

**FRANCISCA ALCAIDE, TITO VICERA AND IGNACIO PALCON,
PETITIONERS, VS. HONORABLE EUFROCINIO S. DELA MERCED,
MUNI-CIPAL JUDGE PEDRO J. CALLEJO JR. AND CESARIO
BENEDITO, RESPONDENTS.**

G.R. No. L-49028. July 25, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The promulgation of the decision by respondent Judge Pedro Callejo Jr. of the Municipal Court of Brookes Point, Palawan and the appeal thereafter taken by defendants, now petitioners,[1] resulted in this certiorari and mandamus proceeding being moot and academic. The inclusion of respondent Judge Eufrocinio dela Merced of the Court of First Instance of Palawan became necessary as he dismissed a certiorari petition assailing the issuance by respondent Municipal Judge of a preliminary mandatory injunction without hearing defendants, present petitioners, in a forcible entry case filed by private respondent Cesario Benedito.

In the comment of respondent Municipal Judge, he admitted the allegation of petitioners that the preliminary mandatory injunction referred to by him as a restraining order compelled petitioner to vacate the land in question on the very same day the forcible entry case was filed. He would justify what he did, however, by the assertion that he conducted "a summary ex-parte investigation" before doing so.[2] The truth of what did transpire became even more evident from this paragraph of the comment of private respondent Benedito: "That undersigned Respondent admits that part of the allegations of paragraph 3 of the petition to the effect that respondent Municipal Judge Pedro J. Callejo Jr. issued the restraining order on the very day of the complaint in Civil Case No. 219 was filed, but specifically denies that no kind of hearing was held, the truth being that a summary hearing ex-parte was conducted whereat the undersigned respondent and his witness, Hernando Baptista, testified." [3] On the other hand, respondent Court of First Instance Judge admitted that a certiorari petition was filed with his court but was not given due course for not being accompanied by a certified true copy of the judgment or orders subject thereof together with the copies of all pleadings and documents as prescribed by the Rules of Court.[4] To the allegation that such order as well as the other pleadings and documents were included as annexes, this was his answer: "That the respondent admits a portion of the allegation in paragraph 12 but denies vehemently the latter part of the paragraph, the truth of the matter is that when the motion for reconsideration was filed, there were no annexes attached to the said motion. This is borne out of the fact that at the hearing of the said motion for reconsideration on July 24, 1978, the court noticed in the record that there were no annexes yet filed by the petitioner, and considering that she has a telegram for the postponement of the hearing, the consideration of the motion was finally reset to August 16, 1978. Likewise, when the said motion was heard on August 16, 1978, the court called the attention of the petitioner Francisca Alcaide who appeared without counsel, that there were not documents accompanying the said motion for reconsideration received by the court. The motion for reconsideration was then denied. It is true that in the motion for reconsideration there were allegations of the fact that the annexes were attached but the truth is that there were none at the time the court ruled on the motion." [5]

A motion for reconsideration having proved unavailing, petitioners filed this certiorari and mandamus proceeding. As noted at the outset a moot and academic aspect has been imparted in this petition. Nonetheless, it would not be amiss to call attention to the failure of respondent Municipal Judge to yield obedience to authoritative decisions of this Court and of respondent Court of First Instance Judge to his deplorable insistence, in this case at least, on procedural technicalities.

1. Had the main case not been decided by respondent Municipal Judge Callejo Jr., certainly the action for certiorari to nullify the issuance of a mandatory injunction, mistakenly referred to by him as a restraining order, would have succeeded. On the face of the challenged order itself, respondent Municipal Judge noted that the title is in the name of petitioner Francisca Alcaide, although he did refer to it as the property of private respondent Cesario Benedito. At the very least, he should have been put on his guard. That way, his order would not have suffered from what appears to be a congenital infirmity. Equally, the lack of validity of such order arose from his failure to grant a hearing to petitioner Alcaide in violation of procedural due process. The admission of private respondent that he and his witness were heard, but without mentioning that it was an ex-parte proceeding, serves to reveal the lack of candor of respondent Municipal Judge when he alleged that he accorded now petitioners their day in court. In *de la Cruz v. Febreo*,^[6] after referring to the leading case of *Manila Electric Railroad and Light Company v. Del Rosario*,^[7] a 1912 decision, thereafter cited with approval in the following cases of *Villena v. Roque*,^[8] *Morabe v. Brown*,^[9] *Coronado v. Court of First Instance of Rizal*,^[10] *Bautista v. Barcelona*,^[11] *Commissioner of Customs v. Cloribel*,^[12] and *National Marketing Corporation v. Cloribel*,^[13] there is this relevant excerpt: "A petition of this character would have been unnecessary had the Municipal Judge of Kabankalan and respondent Judge displayed a greater awareness of the demands of due process and familiarity with controlling doctrines from this Tribunal. It does not speak well of members of the bench if they would be susceptible to the charge that they are remiss in their obligation to be fully acquainted with legal norms and precepts. Even on the assumption that they could accurately ascertain the facts, they would not be in a position to apply the correct principles of law. What is worse in this particular case, the failure to respect the cardinal requirement of procedural due process did lead to consequences that, to say the least, cast a reflection on the two dignitaries concerned."^[14]

2. Now as to the Court of First Instance Judge. He was justified in dismissing the petition for certiorari against respondent Municipal Judge for failure on the part of now petitioners to submit a certified true copy of the order as well as the copies of all pleadings and documents as prescribed by the Rules of Court. He could not be found at fault if as a result of the motion for reconsideration still not curing the defect, he would deny the same. There is this admission, however, in his comment filed with this Court: "Upon receipt, however, of this petition filed by the petitioner with the Supreme Court, together with the order to comment on the said petition, the record was retrieved from the files, and the respondent court found several true copies of the orders of the respondent municipal court, constituting the alleged annexes, stamped received by the clerk of the respondent's court on September 5, 1978, which was very much late when the court ruled on the motion for reconsideration on August 16, 1978, denying the same. The annexes were just filed without any accompanying motion and were just handed to the clerk of the respondent's court."^[15] Considering, as he pointed out that petitioner Alcaide was without counsel and that thereafter the deficiency was cured with the filing of the necessary order as well as the pleadings as annexes, he ought to have set aside his order of dismissal. It is especially important where a litigant pleading for justice, very likely because either of ignorance or poverty, had resulted in her rights not being vindicated that a judge should pay greater attention to the true facts of the case and see to it that justice according to law is done. Respondent Court of First Instance Judge is not, therefore, free from blame.

WHEREFORE, the case is dismissed for being moot and academic. Respondent Municipal Judge Pedro Callejo Jr. is censured for what would appear as a clear disregard of the mandate of procedural due process. Respondent

Court of First Instance Judge Eufrocinio dela Merced is hereby admonished to pay heed to the equally binding principles of the Constitution to assure that every branch of the government and certainly the Judiciary most of all, accords substantial justice, ignoring procedural technicalities in the process.

Barredo, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

Aquino, J., concurs in the result with a separate opinion.

[1] In addition to Francisca Alcaide, her other co-petitioners are Tito Vicera and Ignacio Palcon.

[2] Comment of respondent Municipal Judge Callejo Jr., par. 3.

[3] Comment of private respondent Cesario Benedito, par. 2.

[4] Comment of Court of First Instance Judge dela Merced, par. 3 and Annex 7 of petition.

[5] Ibid, par. 4.

[6] L-33884, April 25, 1978, 82 SCRA 379.

[7] 22 Phil. 433.

[8] 93 Phil. 363 (1953).

[9] 95 Phil. 181 (1954).

[10] 96 Phil. 729 (1955).

[11] 100 Phil. 1078 (1957).

[12] L-20266, January 31, 1967, 19 SCRA 234.

[13] L-26585, March 13, 1968, 22 SCRA 1033.

[14] L-33884, April 25, 1978, 82 SCRA 379, 384.

[15] Comment of Court of First Instance Judge dela Merced, par. 6.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. The restraining order issued by Municipal Judge Callejo, which is mandatory in character, is devoid of any legal basis and shows partiality to the plaintiff in the forcible entry case. That order itself shows that it was issued without any hearing.

What the law authorizes Judge Callejo to issue is a writ of preliminary injunction after hearing and after the proper bond is filed (Art. 539, Civil Code; Sec. 3, Rule 70, Rules of Court).

On the other hand, respondent judge of the Court of First Instance, instead of dismissing

outright the petition for certiorari, should have given the petitioners a period of say, five days, to submit a certified copy of the order sought to be reviewed and the other annexes.

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