

TERESITA P. ARELLANO, PETITIONER, VS. JUDGE NAPOLEON R. FLOJO, FELINO BANGALAN – CLERK OF COURT III, HERMINIO DEL CASTILLO-RTC-OCC.; LUCINO JOVE – DEPUTY SHERIFF, RESPONDENT.

A.M. No. RTJ-93-1008. November 14, 1994

Ponente: MELO, J.

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MELO, J.:

Teresita P. Arellano, defendant in Civil Case No. 11-1041 then pending before Branch 6 of the Regional Trial Court of the Second Judicial Region and stationed in Aparri, Cagayan, filed a verified complaint for neglect of duty, misconduct, bias, and partiality against -

(a) Judge Napoleon R. Flojo, then Presiding Judge of the aforementioned Branch 6, now assigned as Presiding Judge of Branch 2 of the Regional Trial Court of Manila, for having irregularly issued an order dated January 21, 1986 for the issuance of a writ of attachment in the said case on the same date despite the lack of legal basis therefor:

(b) Felino Bangalan, then Acting Clerk of Court III, of the Aparri RTC (now Presiding Judge, MTC, Branch 1, Aparri, Cagayan) - for issuing the writ of attachment in the said case despite the failure of the plaintiffs to post the required attachment bond of P100,000.00 and for deliberately delaying the issuance of service of summons to the defendant in that although the case was filed on January 21, 1986, the defendant (complainant herein) was served summons only on May 13, 1986 or four (4) months thereafter, and that she was not even furnished a copy of the Order authorizing the issuance of a writ of attachment, the so-called attachment bond, as well as the writ of attachment itself.

(c) Herminio del Castillo, Branch Clerk of Court of the Aparri RTC for deliberately delaying the issuance of service of summons on the defendant.

(d) Luciano Jove, Deputy Sheriff, Aparri, Cagayan - for seizing a vehicle not owned by the defendant and entrusting the custody thereof to Sheriff Guards Rodolfo Auringan and Dioniso Co, Jr., instead of personally keeping it under his custody, resulting in the said vehicle being cannibalized to the damage and prejudice of the complainant and the heirs of the late Ruperto Arellano.

The complaint against Clerk of Court Herminio del Castillo was dismissed for lack of merit by the Court in its Resolution dated June 28, 1993, as he did not appear to have had any participation in the issuance and service of summons on the defendant in the aforementioned civil case (pp. 42-43, Rollo.)

With respect to Judge Napoleon R. Flojo, inasmuch as the charges against him were mere reiterations of the charges filed by the same complainant in A.M. Case No. RTJ-86-52 which had been earlier dismissed for lack of merit by the Court en banc on March 24, 1987, the instant complaint against him was likewise dismissed in the resolution of the Court dated November 8, 1993 (p. 83, Rollo).

Thereafter, the case was referred to Justice Ramon A. Barcelona of the Court of Appeals, for investigation, report, and recommendation in regard to the remaining respondents.

Justice Barcelona finds Judge Bangalan (then Clerk of Court III) guilty of negligence for (1) having issued the writ of attachment on January 21, 1986 in spite of the applicants' failure to post an acceptable bond as required under Section 4, Rule 57 of the Rules of Court for what appears in the record is only a promissory note in the form of an affidavit executed by Victor Suguitan, Andres Langaman, and Mariano Retreta; having caused the implementation through Sheriff Jove, of the said writ of attachment on January 23, 1986, knowing fully well that no summons had as yet been issued and served as of said date upon defendant therein in violation of Section 5, Rule 57 of the Rules of Court and Section 3, Rule 14 of the same rules.

As for Sheriff Jove, Justice Barcelona found that in serving the writ of attachment, the sheriff did not serve the same on the defendant but on somebody whom he suspected only as holding the property of the complainant. He failed to verify the ownership of the cargo truck he attached. To compound the sheriff's failure to exercise diligence in the execution of the writ of attachment, he surrendered the custody of the property to the two alleged guards instead of depositing the same in a bonded warehouse.

Finding both Judge Bangalan and Sheriff Jove remiss in the performance of their duties, Justice Barcelona recommends that they each be suspended for one (1) month (not chargeable to their accumulated leave) without pay. However, this Court is of the opinion and thus hereby holds that a fine of P5,000.00 each for Judge Bangalan and Sheriff Jove is the commensurate penalty for the irregularity that attended the civil case below. In this respect, we agree with the factual findings and analysis of the Office of the Court Administrator, thus:

Indeed, he issued the Writ of Attachment although the plaintiffs have not yet posted the required attachment bond. It is explicitly stated in his Comment that what was filed was merely an undertaking. The fact that the "Undertaking" was subscribed by the branch clerk of court does not necessarily follow that it carried the imprimatur of the presiding judge thereof. As a lawyer, respondent Bangalan, who is now a Judge, should have known the glaring distinctions between a plain undertaking and a real attachment bond. The differences between the two is not that hard to discern. As ruled by Judge Ernesto A. Talamayan in his order of April 23, 1993 (Rollo, pp. 18-19), no bond can be confiscated to answer for the damages sustained by defendants. He discovered that only a promissory note in the form of an affidavit executed by the bondsmen denominated as an attachment bond appears on the record. Had respondent Bangalan carefully examined the undertaking filed before he issued the writ of attachment such a situation could have been obviated. Where a statute authorizing attachment requires, as a condition to the issuance of the writ, that a bond shall be given by plaintiff to indemnify defendant for any loss or injury resulting from the attachment in case it proves to be wrongful, a failure to give such bond is fatal, and an attachment issued without the necessary bond is invalid (7 C.J.S. 326). However, we do not find that the delay in the issuance and service of summons was deliberately done to prejudice the defendant. Bad faith cannot be inferred by the mere fact of delay considering that it was issued by the Office of the Clerk of Court and not by the branch clerk to whom the case was already assigned.

For seizing a vehicle which is not owned by the defendant, respondent Sheriff Jove may be held administratively liable. Although his actuation may not have been tainted with bad faith or malice, he failed to exercise due prudence in attaching the truck. He should have verified first if the truck he seized was owned by the judgment debtor, especially in this case where it was found in the possession of a person other than its real owner. Consequently, the writ of attachment was ordered dissolved in the Decision of Judge Tumacder dated August 9, 1989 (Rollo, pp. 25 to 41) as the property attached does not belong to the judgment debtor but to her father, Ruperto Arellano. A sheriff incurs liability if he wrongfully levies upon the property of a third person (47 Am Jr 857). A sheriff has no authority to attach the property of any person under execution except that of the judgment debtor. If he does so, the writ of execution affords him no justification for the action is not in obedience to the mandate of the writ (Codesal and Ocampo vs. Ascue, 38 Phil. 902). The sheriff maybe liable

for enforcing execution on property belonging to a third party (Sec. 17, Rule 39, Rules of Court). However, he cannot be faulted for entrusting the custody thereof to the sheriff guards considering that he can not physically keep the cargo truck under his custody. His stand is sustained by the Court in its Order of October 10, 1989 (Rollo, pp. 110 to 111), holding the two (2) sheriff guards liable for the cannibalism of the truck.

(pp. 132-133, Rollo)

WHEREFORE, premises considered, Judge Felino Bangalan and Sheriff Lucinio Jove are hereby each fined the amount of FIVE THOUSAND PESOS (P5,000.00), with the severe warning that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Bidin, Romero, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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