

**PHILIPPINE INVESTMENT TWO (SPV-AMC), INCORPORATED,
REPRESENTED BY NICANOR M. COLLADO, COMPLAINANT, VS. HON.
BERNABE B. MENDOZA, PRESIDING JUDGE, BRANCH 23, REGIONAL
TRIAL COURT ...**

A.M. No. RTJ-18-2538 (Formerly OCA IPI No. 17-4782-RTJ). November 21, 2018

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CAGUIOA, J:

For resolution is the Complaint[1] dated December 21, 2017 filed by complainant Nicanor M. Collado (Collado), for and in behalf of Philippine Investment Two (SPV-AMC), Incorporated (PI TWO), charging respondent Presiding Judge Bernabe B. Mendoza (respondent Judge Mendoza), Branch 23, Regional Trial Court (RTC), Roxas, Isabela with Gross Ignorance of the Law and Knowingly Rendering an Unjust Judgment, in connection with the case entitled, "Heirs of Wilson Nuesa, et. al. v. Adelaine[2] Samonte, et. al." docketed as Civil Case No. 23-184-17, for Quieting of Title, Annulment of Deed of Absolute Sale, Revocation of Donation, Cancellation of TCT No. T-169808 and TCT No. T-170190 and their Derivative Titles, Annulment of Real Estate Mortgage, Annulment of Foreclosure Sale, Annulment of Sheriffs Certificate of Sale, Cancellation of TCT No. T-374946 and TCT No. T-373888, Cancellation of Tax Declaration of Real Property No. 12-24-0003-02545, Quashal of Writ of Possession dated 27 June 2017, with Prayer for Temporary Restraining Order and Preliminary Injunction, docketed as Civil Case No. 23-184-17 (Quieting of Title Case).

The factual and legal antecedents are as follows:

PI TWO is a corporation which operates as a Special Purpose Vehicle (SPV) created under Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Act of 2002, empowered to acquire or purchase assets from banking and financial institutions. One of the properties acquired by PI TWO from the Development Bank of the Philippines (DBP) was covered by Transfer Certificate of Title (TCT) No. T-374946 (Subject Property).

On April 20, 2015, PI TWO filed an Ex-Parte Petition for Issuance of a Writ of Possession[3] over the Subject Property, docketed as Other Proceeding No. 23-006-15, before Branch 23, RTC, Roxas, Isabela (Writ of Possession Case). Three (3) days later or on April 23, 2015, the petition was granted. On June 27, 2017, the Clerk of Court issued a Writ of Possession[4] in favor of PI TWO.

On August 10, 2017, the Heirs of Wilson Nuesa (Heirs of Nuesa) filed a complaint against Adelaine Samonte (Samonte), PI TWO, DBP, the Sheriff of Branch 23, RTC and the Register of Deeds of Ilagan, Isabela for Quieting of Title Case.

The Heirs of Nuesa alleged in their Complaint that the Subject Property, originally covered by TCT No. T-107489, belonged to their father, Wilson Nuesa (Nuesa). Nuesa executed a Deed of Absolute Sale of the Subject Property in favor of his common-law spouse, Samonte. Samonte then used the Subject Property as collateral for the loan she obtained from the DBP, which foreclosed the mortgage constituted thereon on March 24, 1988. After its ownership was consolidated and a new TCT (TCT No. T-374946) was issued in its favor, the DBP then sold the same to PI TWO, in whose favor the subject Writ of Possession was issued. The Heirs of

Nuesa claimed that the Deed of Absolute Sale between their father and Samonte was null and void for lack of consideration and for being prohibited by law.

On August 25, 2017, the Clerk of Court issued the summons[5] in the Quieting of Title Case.

On August 29, 2017, the Heirs of Nuesa informed the sheriff that they were availing of the remedy of *terceria* in the Writ of Possession Case.[6] The sheriff, in turn, informed PI TWO, in a letter[7] dated September 8, 2017, of the Heirs of Nuesa's intention to avail of the remedy of *terceria* and directed PI TWO to put up a bond, pursuant to Section 16, Rule 39 of the Rules of Court.[8]

On September 18, 2017, respondent Judge Mendoza issued an Order[9] admitting the Amended Complaint filed by the Heirs of Nuesa in the Quieting of Title Case. On the same day, respondent Judge Mendoza issued an Order,[10] directing the issuance of a 72-hour TRO, upon the posting of a bond of Five Hundred Thousand Pesos (P500,000.00) by the Heirs of Nuesa.

On September 20, 2017, respondent Judge Mendoza issued the disputed Temporary Restraining Order (TRO).[11] The TRO was received by the sheriff, the person being enjoined from implementing the Writ of Possession on September 22, 2017.[12]

On September 25, 2017, respondent Judge Mendoza issued an Order[13] extending the validity of the TRO until October 12, 2017 after Winnie Omar C. Nuesa, one of the Heirs of Nuesa, testified on the contents of his judicial affidavit.

PI TWO filed an *Ex Abundanti Ad Cautelam* Manifestation dated October 4, 2017,[14] raising its objections to respondent Judge Mendoza's Orders issuing the TRO and extending its validity. PI TWO averred that the lower court did not have jurisdiction over PI TWO because PI TWO never received the summons for the Quieting of Title Case. PI TWO only learned of the case when they received a pleading titled, "Prayer for Leave of Court to Serve Summons by Publication" from a certain Atty. German M. Balot, where the caption of the Motion states PI TWO as one of the defendants in the case. PI TWO also alleged that the lower court irregularly extended the TRO. The TRO was issued on September 20, 2017; thus, pursuant to the Rules, the TRO may only be valid up to October 12, 2017, or twenty (20) days after its issuance.

Nearly a month after the issuance of the TRO or on October 18, 2017, PI TWO was finally served with the summons and a copy of the complaint in the Quieting of Title Case.[15]

On October 24, 2017, PI TWO received a Writ of Preliminary Injunction[16] (WPI) dated October 12, 2017 issued by respondent Judge Mendoza in the Quieting of Title Case.

On November 27, 2017, the Heirs of Nuesa filed a Motion to Substitute Cash Bond with an Injunction Bond.[17] The said Motion was set for hearing on December 7, 2017.

In an Order[18] dated November 29, 2017, seven (7) days prior to the scheduled hearing, respondent Judge Mendoza granted the Motion.

On December 21, 2017, PI TWO filed the instant administrative complaint for Gross Ignorance of the Law and Knowingly Rendering an Unjust Judgment, assailing the judiciousness of the following orders issued by respondent Judge Mendoza: September 20, 2017 TRO, September 25, 2017 Order extending the TRO up to October 12, 2017; and the November 29, 2017 Order granting Heirs of Nuesa's Motion to Substitute Cash Bond with an Injunction Bond.

The OCA, in its 1st Indorsement[19] dated January 15, 2018, directed respondent Judge Mendoza to submit his Comment[20] within ten (10) days from receipt of the subject Indorsement.

Comment by respondent Judge Mendoza

Respondent Judge Mendoza, in his Comment dated March 16, 2018, prayed that he be exonerated from the instant administrative charges.

Respondent Judge Mendoza averred that he immediately issued the 72-hour TRO because he honestly believed that there appeared an extreme urgency and that the Heirs of Nuesa would suffer grave injustice and irreparable injury since they were the present possessors of the property subject of the writ of possession.[21] He further insisted that after the hearing on September 25, 2017, sufficient evidence was established for the extension of the life of the TRO up to October 12, 2017, twenty (20) days from September 22, 2017, the day the sheriff received the 72-hour TRO dated September 20, 2018.[22] Respondent Judge Mendoza ratiocinated that he did not discuss the merits of granting the extension as the issues therein might be raised for the issuance of the writ of preliminary injunction.[23]

Anent his order immediately granting the motion to substitute the bond from cash to surety, respondent Judge Mendoza admitted that he honestly overlooked that it was set for hearing.[24] He asserted that the substitution of the bond from cash to surety did not adversely affect the rights of the parties.[25]

OCA Report and Recommendation

In a Report[26] dated June 20, 2018, the OCA found that respondent Judge Mendoza took missteps in the Orders he issued.

While the OCA conceded that the wisdom in the issuance of the assailed 72-hour TRO cannot be passed upon, the OCA found that respondent Judge Mendoza's failure to have the summons served on PI TWO after the issuance of the assailed 72-hour TRO cannot be cured by respondent Judge Mendoza's claim that it was received by the sheriff, the person enjoined from implementing the writ of possession.[27] Even assuming that there was proper service of summons, respondent Judge Mendoza was remiss in his duties when he failed to set a summary hearing to determine whether the TRO can be extended, until the hearing for the preliminary injunction is conducted, within the effectivity of the 72-hour TRO.[28] Instead, respondent Judge Mendoza set the hearing for the application of the writ of preliminary injunction on September 25, 2017, two (2) days beyond the effectivity of the 72-hour TRO.

The OCA also found that respondent Judge Mendoza erroneously extended the TRO. The Rules provide that the life of a TRO should not exceed twenty (20) days including the original 72-hour TRO. Thus, computing the period from its original issuance on September 20, 2017, the 72-hour TRO could only be extended up to October 10, 2017.[29]

The OCA thus recommended that respondent Judge Mendoza be found guilty of gross ignorance of the law and be fined in the amount of Twenty-Five Thousand Pesos (P25,000.00) with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely.[30]

The Court's Ruling

The Court agrees with the findings of the OCA.

Though not every judicial error bespeaks ignorance of the law or of the rules, and that, when committed in good faith, does not warrant administrative sanction, the rule applies only in cases within the parameters of tolerable misjudgment. When the law or the rule is so elementary, not to be aware of it or to act as if one does not know it, constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court proficiency in the law, and the duty to maintain professional competence at all times. When a judge displays

an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge is expected to keep abreast of the developments and amendments thereto, as well as of prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[31]

Even granting that respondent Judge Mendoza had been motivated by good intentions leading him to disregard the laws governing TROs, these personal motivations cannot relieve him from the administrative consequences of his actions as they affect his competency and conduct as a judge in the discharge of his official functions.

To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence.[32] Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules,[33] and should be diligent in keeping abreast with developments in law and jurisprudence.[34]

The Court has previously held that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law. There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." [35] It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption.[36] Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.[37]

Sections 4 and 5 of Rule 58 of the Rules of Court on preliminary injunction, pertinent to this case, provide —

SEC. 4. Verified application and bond for preliminary injunction or temporary restraining order.—A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriffs return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

SEC. 5. Preliminary injunction not granted without notice; exception.—No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20)

days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders. (Emphasis supplied)

Supreme Court Administrative Circular No. 20-95 dated September 12, 1995, otherwise known as the Special Rules for Temporary Restraining Orders and Preliminary Injunctions, also provides that:

3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge. (Emphasis supplied)

A temporary restraining order may be issued ex parte "to preserve the status quo until the hearing of the application for preliminary injunction[,] which cannot be issued ex parte." [38] Otherwise stated, a trial court may issue a temporary restraining order even without a prior hearing for a limited period of 72 hours "if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury." [39] In this instance, a summary hearing, separate from the application of the preliminary injunction, is required only to determine if a 72-hour TRO should be extended. [40]

A trial court may also issue ex parte a TRO for 20 days "[i]f it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice." [41] The trial court has twenty (20) days from its issuance to resolve the application for preliminary injunction. If no action is taken on the application for preliminary injunction during this period, the temporary restraining order is deemed to have expired. [42]

In this case, the OCA correctly observed that respondent Judge Mendoza's failure to serve the summons on PI TWO after the issuance of the assailed 72-hour TRO cannot be cured by his claim that it was received by the sheriff, the person enjoined from implementing the writ of possession. The previous summons received by the

sheriff was also no longer valid considering that the complaint was amended and admitted by virtue of respondent Judge Mendoza's Order dated September 18, 2017. Section 5, Rule 58 of the Rules, as bolstered by Administrative Circular No. 20-95, is explicit that the adverse party should be immediately served with the summons and a copy of the complaint.

Furthermore, the supposed extreme urgency of the issuance of the 72-hour TRO was belied by respondent Judge Mendoza's setting of summary hearing for the extension of the same, five (5) days after the issuance thereof. Section 5, Rule 58 clearly states that such summary hearing must be conducted within the 72-hour period. Instead, respondent Judge Mendoza set the hearing on September 25, 2017, two (2) days beyond the effectivity of the 72-hour TRO.

To make matters worse, respondent Judge Mendoza extended the 72-hour TRO, which had already expired, into a full 20-day TRO. An already expired TRO can no longer be extended. The TRO was issued on September 20, 2017. Section 5, Rule 58 of the Rules clearly provides that "[i]n no case shall the total period of effectivity of the [TRO] exceed twenty (20) days, including the original seventy-two hours provided." The effectivity of the 72-hour TRO issued by respondent Judge Mendoza on September 20, 2017 therefore could only be extended until October 10, 2017, twenty (20) days after its issuance. Thus, respondent Judge erroneously extended the effectivity of the 72-hour TRO until October 12, 2017, two (2) days beyond the period of effectivity of a TRO explicitly provided by the Rules.

In this case, respondent Judge Mendoza's failure to apply the settled laws and jurisprudence on the issuance of TROs constitutes gross ignorance of the law which merits administrative sanction. Section 8(9), Rule 140 of the Rules of Court classifies gross ignorance as a serious charge with the following imposable penalties:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than P20,000.00 but not exceeding P40,000.00.[43]

Time and time again, the Court has stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility." [44] As visible representation of the law, respondent Judge Mendoza should have conducted himself in a manner which would merit the respect of the people to him in particular and to the Judiciary in general.[45]

WHEREFORE, IN VIEW OF THE FOREGOING, Presiding Judge Bernabe B. Mendoza, Branch 23, Regional Trial Court, Roxas, Isabela, is found GUILTY of Gross Ignorance of the Law and is hereby FINED in the amount of Twenty-Five Thousand Pesos (P25,000.00), with a STERN WARNING that a repetition of the same or any similar infraction shall be dealt with more severely.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, A. Reyes, Jr., and J. Reyes, Jr., JJ., concur.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

[1] Rollo, pp. 1-28.

[2] Spelled as "Adalaine" in some parts of the rollo.

[3] Id. at 65-74.

[4] Id. at 78-79.

[5] Id. at 84-85.

[6] Id. at 80-83.

[7] Id. at 29-30.

[8] SEC. 16. Proceedings where property claimed by third person.—If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[9] Rollo, p. 43.

[10] Id. at 44.

[11] Id. at 31-32.

[12] Id. at 61.

[13] Id. at 33.

[14] Id. at 34-42.

[15] Id. at 2.

[16] Id. at 94-95.

[17] Id. at 51-53.

[18] Id. at 54.

[19] Id. at 55.

[20] Id. at 56-64.

[21] Id. at 60.

[22] Id. at 61-62.

[23] Id. at 62.

[24] Id. at 63.

[25] Id.

[26] Id. at 99-103.

[27] Id. at 101.

[28] Id.

[29] Id. at 102.

[30] Id. at 103.

[31] Sps. Logo v. Judge Abul, Jr., 654 Phil. 479, 491 (2011), citing Atty. Amante-Descallar v. Judge Ramas 601 Phil. 21, 39 (2009).

[32] Judge Cabatingan Sr. (Ret.) v. Judge Arcueno, 436 Phil. 341, 347 (2002), citing Code of Judicial Conduct, Canon 1, Rule 1.01.

[33] Savella v. Judge Ines, 550 Phil. 14, 19 (2007).

[34] Atty. Amante-Descallar v. Judge Ramas, supra note 31; Aguilar v. Judge Dalanao 388 Phil. 717, 724 (2000).

[35] Judge Cabatingan Sr. (Ret.) v. Judge Arcueno, supra note 32, at 350; Re: Anonymous Letter dated Aug. 12, 2010, Complaining Against Judge Ofelia T. Pinto, RTC, Br. 60, Angeles City Pampanga, 696 Phil 21, 28 (2012).

[36] Id.

[37] De los Santos-Reyes v. Judge Montesa, Jr., 317 Phil. 101, 113 (1995).

[38] Evy Construction and Dev't Corp. v. Valiant Roll Forming Sales Corp., G.R. No. 207938, October 11, 2017, p. 6.

[39] RULES OF COURT, Rule 58, Sec. 5; italics supplied.

[40] See Sps. Lago v. Judge Abul, Jr., supra note 31, at 490: "Rule 58, as amended, mandates a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction, separate from the summary hearing for the extension of the 72-hour TRO. The preliminary injunction prayed for by the applicant can only be heard after the trial court has ordered the issuance of the usual 20-day TRO. Within that period of 20 days, the court shall order the party sought to be enjoined to show cause at a specified time and place why the injunction should not be granted. During that same period, the court shall also determine the propriety of granting the preliminary injunction and then issue the corresponding order to that effect."

[41] RULES OF COURT, Rule 58, Sec. 5.

[42] Id.

[43] Rules of Court, Rule 140, Sec. 11.

[44] Judge Santos, Jr. v. Mangahas, 685 Phil. 814, 821 (2012).

[45] Atty. Fernandez v. Judge Vasquez, 669 Phil. 619, 633 (2011).

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