

MATEO DUMAYA, COMPLAINANT, VS. JUDGE TERTULO A. MENDOZA, MCTC, QUEZON-LICAB, NUEVA ECIJA

A.M. No. MTJ-89-301. November 08, 1993

Ponente: NOCON, J.

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NOCON, J.:

A judge should perform his official duties honestly, and with impartiality and diligence. He shall dispose of the court's business promptly and decide cases within the required periods.[1] Thus, a delay of five (5) months in the resolution of a motion for the issuance of a writ of preliminary injunction in a forcible entry case runs counter to the duty of a judicial magistrate to ensure speedy administration of justice.

Judge Tertulo Mendoza[2] is here charged with serious misconduct relative to the disposition of Civil Case No. 379, entitled "Mateo Dumaya v. Sps. Teddy Fernandez and Amelia Ventura" for Forcible Entry with Prayer for Writ of Preliminary Mandatory Injunction.

In an administrative complaint dated May 22, 1989, Mateo Dumaya alleges that on August 5, 1988, he filed the aforesaid case, specifically praying therein the issuance of a writ of preliminary injunction. On September 9, 1988, respondent judge ordered the parties to file their respective memorandum and "thereafter, with or without such memorandum, the prayer for the issuance of the writ of preliminary mandatory injunction will be deemed submitted for resolution"[3]

Respondent Judge, however, apparently forgot to act expeditiously upon his own order, so much so that on February 24, 1989, or five (5) months thereafter, the counsel for petitioner/complainant had to file a petition to resolve his request for preliminary injunction.[4] Jolted into action, respondent Judge response was to issue an Order dated March 15, 1989 denying the issuance of the writ, "(a)fter considering the arguments of both parties with regard to the issuance of writ of preliminary mandatory injunction as contained in their pleadings." [5] (Emphasis supplied.) Thus, this complaint alleging that the delay of respondent in deciding the case unnecessarily prolonged the litigation, resulting to his damage and prejudice.

The case was referred to the Office of the Court Administrator (OCA) which found that "respondent evidently failed to satisfactorily explain his failure to resolve the prayer (for the issuance of a writ of preliminary injunction) after fifteen (15) days from September 9, 1988. (Annex "B", Complaint)."[6] Hence, the OCA recommended a fine of P2,000.00 "for his failure to apply the (1983) Rule on Summary Procedure in Civil Case 379." [7]

Deputy Court Administrator Reynaldo Suarez, further observed that:

"It may be argued that respondent in the exercise of his sound discretion had legal reasons to hold a full blown trial instead of deciding the case based on the pleadings filed, but had he been more assiduous in the performance of his obligation as a dispenser of justice the case should have been deemed submitted after the filing of the answer, (the date however could not be ascertained as the records do not disclose), which certainly could have been done prior to the hearing scheduled on February 24, 1989. The action was simply a case of forcible entry which involves only the issue of possession but it took respondent more than one year to decide

the case from the date it was filed. Clearly, respondent failed to implement the Rule on Summary Procedure in this particular case.”[8]

Although we agree with the recommendation of the Office of the Court Administrator that respondent judge should be sanctioned for the delay in resolving the prayer for issuance of the writ of preliminary injunction, the recommendation failed to consider that Civil Case No. 379 is not really a case of forcible entry but one involving the issue of ownership over the subject property, and therefore, the old Rule on Summary Procedure is not applicable.

Before its amendment in October, 1991 the Rule on Summary Procedure was applicable to cases of forcible entry and unlawful detainer, except where the question of ownership is involved.[9] In respondent judge's decision he stated that the defendants in Civil Case No. 379 alleged as affirmative defense that they are the "owners of the house and lot having bought the same for value and good faith from the son of the plaintiff.”[10] There being a question of ownership, the old Rule on Summary Procedure is therefore, not applicable.

Be that as it may, Rule 70 of the Rules of Court mandates that in forcible entry cases where a motion for the issuance of a writ of preliminary injunction has been filed to restore the possessor in possession, the court "shall decide the motion within thirty (30) days from the filing thereof. "[11]

Respondent's excuse that he resolved complainant's prayer for the issuance of a writ of preliminary injunction before the filing of the instant complaint is unavailing as he evidently failed to resolve the issue of whether the writ should be issued or not within the period stated in the law nor to explain the delay.

Respondent judge is administratively liable for the unreasonable delay in the disposition of the said civil case. Nevertheless, we find the recommended penalty of P2,000.00 fine to be too harsh a penalty to be imposed.

WHEREFORE, finding Judge Tertulo A. Mendoza to be guilty of misconduct for unreasonable delay in resolving the matter of whether or not to issue the writ of preliminary injunction within 30 days from the filing of Civil Case No. 379 for Forcible Entry, the Court hereby FINES him P1,000.00, with a warning that any or similar infraction shall be dealt with more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Canon 3, Rule 3.05, Code of Judicial Conduct.

[2] Municipal Trial Court, Quezon-Licab, Nueva Ecija.

[3] Annex "B" of the Petition, Rollo, p. 6.

[4] Annex "C" of the Petition, Rollo, p. 7.

[5] Annex "1" of the Answer, Rollo, p. 14.

[6] Recommendation of the OCA, p. 1.

[7] Id., p. 2.

[8] Id.

[9] Sec. 1. A (1), 1983 Rule on Summary Procedure.

[10] Annex "4" of the Answer, Rollo, p. 17.

[11] Sec. 3 - Preliminary Injunction -

x x x

A possessor deprived of his possession through forcible entry may within ten (10) days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof. (Emphasis supplied)

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