

ATTY. TOMAS ONG CABILI, COMPLAINANT, VS. JUDGE RASAD G. BALINDONG, ACTING PRESIDING JUDGE, RTC, BRANCH 8, MARAWI CITY, RESPONDENT.

A.M. No. RTJ-10-2225 (FORMERLY A.M. OCA I.P.I. NO. 09-3182-RTJ). September 06, 2011

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PER CURIAM:

We resolve the administrative complaint against respondent Acting Presiding Judge Rasad G. Balindong of the Regional Trial Court (RTC) of Marawi City, Branch 8, for Gross Ignorance of the Law, Grave Abuse of Authority, Abuse of Discretion, and/or Grave Misconduct Prejudicial to the Interest of the Judicial Service.[1]

The Factual Antecedents

The antecedent facts, gathered from the records, are summarized below.

Civil Case No. 06-2954[2] is an action for damages in Branch 6 of the Iligan City RTC against the Mindanao State University (MSU), et al., arising from a vehicular accident that caused the death of Jesus Ledesma and physical injuries to several others.

On November 29, 1997, the Iligan City RTC rendered a Decision, holding the MSU liable for damages amounting to P2,726,189.90. The Court of Appeals (CA) affirmed the Iligan City RTC decision and the CA decision subsequently lapsed to finality. On January 19, 2009, Entry of Judgment was made.[3]

On March 10, 2009, the Iligan City RTC issued a writ of execution.[4] The MSU, however, failed to comply with the writ; thus, on March 24, 2009, Sheriff Gerard Peter Gaje served a Notice of Garnishment on the MSU's depository bank, the Land Bank of the Philippines (LBP), Marawi City Branch.[5]

The Office of the Solicitor General opposed the motion for execution, albeit belatedly, in behalf of MSU.[6] The Iligan City RTC denied the opposition in its March 31, 2009 Order. The MSU responded to the denial by filing on April 1, 2009 a petition with the Marawi City RTC, for prohibition and mandamus with an application for the issuance of a temporary restraining order (TRO) and/or preliminary injunction against the LBP and Sheriff Gaje.[7] The petition of MSU was raffled to the RTC, Marawi City, Branch 8, presided by respondent Judge.

The respondent Judge set the hearing for the application for the issuance of a TRO on April 8, 2009.[8] After this hearing, the respondent Judge issued a TRO restraining Sheriff Gaje from garnishing P2,726,189.90 from MSU's LBP-Marawi City Branch account.[9]

On April 17, 2009, the respondent Judge conducted a hearing on the application for the issuance of a writ of preliminary injunction. Thereafter, he required MSU to file a memorandum in support of its application for the issuance of a writ of preliminary injunction.[10] On April 21, 2009, Sheriff Gaje moved to dismiss the case on the ground of lack of jurisdiction.[11] The respondent Judge thereafter granted the motion and dismissed the case.[12]

On May 8, 2009, complainant Atty. Tomas Ong Cabili, counsel of the private plaintiffs in Civil Case No. 06-2954, filed the complaint charging the respondent Judge with Gross Ignorance of the Law, Grave Abuse of

Authority, Abuse of Discretion, and/or Grave Misconduct Prejudicial to the Interest of the Judicial Service for interfering with the order of a co-equal court, Branch 6 of the Iligan City RTC, by issuing the TRO to enjoin Sheriff Gaje from garnishing P2,726,189.90 from MSU's LBP-Marawi City Branch account.[13]

The respondent Judge denied that he interfered with the order of Branch 6 of the Iligan City RTC.[14] He explained that he merely gave the parties the opportunity to be heard and eventually dismissed the petition for lack of jurisdiction.[15]

In its December 3, 2009 Report, the Office of the Court Administrator (OCA) found the respondent Judge guilty of gross ignorance of the law for violating the elementary rule of non-interference with the proceedings of a court of co-equal jurisdiction.[16] It recommended a fine of P40,000.00, noting that this is the respondent Judge's second offense.[17]

The Court resolved to re-docket the complaint as a regular administrative matter and to require the parties to manifest whether they were willing to submit the case for resolution on the basis of the pleadings/records on file.[18]

Atty. Tomas Ong Cabili complied through his manifestation of April 19, 2010,[19] stating that he learned from reliable sources that the respondent Judge is "basically a good Judge," and "an admonition will probably suffice as reminder to respondent not to repeat the same mistake in the future." [20] The respondent Judge filed his manifestation on September 28, 2010.[21]

The Court's Ruling

The Court finds the OCA's recommendation well-taken.

The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice:[22] no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction.[23] The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.[24]

Thus, we have repeatedly held that a case where an execution order has been issued is considered as still pending, so that all the proceedings on the execution are still proceedings in the suit.[25] A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.[26] To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administration of justice.[27]

Jurisprudence shows that a violation of this rule warrants the imposition of administrative sanctions.

In *Aquino, Sr. v. Valenciano*, [28] the judge committed grave abuse of discretion for issuing a TRO that interfered with or frustrated the implementation of an order of another court of co-equal jurisdiction. In *Yau v. The Manila Banking Corporation*, [29] the Court held that undue interference by one in the proceedings and processes of another is prohibited by law.

In *Coronado v. Rojas*, [30] the judge was found liable for gross ignorance of the law when he proceeded to enjoin the final and executory decision of the Housing and Land Use Regulatory Board (HLURB) on the pretext that the temporary injunction and the writ of injunction he issued were not directed against the HLURB's writ of

execution, but only against the manner of its execution. The Court noted that the judge "cannot feign ignorance that the effect of the injunctive writ was to freeze the enforcement of the writ of execution, thus frustrating the lawful order of the HLURB, a co-equal body." [31]

In *Heirs of Simeon Piedad v. Estrera*, [32] the Court penalized two judges for issuing a TRO against the execution of a demolition order issued by another co-equal court. The Court stressed that "when the respondents-judges acted on the application for the issuance of a TRO, they were aware that they were acting on matters pertaining to a co-equal court, namely, Branch 9 of the Cebu City RTC, which was already exercising jurisdiction over the subject matter in Civil Case No. 435-T. Nonetheless, respondent-judges still opted to interfere with the order of a co-equal and coordinate court of concurrent jurisdiction, in blatant disregard of the doctrine of judicial stability, a well-established axiom in adjective law." [33]

To be sure, the law and the rules are not unaware that an issuing court may violate the law in issuing a writ of execution and have recognized that there should be a remedy against this violation. The remedy, however, is not the resort to another co-equal body but to a higher court with authority to nullify the action of the issuing court. This is precisely the judicial power that the 1987 Constitution, under Article VIII, Section 1, paragraph 2, [34] speaks of and which this Court has operationalized through a petition for certiorari, under Rule 65 of the Rules of Court. [35]

In the present case, the respondent Judge clearly ignored the principle of judicial stability by issuing a TRO to temporarily restrain [36] Sheriff Gaje from enforcing the writ of execution issued by a co-equal court, Branch 6 of the Iligan City RTC, and from pursuing the garnishment of the amount of P2,726,189.90 from MSU's account with the LBP, Marawi City Branch. The respondent Judge was aware that he was acting on matters pertaining to the execution phase of a final decision of a co-equal and coordinate court since he even quoted MSU's allegations in his April 8, 2009 Order. [37]

The respondent Judge should have refrained from acting on the petition because Branch 6 of the Iligan City RTC retains jurisdiction to rule on any question on the enforcement of the writ of execution. Section 16, Rule 39 of the Rules of Court (terceria), cited in the course of the Court's deliberations, finds no application to this case since this provision applies to claims made by a third person, other than the judgment obligor or his agent; [38] a third-party claimant of a property under execution may file a claim with another court [39] which, in the exercise of its own jurisdiction, may issue a temporary restraining order. In this case, the petition for injunction before the respondent Judge was filed by MSU itself, the judgment obligor. If Sheriff Gaje committed any irregularity or exceeded his authority in the enforcement of the writ, the proper recourse for MSU was to file a motion with, or an application for relief from, the same court which issued the decision, not from any other court, [40] or to elevate the matter to the CA on a petition for certiorari. [41] In this case, MSU filed the proper motion with the Iligan City RTC (the issuing court), but, upon denial, proceeded to seek recourse through another co-equal court presided over by the respondent Judge.

It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. The duty of a sheriff in enforcing writs is ministerial and not discretionary. [42] As already mentioned above, the appropriate action is to assail the implementation of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body. Significantly, MSU did file its opposition before the issuing court -- Iligan City RTC -- which denied this opposition.

That the respondent Judge subsequently rectified his error by eventually dismissing the petition before him for lack of jurisdiction is not a defense that the respondent Judge can use. [43] His lack of familiarity with the rules in

interfering with the acts of a co-equal court undermines public confidence in the judiciary through his demonstrated incompetence. In this case, he impressed upon the Iligan public that the kind of interference he exhibited can be done, even if only temporarily, i.e., that an official act of the Iligan City RTC can be thwarted by going to the Marawi City RTC although they are co-equal courts. That the complaining lawyer, Atty. Tomas Ong Cabili, subsequently reversed course and manifested that the respondent Judge is "basically a good Judge,"[44] and should only be reprimanded, cannot affect the respondent Judge's liability. This liability and the commensurate penalty do not depend on the complainant's personal opinion but on the facts he alleged and proved, and on the applicable law and jurisprudence.

When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[45]

Under A.M. No. 01-8-10-SC or the Amendment to Rule 140 of the Rules of Court Re: Discipline of Justices and Judges, gross ignorance of the law is a serious charge, punishable by a fine of more than P20,000.00, but not exceeding P40,000.00, suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months, or dismissal from the service. Considering the attendant circumstances of this case, the Court -- after prolonged deliberations -- holds that a fine of P30,000.00 is the appropriate penalty. This imposition is an act of leniency as we can, if we so hold, rule for the maximum fine of P40,000.00 or for suspension since this is the respondent Judge's second offense.

WHEREFORE, premises considered, respondent Judge Rasad G. Balindong, Acting Presiding Judge, Regional Trial Court, Branch 8, Marawi City, is hereby FOUND GUILTY of Gross Ignorance of the Law and FINED in the amount of P30,000.00, with a stern WARNING that a repetition of the same will be dealt with more severely.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Villarama, Jr., and Mendoza, JJ., concur. Bersamin, J., join the dissenting opinion of J. Abad.

Abad, J., please see dissenting opinion.

Perez, J., no part. Acted on matter as Cadm.

Sereno, J., on Leave.

Reyes, J., on Leave.

[1] Rollo, pp. 2-9.

[2] Entitled "City of Iligan, represented by Mayor Alejo A. Yanez, Heirs of Jesus Ledesma, Jr., represented by Dexter Ledesma, Wendell Boque, Rodrigo Dayta, Mae Gayta, Landenila Jabonillo, Trifon Lloren, Alma Polo, Jeselda Maybituin, Leobert Pairat, Orchelita Ronquillo, Estrella Ratunil, Virginia Salinas, Lucia Sinanggote, Erwin Siangco, Cesar Cabatic and Alicia Sumapig v. Percing Gabriel and Mindanao State University, Government Service Insurance System, and Fidelity and Surety Company of the Philippines, Inc."

[3] Rollo, pp. 10-11.

[4] Id. at 12-14.

[5] Id. at 15.

[6] Id. at 16.

[7] Id. at 20-24.

[8] Id. at 33.

[9] Id. at 17-19.

[10] Id. at 37-38.

[11] Id. at 45-48.

[12] Id. at 39-40.

[13] Supra note 1.

[14] Comment dated June 29, 2009; rollo, pp. 31-32.

[15] Ibid.

[16] Id. at 81-85.

[17] In *Benito v. Balindong* (A.M. No. RTJ-08-2103, February 23, 2009, 580 SCRA 41), respondent Judge was fined P30,000.00 for gross ignorance of the law and P10,000.00 for violation of the Lawyer's Oath and Canons 1, 5, 6 and 11 of the Code of Professional Responsibility.

[18] Rollo, pp. 86-87.

[19] Id. at 89-90.

[20] Ibid.

[21] Id. at 96.

[22] *Republic of the Philippines v. Judge Reyes*, 239 Phil. 304, 316 (1987).

[23] *Go v. Villanueva, Jr.*, G.R. No. 154623, March 13, 2009, 581 SCRA 126, 131-132; *Aquino, Sr. v. Valenciano*, A.M. No. MTJ-93-746, December 27, 1994, 239 SCRA 428, 429; *Prudential Bank v. Judge Gapultos*, 260 Phil. 167, 179 (1990); and *Investors' Finance Corp. v. Ebarle*, 246 Phil. 60, 71 (1988).

[24] *De Leon v. Hon. Salvador, et al.*, 146 Phil. 1051, 1057 (1970).

[25] *Go v. Villanueva, Jr.*, supra note 23; *Union Bank of the Philippines v. Securities and Exchange Commission*, G.R. No. 165382, August 17, 2006, 499 SCRA 253, 264; *David v. Court of Appeals*, 375 Phil. 177, 187 (1999); *Darwin, et al. v. Tokonaga, et al.*, 274 Phil. 726, 736 (1991); and *Paper Industries Corp. of the Philippines v. Intermediate Appellate Court*, 235 Phil. 162, 167 (1987).

[26] *Balais v. Velasco*, 322 Phil. 790, 806 (1996); and *Vda. de Dimayuga v. Raymundo and Nable*, 76 Phil. 143, 146 (1946).

[27] *Bishop Mondejar v. Hon. Javellana*, 356 Phil. 1004, 1017 (1998); and *Balais v. Velasco*, supra note 26.

[28] Supra note 23.

[29] 433 Phil. 701, 711 (2002), citing *Parco, et al. v. CA, et al.*, 197 Phil. 240, 257 (1982).

[30] A.M. Nos. RTJ-07-2047-48, July 3, 2007, 526 SCRA 280.

[31] Id. at 289.

[32] A.M. No. RTJ-09-2170, December 16, 2009, 608 SCRA 268.

[33] Id. at 277.

[34] Article VIII, Section 1, paragraph 2 of the 1987 Constitution reads:

Section 1. x x x

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[35] Abraham Kahlil B. Mitra v. Commission on Elections, et al., G.R. No. 191938, October 19, 2010; and People v. Nazareno, G.R. No. 168982, August 5, 2009, 595 SCRA 438, 451.

[36] Rollo, pp. 34-36; TRO issued in Spl. Civil Case No. 1873-09, entitled "Mindanao State University, etc. v. Land Bank of the Philippines, etc."

[37] Supra note 9.

[38] Fermin v. Esteves, G.R. No. 147977, March 26, 2008, 549 SCRA 424, 431; and DSM Construction and Dev't Corp. v. Court of Appeals, 514 Phil. 782, 797 (2005).

[39] Section 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 therefore 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. See Bon-Mar Realty and Sport Corporation v. De Guzman, G.R. Nos. 182136-37, August 29, 2008, 563 SCRA 737, 749-750; and Solidum v. Court of Appeals, G.R. No. 161647, June 22, 2006, 492 SCRA 261, 271.

[40] Collado v. Heirs of Alejandro Triunfante, Sr., G.R. No. 162874, November 23, 2007, 538 SCRA 404, 413.

[41] Supra note 35.

[42] Ramas-Uypitching, Jr. v. Magalona, A.M. No. P-07-2379, November 17, 2010, 635 SCRA 1, 5; Patawaran v. Nepomuceno, A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 277; Apostol v. Ipac, 502 Phil. 485, 490 (2005); and De Guzman, Jr. v. Mendoza, 493 Phil. 690, 696 (2005).

[43] Nor is it a viable legal position to claim that a TRO is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ; any complaint against the act of the sheriff must be addressed to the issuing court, not the executing sheriff.

[44] Rollo, p. 89.

[45] In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City,

A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105, 116.

DISSENTING OPINION

ABAD, J.:

Is it right to impose the penalty of fine of P40,000.00 upon Judge Rasad G. Balindong for issuing a temporary restraining order, pending hearing of an application for preliminary injunction, that enjoins a sheriff from executing, in violation of the rules governing satisfaction of judgment against State instrumentalities, upon Mindanao State University's Congress-appropriated funds needed for its operations?

The Facts and the Case

Complainant Atty. Tomas Ong Cabili (Atty. Cabili) was counsel of the Heirs of Jesus Ledesma in the latter's action for damages against the Mindanao State University (MSU) and others arising from the death of the late Jesus Ledesma in Civil Case 06-254 of the Regional Trial Court (RTC) of Iligan City, Branch 6.[1] The RTC rendered judgment[2] against the defendants, including MSU, ordering them to pay damages to the Heirs. On appeal,[3] the Court of Appeals (CA) affirmed the RTC decision[4] which became final and executory.[5]

Eventually, on motion of the Heirs, on March 6, 2009 the RTC Branch 6 caused the issuance of a writ of execution against the defendants. The Office of the Solicitor General (OSG) belatedly filed an opposition to the issuance of the writ, resulting in its denial on the ground of mootness of the motion.[6] Meantime, the Sheriff of Branch 6, Sheriff Gerard Peter Gaje, served a notice of garnishment on MSU's funds with the Land Bank of the Philippines-Marawi City Branch by reason of MSU's failure to obey the writ.

On April 1, 2009, to prevent seizure of its Land Bank deposits that it needed for operations, MSU filed a special civil action of prohibition and mandamus with application for the issuance of a temporary restraining order (TRO) and, subsequently, a preliminary injunction before the RTC Branch 8, presided over by respondent acting presiding judge, Judge Rasad G. Balindong, against Land Bank and Sheriff Gaje.[7]

In its petition, MSU averred that it is a state university, funded by appropriations law enacted by Congress; that despite OSG opposition to the issuance of a writ of execution against it, such writ was issued and Sheriff Gaje garnished upon MSU's deposits with Land Bank, who in turn gave notice to MSU that it was putting on hold the sum of P2,726,189.90 on its deposit in Account 2002-0000-35; that, this money being government funds, Sheriff Gaje was executing on the same in violation of Commission on Audit (COA) Circular 2001-002 dated July 31, 2001 and SC Administrative Circular 10-2000; and that unless restrained, the garnishment of government fund would disrupt MSU's operations.

After due hearing, Judge Balindong issued a TRO, enjoining Land Bank and Sheriff Gaje from proceeding with the garnishment of the MSU deposit with Land Bank.[8] To determine whether the issuance of a writ of preliminary injunction was warranted, Judge Balindong heard the parties and required them to submit memoranda. Instead of submitting a memorandum, Sheriff Gaje filed a motion to dismiss on the ground that RTC Branch 8 had no jurisdiction to issue an injunction order against another court of equal rank. Finding merit, on April 28, 2009 Judge Balindong issued an Order, dismissing the petition.

For having initially taken cognizance of the case and issuing a TRO, Atty. Cabili filed the present administrative action Judge Balindong for gross ignorance of the law, grave abuse of authority, abuse of discretion and/or grave misconduct prejudicial to the interest of the judicial service. The Office of the Court Administrator (OCA) found ground to hold Judge Balindong guilty of gross ignorance of the law for interfering with the judgment of a

co-equal court. It recommended the imposition of a fine of P40,000.00 on Judge Balindong with a stern warning against a future offense.[9]

The majority would want to adopt the recommendation.

The Issue Presented

The issue in this case is whether or not Judge Balindong of RTC Branch 8 acted with gross ignorance of the law when he issued the TRO, pending hearing on the application for preliminary injunction that enjoined Sheriff Gaje from garnishing MSU's Congress-appropriated operating funds for the satisfaction of the judgment of RTC Branch 6.

The Dissent

With all due respect, I dissent from my colleagues. The majority concludes that Judge Balindong exceeded his authority when he temporarily restrained the writ of execution issued by a co-equal court, RTC Branch 6. Judge Balindong's act, said the majority, betrayed his gross ignorance of the policy of peaceful co-existence among courts of the same judicial plane and the elementary rule of non-interference with the proceedings of a court of co-equal jurisdiction.

But there is quite a huge difference between a) issuing a TRO that enjoins the sheriff from enforcing the writ of execution of a co-equal court against specific assets that are exempt from execution and b) issuing one that altogether enjoins a co-equal court from enforcing its judgment.

Here, MSU's action before Branch 8, presided over by Judge Balindong, was not directed against the final decision of Branch 6 of the Court or its enforceability against MSU but against Sheriff Gaje's authority to look for the judgment debtor's assets, not exempt from execution, upon which he could satisfy the judgment. Clearly, Judge Balindong's TRO was addressed to the sheriff, enjoining him from enforcing the writ of execution, a writ directed in general against all assets of MSU and the other defendants that were not exempt from execution.

Indeed, Judge Balindong's TRO did not enjoin the enforcement of the judgment of a co-equal branch. It merely restricted Sheriff Gaje's discretion in determining what assets of MSU he can validly execute upon. From the circumstances above, it is clear that Sheriff Gaje actually exceeded his authority in serving the notice of garnishment against the Congress-appropriated funds of MSU that were deposited with Land Bank.

While funds of government instrumentalities that have separate and distinct personalities from the national government are not exempt from execution or garnishment,[10] the enforcement of a writ of execution against these funds are not ministerial compared to the execution of funds belonging to private individuals. An additional requirement, the filing of claim for payment with the COA, is necessary before execution can prosper.[11] This additional requirement is pursuant to Commonwealth Act 327, as amended by Section 26 of Presidential Decree 1445, which vests in the COA the primary jurisdiction to examine, audit, and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned and controlled corporations and their subsidiaries.

As properly alleged in its petition, MSU is a government instrumentality,[12] being a creation of Republic Act 1387, as amended. As an instrumentality of the government, its funds cannot be simply garnished through the mere service of Sheriff Gaje of a notice of garnishment without proof of approval from the COA.

Consequently, it cannot be said that Judge Balindong acted with blatant gross ignorance of the law. His TRO did not enjoin the enforcement of the final judgment of Branch 8. He issued a temporary restraining order based on the legally plausible proposition that there was a need to protect Congress-appropriated funds that MSU, a

government instrumentality for providing higher education for the Muslim minority in Mindanao, needed for its operations. And it was but a TRO of limited life, sufficient to enable him to hear the parties and decide what appropriate action to take in the case. After hearing the parties on the need to issue a writ of preliminary injunction and finding merit on the motion questioning Branch 8's jurisdiction over the action, Judge Balindong eventually dismissed the petition filed in his sala. He acted prudently and correctly in the case. He did not act with outrageous ignorance of the principle of non-interference with the proceedings of a court of co-equal jurisdiction.

Actually the issuance by one court of a TRO or writ of preliminary injunction against the sheriff of another court who attempts to enforce a judgment against properties that do not belong to the judgment debtor is common place, is authorized by the rules, and is not regarded as interference with the authority of a co-equal body.[13] The party prejudiced by the execution has an option to raise the matter before the court that rendered the judgment or before some other appropriate court. MSU relied on this authorized course of action. The only problem is that the OSG had already filed an opposition to the issuance of the writ of execution against MSU before Branch 6 and the latter court denied such opposition. Consequently, the proper remedy was a special civil action with the Court of Appeals assailing such denial.

Still Judge Balindong cannot be regarded as incorrigibly incompetent. At best he initially incurred an error of judgment. Still, after appropriate hearing, he declined to issue a writ of preliminary injunction in the case and instead dismissed the action for lack of jurisdiction. He, therefore, acted reasonably, prudently, and appropriately. He certainly does not deserve either the finding that he was guilty of gross ignorance of the law or the harsh penalty that the majority prescribes for him.[14]

Parenthetically, complainant Atty. Cabili himself openly declares that Judge Balindong is a good judge[15] and that the Court should consider in his favor his lack of bad faith in issuing the TRO in question.

I therefore vote to reduce the penalty imposed on Judge Rasad G. Balindong to P20,000.00.

[1] Entitled City of Iligan, Heirs of Jesus Ledesma, et al. v. Percing Gabriel, Mindanao State University, et al.

[2] Decision dated November 29, 1997.

[3] Docketed as CA-G.R. CV 64832.

[4] Decision dated August 27, 2008.

[5] Rollo, p. 10.

[6] A copy of the OSG's Opposition dated February 8, 2009 was received by the RTC on March 13, 2009 and was denied by the RTC in its Order dated March 31, 2009.

[7] Docketed as SPL Civil Case 1873-09.

[8] Order dated April 8, 2009.

[9] Judge Balindong was previously found guilty of gross ignorance of the law and for violation of the lawyer's oath and Canons 1, 5, 6 and 11 of the Code of Professional Responsibility and was fined P30,000.00 and P10,000.00 respectively, in A.M. RTJ-08-2103 entitled: "Edna S.V. Benito v. Rasad G. Balindong."

[10] In this case, MSU has a separate juridical personality from the National Government and has the power to sue and to be sued as provided in Section 5 of R.A. 1387 in relation to Section 13, Act 1459.

[11] National Electrification Administration v. Morales, G.R. No. 154200, July 24, 2007.

[12] Executive Order 292 or the Revised Administrative Code defines a government instrumentality as any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. (Section 2 [10]) "Chartered institution" refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State. (Section 2[12]).

[13] Rules of Court, Rule 39, Section 16.

[14] *Andres v. Judge Majaducon*, A.M. No. RTJ-03-1762, December 17, 2008: "[M]ere error is not sufficient in order to indict a judge for gross ignorance of the law. For liability to attach, the assailed order, decision or actuation must not only be contrary to existing law and jurisprudence, but, most importantly, it must be established that he was moved by bad faith, fraud, dishonesty and corruption."

[15] *Manifestation*, rollo, pp. 89-90.

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