

WENCESLAO NUEZ, COMPLAINANT, VS. AGERICO BALLE, RESPONDENT.

A.M. No. P-90-424. December 01, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

In an affidavit-complaint, Wenceslao Nuez, Treasurer/Cashier of the Leyte Metropolitan Water District, (LMWD) charged Agerico Balles, Clerk of Court and Ex-Officio Sheriff of the Municipal Trial Court in Cities, Tacloban City, with grave misconduct relative to the enforcement of the writ of preliminary mandatory injunction issued in Civil Case No. 90-01-008 of the Regional Trial Court Branch 7, Palo, Leyte, entitled "Local Water Utilities Administration v. Leyte Metro Water District, et al."

Complainant alleged that at about 2:00 P.M. of March 28, 1990, he was told to go the office of the LMWD General Manager, Ranulfo Feliciano. At that office, he saw Cayo Emnas, an LMWD engineer with respondent. The latter, without identifying himself, asked complainant to surrender to him the keys to the cashier's booth, the drawers and filing cabinets. Complainant replied that he would like first to speak with the LMWD's legal counsel before complying with the request. Respondent then ordered the policemen with him to arrest complainant. The policemen handcuffed complainant and brought him to the Tacloban City Police Station, where he was detained until 4:45 P.M. Upon learning that the door to the cashier's booth, as well as his drawers and filing cabinets had been forcibly opened, he decided to witness the inventory. When complainant arrived at the LMWD office, he saw that most of his records were thrown outside the cashier's booth. Complainant was made to sign an inventory report by respondent, which he did because of fear that he would again be detained. Inasmuch as the inventory was started in his absence and he was not informed that respondent was enforcing a court order, complainant signed the report under protest.

In his comment, respondent stated that the Regional Trial Court, Branch 7, Palo, Leyte, issued on March 5, 1990 a writ of preliminary mandatory injunction against LMWD and its Board of Directors in Civil Case No. 90-01-008 (Annex "1"). The writ was issued pursuant to an earlier order dated February 21, 1990 (Annex "1-A"), directing the LMWD Board of Directors to cease and desist from further exercising its authority and to turnover to the representative of the Local Water Utilities Administration (LWUA), all the property, assets and records of LMWD.

In an order dated March 23, 1990 (Annex "3"), the same court: (i) designated respondent as special sheriff to implement the writ of preliminary mandatory injunction; (ii) authorized the LWUA representatives to open the stockroom and filing cabinets of LMWD in order to gain access to the records of LMWD, and to use such force as may be necessary; and (iii) deputized the Tacloban City Police Station Commander to assist in enforcing the writ.

Respondent alleged that the writ had been partially enforced even prior to March 28, 1990.

Respondent also alleged that a memorandum dated March 27, 1990 was issued by Cayo Emnas (Annex "4"), wherein complainant was temporarily relieved as cashier of LMWD and directed to turnover all the funds and

records in his custody to Virginia Abayata. Complainant, however, refused to acknowledge receipt of a copy of the memorandum on the two occasions when it was served on him.

Respondent further claimed that when he met complainant at the LMWD premises at about 2:00 P.M. on March 28, 1990, he showed copies of the pertinent court orders and the writ of preliminary mandatory injunction, as well as a copy of Emnas' memorandum. Respondent warned complainant that he could be charged with contempt of court and with disobedience to a lawful court order if he refused to comply with the orders.

Respondent belied the allegation that the inventory was conducted in complainant's absence. He said that the filing cabinets and drawers inside the cashier's office were opened in the presence of complainant, his wife, Oda Feliciano Nuez, as well as three barangay officials.

Upon recommendation of the Office of Court Administrator, the complaint was referred to Judge Lolita O. Gal-lang, Regional Trial Court, Branch 8, Palo City, for investigation, report and recommendation.

Proceedings initiated by Judge Gal-lang were continued by Judge Fortunato B. Operario, Regional Trial Court, Branch 9, Palo, Leyte and later by Judge Getulio M. Francisco, Regional Trial Court, Branch 6, Tacloban City, Leyte.

In the report dated May 15, 1993, Judge Francisco recommended the exoneration of respondent. According to the report, the Regional Trial Court, Branch 7, Palo, Leyte, issued an order dated March 6, 1990 (Exh. "14") directing: (a) the LMWD General Manager (i) to promptly turnover the property and records of LMWD to LWUA through Cayo Emnas and (ii) to conduct an inventory of the LMWD property and records; and (b) the sheriff to immediately install LWUA in the management of LMWD.

In the Regional Trial Court's order dated March 23, 1990, respondent was designated to implement the writ of preliminary mandatory injunction. Thus, he had the authority to order complainant as he did, such order being in the performance of his duty (Cf. U.S. v. Ramayrat, 22 Phil. 183 [1912]). Moreover, in previous orders, the Regional Trial Court had directed the responsible officers of LMWD to promptly turnover its property to the LWUA and to make an inventory thereof. Complainant's refusal to comply with the court order constituted contempt (Rules of Court, Rule 71, Sec. 3[b]).

Judge Francisco found as incredible complainant's allegation that he did not know that the management of LMWD was taken-over by the LWUA. He noted that the writ was already partially implemented, with only the inventory of the funds and records under the custody of complainant left to be done.

The inventory was conducted by respondent in the presence of complainant and his wife, two employees of LMWD and three barangay officials.

Judge Francisco also found that complainant was not actually locked-up in a jail cell. Complainant admitted that he was merely made to stay within the premises of the police station. If complainant was brought to the police station, it was because he defied a lawful court order.

The records disclose that the glass panel of the door to the cashier's office was broken, not by respondent but by order of Emnas and that the inventory was conducted only after complainant arrived from the police station.

We find Judge Francisco's findings to be supported by the evidence on record and we agree with his recommendation that the respondent be exonerated.

It is worth mentioning that in a resolution dated September 2, 1991 (OMB-2-90-0951), the Office of the Ombudsman (Visayas) dismissed the complaints for arbitrary detention, grave coercion, robbery, and violation of Section 3(a) of the Anti-Graft and Corrupt Practices Act against respondent, Emnas and the other LMWD

employees involving the same incident subject of administrative case against respondent herein (Exhs. "28-A" to "28-G").

It may also be mentioned that the Regional Trial Court finally decided Civil Case No. 90-01-008 on September 20, 1990. In its decision, the said court upheld the right of LWUA to take over the management of the LMWD (Exh. "18").

The Court of Appeals (Fourth Division) dismissed for lack of merit the petition for certiorari, prohibition and mandamus to set aside the Regional Trial Court order directing LMWD and its officers to turnover forthwith the possession, control and management of LMWD to LWUA (CA-G.R. SP-23171; Exh. "22").

Instead of appealing the said resolution to the Supreme Court, LMWD and its officers filed with the Court of Appeals another petition for certiorari, prohibition and mandamus to nullify it (CA-G.R. SP No. 24989). The Court of Appeals (Seventh Division) dismissed the petition on the ground that a division of the said appellate court cannot annul the resolution of another division thereof (Exh. "26-A").

WHEREFORE, the affidavit-complaint filed by complainant against respondent is DISMISSED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

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