ATTY. ERNESTO A. TABUJARA III, COMPLAINANT, VS. JUDGE FATIMA GONZALES-ASDALA, RESPONDENT.

A.M. No. RTJ-08-2126 [Formerly OCA I.P.I. No. 08-2896-RTJ]. January 20, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Atty. Ernesto A. Tabujara III (complainant), by Complaint-Affidavit[1] dated June 8, 2006 which was sworn to on June 9, 2006 and received by the Office of the Court Administrator (OCA) on June 13, 2006, charged Judge Fatima Gonzales-Asdala (respondent), Presiding Judge of the Regional Trial Court of Quezon City, Branch 87, with gross ignorance of the law and procedure, gross misconduct constituting violation of the Code of Judicial Conduct, graft and corruption, knowingly rendering an unjust order, and culpable violation of the Constitution.

Complainant was a party to the following cases which were originally raffled to different branches but which were ordered consolidated and assigned to Branch 86 presided by Judge Teodoro Bay (Judge Bay), they having involved the same parties (complainant and his wife), related issues and reliefs prayed for: (1) Civil Case No. Q-06-57760,[2] for Violation of Republic Act No. 9262 or the "Violence Against Women and Their Children Act," filed by complainant's wife against him praying for, among others, the issuance of Temporary Protection Order (TPO), (2) Civil Case No. 06-57857,[3] filed by complainant against his wife for declaration of nullity of marriage, and (3) Civil Case No. Q-06-57984,[4] petition for a writ of habeas corpus filed by complainant's wife against him involving their son Carlos Iñigo R. Tabujara (habeas corpus case).

The habeas corpus case was raffled to Branch 102 which issued on May 23, 2006 a Writ[5] directing Deputy Sheriff Victor Amarillas to "take and have the body of .... CARLOS IÑIGO R. TABUJARA before this Court on 25 May 2006, at 10:00 A.M. and [to] summon the respondent-[herein complainant] to appear then and there to show cause why he should not be dealt with in accordance with law."[6] (Capitalization and underscoring in the original)

During the hearing on May 25, 2006 of the habeas corpus case before Branch 102, on complainant's information that there were two pending cases before Branch 86 presided by Judge Bay, Branch 102 directed the consolidation of said habeas corpus case with the other cases pending before Branch 86.

After hearing was conducted on the habeas corpus case, Branch 86 Presiding Judge Bay issued on May 31, 2006 an Order[7] reading:

> After considering the records of the three (3) cases consolidated before this Court, this Court resolves as follows:
>
> - the child Carlos Iñigo R. Tabujara shall continue to be under the custody of the respondent Ernesto Tabujara III until the Court shall have resolved the issue of custody of said child. This is necessary to protect the child from emotional and psychological violence due to the misunderstanding now existing between his parents.
>
> - the Motion to Admit Amended Petition with Prayer for Temporary Protection Order is GRANTED. The

> Temporary Protection Order dated April 19, 2006 is hereby extended until the prayer for Permanent Protection is resolved.
>
> - The respondent Ernesto Tabujara III is hereby ordered to bring the child Carlos Iñigo Tabujara to this Court during the hearing of these cases on July 14, 2006 at 8:30 in the morning.
>
> x x x x[8] (Emphasis and underscoring supplied)

On the same date (May 31, 2006) of the issuance by Judge Bay of the above-quoted Order, complainant's wife filed an Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of Habeas Corpus with Urgent Motion For Partial Reconsideration (Of the Order dated May 31, 2006).[9] The motion contained no notice of hearing and no copy was furnished herein complainant, albeit a copy was sent to his counsel via registered mail. Also on May 31, 2006, respondent Presiding Judge of Branch 87, the pairing Judge of Branch 86 presided by Judge Bay who had filed a Leave of Absence effective the following day or on June 1, 2006, acted on the motion of complainant's wife and amended Judge Bay's May 31, 2006 order by advancing the production of the parties' child from July 14, 2006 to June 1, 2006.[10] The decretal portion of respondent's May 31, 2006 Order reads:

> WHEREFORE, Ernesto A. Tabujara III or any person or persons acting for and in his behalf and under his direction is hereby directed to produce the person of minor Carlos I[ñ]igo R. Tabujara before the Session Hall, Branch 87, located at 114, Hall of Justice, Quezon City on June 1, 2006 at 9:00 o'clock in the morning. Failing which, the more coercive process of a Bench Warrant will be issued against said respondent, without prejudice to a declaration of contempt which may be due under the obtaining circumstances.[11] (Underscoring supplied)

Alleging that respondent's May 31, 2006 Order was issued with undue haste and without notice to complainant, and that respondent violated the rule against interference with courts of co-equal and concurrent jurisdiction, complainant filed on June 1, 2006 a Petition for Certiorari with prayer for temporary restraining order and/or writ of preliminary injunction before the Court of Appeals.[12]

On June 1, 2006, complainant having failed to appear at the rescheduled date (by respondent) for him to produce the minor child, declared him

> . . . in contempt of Court for defying the order directing the production of the minor, in which case, a bench warrant is hereby ordered against respondent, who is likewise ordered imprisoned until such time that he is willing to appear and comply with the order of this Court directing the production of the minor. Until further notice.[13] (Underscoring supplied)

On June 2, 2006, the appellate court issued a Resolution[14] in complainant's petition for Certiorari granting a Temporary Restraining Order and ordering complainant's wife to submit a Comment on the petition. On even date, in view of the contempt order and bench warrant issued by respondent on June 1, 2006, complainant filed before the appellate court an urgent ex-parte motion to set aside respondent's June 1, 2006 Order and bench warrant.[15] The appellate court granted the motion by June 7, 2006 Resolution.[16]

Hence, arose the present complaint, complainant contending that when respondent issued her May 31, 2006 Order, Judge Bay was not yet on official leave as it was yet to start the following day, June 1, 2006; that as a judge of a co-equal and concurrent jurisdiction, respondent could not amend, revise, modify or disturb the orders of the other courts;[17] and that respondent violated Rule 15, Section 4 of the Rules of Court[18] on litigated motions which Rule calls for the setting of such motions for hearing and the service of copy thereof upon the opposing party at least three days before the scheduled hearing.

Complainant adds that respondent's May 31, 2006 Order was issued after the opposing counsel personally met and

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conferred with respondent in her chambers without the presence of his (complainant's) counsel; and that after issuing the Order, respondent personally summoned via telephone complainant's counsel to her chambers where she personally furnished him a copy of the Order in the presence of opposing counsel.[19]

Then Court Administrator Christopher Lock, by I[st] Indorsement dated July 3, 2006,[20] directed respondent to comment on the Complaint-Affidavit within ten days from notice.

The Office of the Court Administrator (OCA) synthesized respondent's 22-page Comment dated August 2, 2006,[21] the salient portions of which follow:

> x x x x
>
> In acting on the subject cases as pairing judge of Branch 86, respondent judge argued that she did not violate the basic rule against interference between courts of concurrent or co-equal jurisdiction. When respondent judge ordered the production of the minor child during the hearing set on 01 June 2006, the regular presiding judge of Branch 86 was no longer in his office as he already left the building as per information of Branch Clerk of Court Buenaluz. Hence, as pairing judge, she has the authority to act on the said urgent motion and to issue the bench warrant.
>
> x x x x
>
> Respondent denied her alleged close personal relationship with Atty. Carmina Abbas, counsel of record of complainant's wife. When Atty. Abbas appeared during the hearing on 01 June 2006, it was the second time that she saw her; the first time was sometime two years ago during the IBP meeting in Makati City. She claimed that she did not know either Atty. Abas or the complainant's wife. She only came to know them when the case was referred to her for action.
>
> With respect to her alleged failure to require complainant to show cause and answer the contempt charge against him, respondent explained that the record of the habeas corpus case shows that complainant was given several opportunities to comply with the Writ to bring the minor child. Per record, the 1[st] refusal to comply was during the hearing on 25 May 2006 when complainant claimed lack of material time to fetch the child from Tagaytay highlands. Then, the 2[nd] and 3[rd] refusal[s] to comply were during the hearings on 26 May 2006 and 01 June 2006, respectively.
>
> Respondent likewise denied personally calling complainant's counsel and informing her about the motion and the hearing on 01 June 2006. As to the reason for Atty. Ambrosio's unexpected arrival at the respondent's sala and as to how she learned about the motion is unknown to her. She claimed that the sending of notice to party litigants and/or their counsel is not her concern or duty but that of the Branch Clerk of Court.
>
> Respondent noted that the Petition for Certiorari which complainant filed in the Court of Appeals impleaded her in the capacity of Presiding Judge of Branch 87. Hence, complainant misled the Court of Appeals in making it appear that she issued the questioned order in her capacity as the regular judge of Branch 87.
>
> Respondent only came to know of the TRO when the bench warrant was already disseminated to the proper government authorities. It was thus incumbent upon the complainant to submit himself to the court and ask that the bench warrant be set aside or recalled because of the TRO.
>
> . . . . Complainant's detention at the office of the Executive Judge Natividad was of his own making.
>
> x x x x[22] (Underscoring supplied)

After noting the following record of administrative charges against respondent:[23]

> Docket No.

Complainant

Charge/
Violation

Penalty

Date of
Decision/ Resolution

1. RTJ-06-1974

Edano, Carmen P.

Gross Insubordination
And
Gross Misconduct

Dismissal from the
Service without prejudice

26 July 2007

2. 05-10-618 RTC

OCA's Report

Undue Delay in The
Disposition of Cases

Fine of P11,000.00
Pesos with Warning

11 July 2006

3. RTC-05-1916

Manansala, Melencio III P.

Gross Misconduct

Fine of P40,000.00
Pesos with stern Warning

10 May 2005

4. RTJ-00-1546
(98-628-RTJ)

Bownman, James et al.,

Grave Abuse of Discretion

Fine of P2,000.00 Pesos

06 March 2000

5. RTJ-99-1428

Dumlao, Florentino, Jr.,

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Partiality

Admonished

08 February 1999

(Emphasis in the original; underscoring supplied),

the OCA came up with the following evaluation of the Complaint:

> As correctly claimed by the complainant, respondent Judge had indeed acted on the three (3) consolidated cases: (1) without the legal authority as pairing judge of Branch 86 considering that the regular presiding judge thereat was still sitting as such when she issued the order of 31 May 2006; (2) in violation of the basic rule on procedural due process when she resolved ex-parte the motion of the complainant's wife; and . . . in citing complainant in contempt of court and issuing the bench warrant without requiring the complainant to file his comment on said ex-parte motion and explain the reason for his failure to appear and bring the minor child during the hearing on 01 June 2006.
>
> x x x x
>
> It must be noted that the motion of complainant's wife was an ordinary motion which required the application of ordinary rules and was not itself the application of writ under Rule 102.
>
> x x x x
>
> Clear it is from the foregoing that respondent's basis in disregarding the rule under Section 4 of Rule 15 is not valid. While respondent may be justified in immediately setting the hearing of the said urgent ex-parte motion, she should not have resolved it without first requiring the complainant to file his comment. Although the appearance of the complainant during the hearing may be waived, he has the right to be heard insofar as the said motion is concerned through the filing of his comment thereon.
>
> Respondent Judge's blunder was compounded when she immediately cited complainant in contempt of court and issued the bench warrant without requiring the latter to explain the reason for his non-appearance and non-compliance with a standing order. Under Rule 71 of the Rules of Court, complainant's alleged disobedience is an indirect contempt the punishment for which requires that a respondent should be first asked to show cause why he should not be punished for contempt.
>
> There is one more act equally serious in nature. As correctly claimed by the complainant, respondent indeed took cognizance of the consolidated cases without proper authority. Respondent cannot reason out that she acted in her capacity as pairing judge. It is clear from the records that her authority as pairing judge of Branch 86 started only on 01 June 2006 when Judge Bay's leave of absence commenced. Judge Bay was still sitting as the regular judge of Branch 86 as evidenced by the issuance of his order on 31 May 2006. Respondent's explanation that Judge Bay was no longer in the premises in the afternoon of 31 May 2006, so that she could act on the subject ex-parte motion is clearly unacceptable. x x x
>
> Under Section 8 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10, the penalty of gross ignorance of the procedure and gross misconduct is dismissal from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled and with disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporation...
>
> x x x x [24] (Italics in the original, emphasis and underscoring supplied)

As reflected above, respondent having been earlier dismissed from the service, the OCA recommended that "respondent should be fined in the sum of P40,000.00 pesos, the maximum penalty of fine under Section 11(3) under Rule 140, as amended."

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By Resolution of June 30, 2008,[25] this Court re-docketed the complaint as a regular administrative matter.

The Court finds the evaluation of the case by the OCA well-taken.

As found by the Court of Appeals, respondent gravely abused her discretion when she acted on the Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of Habeas Corpus with Urgent Motion For Partial Reconsideration (Of the Order dated May 31, 2006).[26] That Judge Bay may have left the court premises in the afternoon of May 31, 2006 did not justify her acting on even date on motion of complainant's wife, as her authority as pairing judge commenced only the following day, June 1, 2006, when Judge Bay's leave of absence started; Nor did respondent's opinion on the urgency of the case justify her sacrificing law and settled jurisprudence for the sake of expediency.[27]

Respondent also abused her contempt powers. If at all, complainant was guilty of indirect contempt and not direct contempt.[28] Indirect or constructive contempt is committed "outside of the sitting of the court and may include misbehavior of an officer of the court in the performance of his official duties or in his official transactions, disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or a judge, any abuse or any unlawful interference with the process or proceedings of a court not constituting direct contempt, or any improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice."[29]

For not affording complainant the opportunity to explain why he should not be cited in contempt, she blatantly disregarded Rule 71 of the

Rules of Court.[30] In Lim v. Domagas[31] where the therein judge declared the therein complainant guilty of contempt and ordered his arrest for failure to bring three minors before the court without the benefit of a hearing, the Court faulted the therein judge not only for grave abuse of discretion but also for gross ignorance of the law.

Because, again as reflected above, respondent was, in Edaño v. Asdala, dismissed from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled, [32] she should, as recommended by the OCA, be fined in the amount of Forty Thousand Pesos, the highest amount of fine imposable for gross ignorance of the law or procedure, a serious charge under Rule 140 of the Rules of Court.[33]

WHEREFORE, the Court finds respondent GUILTY of gross ignorance of law and procedure. She having been earlier dismissed from the service, she is FINED the amount of Forty Thousand (P40,000) Pesos to be deducted from the Eighty Thousand (P80,000) Pesos which this Court withheld pursuant to its January 15, 2008 Resolution in Edaño v. Asdala.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, and Brion, JJ., concur.

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[1] Rollo, pp. 14-28.

[2] Annex "A," id. at 29-37.

[3] Annex "C," id. at 41-92.

[4] Annex "F," id. at 220-231. Docketed as Spec. Proc. Q-06-57984, in the Orders issued by the trial court.

[5] Id. at 233.

[6] Annex "G," id. at 232.

[7] Annex "H," id. at 234-236.

[8] Id. at 235-236.

[9] Annex "J," id. at 240-246.

[10] Annex "I," id. at. 237-239.

[11] Id. at 238-239.

[12] Docketed as CA-SP G.R. No. 94699, Annex "K," id. at 247-264.

[13] Id. at 266.

[14] Id. at 269-271.

[15] Annex "N," id. at 272-273.

[16] Id. at 278-280.

[17] Complaint-Affidavit, id. at. 22.

[18] SEC. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the heating on shorter notice.

[19] Rollo, p. 23.

[20] Id. at 283.

[21] Id. at 288-309. The Comment was received by the OCA on August 10, 2006 together with a letter from respondent explaining her belated compliance with the directive of OCA to file her Comment within ten days from notice.

[22] Id. at 6-7.

[23] Id. at 8.

[24] Id. at 8-11.

[25] Id. at 342-343.

[26] In Reyes-Tabujara v. Court of Appeals, G.R. No. 172813, July 20, 2006, 495 SCRA 844, the Court affirmed the Decision of the Court of Appeals which ordered the nullification and setting aside of the May 31, 2006 and June 1, 2006 Orders of respondent. The Court of Appeals' Decision reads in part:

Respondent judge's basis for her acting on the "Urgent Ex-Parte Motion to Order Respondent ... to comply with the Writ of Habeas Corpus" filed by herein private respondent in the trial court is the transmittal memo dated 31 May 2006 from Atty. Amabel B. Robles-Buenaluz, Branch Clerk of Court of Branch 86, Regional Trial Court of Quezon City stating that: -

"Considering that our Presiding Judge will be on official leave effective tomorrow, may we request your good

office to hear and act on the URGENT EX-PART MOTION TO ORDER RESPONDENT TO COMPLY WITH THE WRIT OF HABEAS CORPUS filed by the Petitioner in the case entitled IN RE: ISSUANCE OF THE WRIT OF HABEAS CORPUS FOR THE PERSON OF THE MINOR CARLOS INIGO R. TABUJARA, IVY JOAN REYES-TABUHARA as petitioner versus ERNESTO A. TABUJARA III and JOHN DOES as respondents..."

Said transmittal memo clearly stated that "Our presiding judge will be on official leave effective TOMORROW," which is 01 June 2006. Apparently, on 31 May 2006, the presiding judge Teodoro A. Bay was still present and not yet on leave. Hence, respondent judge had, as yet, no authority to act upon the case on that day. A Branch Clerk of Court has no authority to abdicate the authority of a presiding judge to exercise his functions in a case and decide pending incidents while said judge is still present and performing his functions in court.

[27] Lim v. Domagas, A.M. No. RTJ-92-899, October 15, 1993, 227 SCRA 258, 263.

[28] Direct contempt is a contumacious act done facie curiae and may be punished summarily without hearing. One may be summarily adjudged in direct contempt at the very moment or at the very instance of the commission of the act of contum

ely. Vide Español v. Formoso, G.R. No. 150949, June 21, 2007, 525 SCRA 216, 225.

[29] Vide Español v. Formoso, G.R. No. 150949, June 21, 2007, 525 SCRA 216, 226.

[30] Sec. 3. Indirect contempt to be punished after charge and hearing. - After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: (Underscoring supplied)

x x x x

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court...

x x x x

Sec. 4. How proceedings commenced. â”€ Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

[31] Lim v. Domagas, A.M. No. RTJ-92-899, October 15, 1993, 227 SCRA 258.

[32] The decretal portion of the Decision reads:

IN VIEW WHEREOF, judgment is hereby rendered:

- Respondent Judge Fatima G. Asdala is found GUILTY of gross insubordination and gross misconduct unbefitting a member of the judiciary and is accordingly DISMISSED from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled.

- x x x x

By Resolution of September 11, 2007, the Court modified the July 26, 2007 Decision and exempted from forfeiture her accrued leave credits.

[33] Vide Malabanan v. Metrillo, A.M No. P-04-1875, February 6, 2008, 544 SCRA 1; Re: Non-Disclosure before the Judicial and Bar Council of the Administrative Case Filed against Judge Jaime V. Quitain, JBC No.

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013, August 22, 2007, 530 SCRA 729, wherein the therein respondents were fined in the amount of P40,000 in view of their resignation. While in the instant case, dismissal of the respondent and not resignation was involved, there is no reason why the same principle should not be applied here.

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