

**SPOUSES DEMOCRITO AND OLIVIA LAGO, COMPLAINANTS, VS.  
JUDGE GODOFREDO B. ABUL, JR., REGIONAL TRIAL COURT,  
BRANCH 43, GINGOOG CITY, RESPONDENT.**

*A.M. No. RTJ-10-2255 (Formerly OCA I.P.I. No. 10-3335-RTJ). February 08, 2012*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

Subject of this disposition is the motion for reconsideration of the Court's January 17, 2011 Decision, filed by respondent Judge Godofredo B. Abul, Jr. (Judge Abul), Presiding Judge, Regional Trial Court, Branch 4, Butuan City, finding him guilty of gross ignorance of the law and imposing upon him a fine in the amount of P25,000.00.

Disciplinary action was meted on him for (1) assuming jurisdiction over Civil Case No. 2009-905 without the mandated raffle and notification and service of summons to the adverse party and issuing a temporary restraining order (TRO); (2) setting the case for summary hearing beyond the 72-hour required by the law in order to determine whether the TRO could be extended; and (3) issuing a writ of preliminary injunction without prior notice to the complainants and without hearing.

Judge Abul stresses that contrary to the allegations of the complainants, the Clerk of Court conducted a raffle of the case in question. In support thereof, he attached the Letter[1] dated July 3, 2009 of Atty. Rhodora N. Restituto, Clerk of Court VI, RTC, Misamis Oriental, to prove that the case was indeed raffled on June 9, 2009 to RTC, Branch 43, Gingoog City. He explained that he issued the 72-hour TRO pursuant to the 2[nd] paragraph of Section 5, Rule 58 of the Rules in order to avoid injustice and irreparable damage on the part of the plaintiff. He pointed out, however, that the 72-hour TRO was issued only on July 7, 2009 because he was not physically present in the RTC, Branch 43, from July 2, 2009 to July 6, 2009.

Judge Abul admits not conducting a summary hearing before the expiration of the 72 hours from the issuance of the ex parte TRO to determine whether it could be extended to twenty (20) days. He, however, explained that the holding of the summary hearing within 72 hours from the issuance of the TRO was simply not possible and was scheduled only on July 14, 2009 because the law office of the plaintiff's counsel was 144 kilometers away from Gingoog City and under that situation, the service of the notice could only be made on the following day, July 8, 2009. Hence, it would be impractical to set the hearing on July 8, 2009. In addition, on July 9, 10 and 13, 2009, he was conducting hearings in his permanent station, RTC, Branch 4, Butuan City.

As to the charge that he failed to cause the service of summons on the complainants and that no hearing was conducted prior to the issuance of the writ of preliminary injunction, Judge Abul belies the same by submitting (1) a certified true copy of the Sheriff's Return of Service[2] dated July 9, 2009 stating that he actually served the summons on the complainants on July 8, 2009 together with the copy of the 72-hour TRO; and (2) a certified machine copy of the summons[3] bearing the signature of complainant Democrito Lago that he personally received the same.

Judge Abul likewise attached to his motion for reconsideration a certified true copy of the Order[4] dated July 29,

2009 and the Transcript of Stenographic Notes[5] to show that he conducted a hearing on July 21 and 29, 2009 and that the parties had a lengthy argument during the hearing and thereafter agreed to submit the application for the issuance of the writ of preliminary injunction for resolution.

The Court finds merit in the motion for reconsideration.

With respect to the issues regarding the raffle, the lack of notice and hearing prior to the issuance of the writ of preliminary injunction, the Court is satisfied with the explanation of Judge Abul as it is substantiated by the official records on file.

As to the issue on the delay in conducting the summary hearing for purposes of extending the 72-hour TRO, the Court finds the reasons advanced by Judge Abul to be well-taken. Section 5, Rule 58 of the Rules permits the executive judge to issue a TRO ex parte, effective for 72 hours, in case of extreme urgency to avoid grave injustice and irreparable injury. Then, after the lapse of the 72 hours, the Presiding Judge to whom the case was raffled shall then conduct a summary hearing to determine whether the TRO can be extended for another period.

Under the circumstances, Judge Abul should not be penalized for failing to conduct the required summary hearing within 72 hours from the issuance of the original TRO. Though the Rules require the presiding judge to conduct a summary hearing before the expiration of the 72 hours, it could not, however, be complied with because of the remoteness and inaccessibility of the trial court from the parties' addresses. The importance of notice to all parties concerned is so basic that it could not be dispensed with. The trial court cannot proceed with the summary hearing without giving all parties the opportunity to be heard.

It is a settled doctrine that judges are not administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction.[6] Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice.[7] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[8]

To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the respondent judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.[9]

In this case, complainants failed to show that Judge Abul was motivated by bad faith, ill will or malicious motive when he granted the TRO and preliminary injunction. Complainants did not adduce any proof to show that impropriety and bias attended the actions of the respondent judge.

WHEREFORE, the motion for reconsideration is GRANTED. The Decision dated January 17, 2011 is SET ASIDE. The administrative complaint filed against Judge Godofredo B. Abul, Jr. is DISMISSED.

### **SO ORDERED.**

Carpio, (Chairperson), Peralta, Abad, and Reyes, JJ., concur.

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[1] Annex "1" of the Motion for Reconsideration, rollo, p. 140.

[2] Annex "5" of the Motion for Reconsideration, id at 157.

[3] Annex "6" of the Motion for Reconsideration, id. at 158.

- [4] Annex "7" of the Motion for Reconsideration, *id.* at 159.
- [5] Annexes "8" and "9" of the Motion for Reconsideration, *id.* at 160-178.
- [6] *Ang v. Quilala*, 444 Phil. 742, 747-748 (2003).
- [7] *Balsamo v. Suan*, 458 Phil. 11, 24 (2003).
- [8] *Fernandez v. Court of Appeals Justices*, 480 Phil. 1, 6 (2004).
- [9] *Martinez v. Judge De Vera*, A.M. No. MTJ-08-1718, March 16, 2011.

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