus:

. . . The first [situation where the complaint does not allege a sufficient cause of action] is raised in a motion to dismiss under Rule 16 before a responsive pleading is filed and can be determined only from the allegations in the initiatory pleading and not from evidentiary or other matters aliunde. The second [situation where the evidence does not sustain the cause of action alleged] is raised in a demurrer to evidence under Rule 33 after the plaintiff has rested his case and can be resolved only on the basis of the evidence he has presented in support of his claim. The first does not concern itself with the truth and falsity of the allegations while the second arises precisely because the judge has determined the truth and falsity of the allegations and has found the evidence wanting.[20]

Hence, a motion to dismiss based on lack of cause of action is filed by the defendant after the plaintiff has presented his evidence on the ground that the latter has shown no right to the relief sought. While a motion to dismiss under Rule 16 is based on preliminary objections which can be ventilated before the beginning of the trial, a motion to dismiss under Rule 33 is in the nature of a demurrer to evidence on the ground of insufficiency of evidence and is presented only after the plaintiff has rested his case.[21]

As the rejoinder filed by the defendants was not based on the failure of the complaint to state a cause of action but on factual and legal matters allegedly excusing them from liability, the same could not be considered a motion to dismiss under Rule 16, §1(g).

Actually, what respondent judge did was to render a decision. Thus, in his so-called resolution, he stated:

Pertinent provisions of Republic Act No. 7099 provides that a set of guidelines by which a student publication is operated and managed, taking into account pertinent laws as well as the school administration's policies. Said guidelines shall determine the frequency of publication, the manner of selecting articles and features and other similar matters, (section 3(c) thereof); and students who are members of the editorial board shall not be suspended or expelled solely on the basis of articles he or she has written, or on the basis of the performance of his or her duties in the student publication, (section 7 thereof) (underscoring supplied).

The plaintiffs, who are all members of the editorial board, were not expelled solely on the basis of the articles they wrote in the alleged spoof publication of Dataline. They violated the Manual of the school with regard to the manner of selecting articles and features they are supposed to write or feature therein. . . . What they wrote is not in consonance with the principle of the State to promote campus journalism. . . but degrading and insulting to the tenets of professional journalism in the level of campus journalism.

Defendant school, through its Dean of Student Affairs, conducted an investigation and subsequently a hearing on December 9 and 10, 1996. During these hearings, plaintiffs admitted that they have knowledge of and consented to the publication of the tabloid or the spoof edition of the Dataline and their purpose for publishing such spoof edition is merely to entertain the studentry of AMACC. This was likewise not disputed nor denied by the plaintiffs in their verified Reply. On December 17, 1996, plaintiffs, through their Editor-In-Chief Ian Dexter R. Marquez, filed a complaint before the Commission of Higher [Education] against the administration of AMA Computer College for the malicious, arbitrary dismissal or expulsion of plaintiffs herein which was detrimental to students' rights and welfare, in violation of Republic Act No. 7079, (Annex "2", Rejoinder). However, said complaint was dismissed for failure on the part of the plaintiffs themselves to comply with the Order of the Commission dated February 19, 1997 for a formal hearing. Hence, this instant case.

....

... Also, the Manual of Regulation for Private Schools provides that the school or university can impose penalty for cause after due investigation having been conducted. The exclusion by the AMACC of plaintiffs from the roll of students to be admitted is warranted and in accordance with the law and in consonance with its regulatory and supervisory power so that the spirit of the law is observed.[22]

Respondent judge could not do this since there were issues of facts which had to be resolved. Respondent could dismiss Civil Case No. Q-97-30549 for lack of cause of action only after a trial on the merits. The manner in which the hearing before the disciplinary tribunal was held, whether complainants were expelled on the sole basis of the articles written in Amable Tonight, and whether or not Mauricia Herrera, who was one of the complainants in the disciplinary tribunal, was indeed a member thereof are factual issues which require the presentation of evidence before respondent judge could determine the veracity of the parties' claims. As admitted in his comment, dated October 23, 1997, respondent judge simply accepted as facts the affirmative defenses raised by the defendants, namely: (1) that complainants had given cause for their expulsion with the publication of the spoof edition of the Dataline; (2) that the articles in the said spoof edition, as "selectively reproduced" by the defendants in their Opposition, contained obscene and indecent language; and (3) that complainants were given due process before their expulsion.[23]

Without evidence as to their truthfulness or veracity, the allegations in the opposition filed by the defendants remained mere allegations and did not rise to the dignity of proof.[24] There is thus no factual support for respondent judge's resolution. Indeed, all that was submitted to respondent judge for resolution was merely the issue of whether or not to grant a preliminary mandatory injunction to compel the defendant school to allow complainants to enroll for the school year 1997-1998.

Only ignorance of basic procedure can account for the bizarre proceedings before respondent judge. When the law is elementary, not to be aware of it constitutes gross ignorance thereof. Judges are expected to have more than just a modicum of acquaintance with the statutes and procedural rules.[25] Truly, respondent judge failed to live up to the demands of his position as a member of the bench.

Third. Complainants also claim that respondent judge's resolution, dated September 26, 1997, denying their motion for reconsideration and motion to inhibit him was received by them only on February 19, 1998, or almost five months after its supposed issuance.[26] Respondent judge does not deny this allegation by complainants in his comment.[27]

This is not the first time a charge of this nature has been made against respondent judge. In A.M. No. RTJ-92-840, entitled "Atty. Arturo V. Miranda v. Judge Percival Lopez, Regional Trial Court, Branch 78, Quezon City," respondent judge was reprimanded by this Court for undue delay in the service of his decision in a civil case upon the parties. Respondent judge was thus not above covering up his shortcomings by making it appear that he timely

resolved a matter before him. Considering that counsel for complainants maintains his office only in Makati City[28] while respondent judge presides over a court located in Quezon City, it is hard to believe that the supposed September 27, 1997 resolution took five months before it could be served on complainants and their counsel. In any event, it is incumbent upon a judge to manage his court in such manner as to promote prompt and convenient disposition of its business.[29] Hence, the responsibility for the delay in the service of the resolution, dated September 26, 1997, on the complainants in this case lies only with respondent judge.

We now consider the penalty to be imposed on respondent judge. In a recent case[30] decided by this Court, a judge was fined in the amount of P1,000.00 for having incurred a delay of four months in resolving the issue of injunctive writ. On the other hand, a fine of P2,000.00 was imposed by this Court in previous cases[31] where judges were found guilty of gross ignorance of the law. In this case, where we find respondent judge guilty of undue delay in the resolution of a motion, gross ignorance of the law, and failure to heed a prior warning from this Court, a fine of P5,000.00 with warning of a more drastic sanction should he repeat the same offenses is appropriate.

WHEREFORE, this Court finds respondent Judge Percival Mandap Lopez, of the Regional Trial Court, Branch 78, Quezon City, GUILTY of gross ignorance of the law, undue delay in the resolution of the writ of preliminary mandatory injunction in Civil Case No. Q-97-30549, and failure to heed a prior warning by this Court and hereby imposes on him a FINE of P5,000.00, with warning that repetition of the same or similar offenses will be dealt with more severely.

SO ORDERED.

Bellosillo, (Acting C.J.), (Chairman), and Corona, JJ., concur.
Quisumbing, J., abroad, on official business.

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- [1] Annex A of the Petition; Complaint, p. 2; Rollo, p. 9.
[2] Annex A of the Petition; id., pp. 1-6; id., pp. 8-13.
[3] Annex F of the Petition; id., pp. 42-47.
[4] Annex G of the Petition; id., pp. 48-54.
[5] Annex H of the Petition; id., pp. 56-63.
[6] Annex B of the Petition; id., pp. 17-19.
[7] Annex D of the Complaint; id., pp. 25-34.
[8] Annex E of the Complaint; id., pp. 36-41.
[9] Annex A to the Supplement to the Complaint for Dismissal/Separation from Service; id., pp. 167-168.
[10] Complaint, pp. 3-4; id., pp. 3-4.
[11] Rollo, pp. 104-116.
[12] Id., pp. 157-165.
[13] Id., pp. 179-184.
[14] Report and Recommendation, dated March 18, 2002, pp. 4-5.

- [15] Balayo v. Buban, Jr., 314 SCRA 16 (1999).
- [16] Comment, dated October 23, 1997, p. 2; Rollo, p. 105.
- [17] Ubarra v. Tecson, 134 SCRA 4 (1985).
- [18] Fernandez v. International Corporate Bank, 316 SCRA 326 (1999) citing Diaz v. Adiong, 219 SCRA 631 (1993).
- [19] Under Rule 16, §1(g) of the old Rules of Civil Procedure, then applicable to the case filed by complainants before the trial court, a motion to dismiss may be made on the ground of failure of the complaint to state a cause of action.
- [20] China Road and Bridge Corp. v. Court of Appeals, 348 SCRA 401, 412 (2000).
- [21] Enojas v. Commission on Elections, 283 SCRA 229 (1997).
- [22] Resolution, dated June 14, 1997, pp. 2-5; id., pp. 21-24 (emphasis in the original).
- [23] Comment, dated October 23, 1997, pp. 6-7; Rollo, pp. 109-110.
- [24] SMI Development Corp. v. Republic, 323 SCRA 862 (2000).
- [25] Espino v. Salubre, A.M. MTJ-00-1255, Feb. 26, 2001.
- [26] Supplement to the Complaint for Dismissal/Separation from Service, dated Nov. 17, 1998, p. 8; Rollo, p. 164.
- [27] Comment, dated Oct. 28, 1999, pp. 1-6; id., pp. 179-184.
- [28] Complaint, dated March 7, 1997, p. 6; id., p. 13.
- [29] Ramires v. Corpuz-Macandog, 144 SCRA 462 (1986).
- [30] Viaje v. Hernandez, 346 SCRA 162 (2000).
- [31] Vercide v. Hernandez, 330 SCRA 49 (2000); Ting v. Atal, 231 SCRA 80 (1994).

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