

ATTY. FRANCISCO CARREON, COMPLAINANT, VS. JUDGE MANUEL B. ACOSTA, MUNICIPAL COURT, MAKATI, METRO MANILA, RESPONDENT.

A.M. No. 2035-MJ. January 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The Court Administrator submitted the following report and recommendation:

"In a verified letter-complaint against Judge Manuel B. Acosta of the Municipal Court of Makati, Atty. Francisco Carreon imputes 'gross ignorance of the law and jurisprudence and/or serious misconduct, gross incompetence and gross inefficiency in the performance of his duties as member of the judiciary.'

"It is alleged that complainant was the counsel of defendant Sylvia Tankiang Manalo in an ejectment case (Civil Case No. 17595, entitled 'Vicente S. Martinez, et al. vs. Sylvia Tankiang Manalo') filed before the Municipal Court of Makati. Defendant Manalo, through complainant, filed her answer admitting her occupancy and possession of the property while denying the other material allegations of the complaint, and specifically putting up the affirmative defense that she and her husband Francisco Manalo 'are the owners of the bungalow (house), subject of the complaint, having built same in their own expense in 1956 in accordance with an agreement with the then registered owner (defendant's mother-in-law, Mrs. Salud Reyes Manalo) of the parcel of land on which the bungalow stands . . .,' and that the 'court had no jurisdiction of the action.'

"On July 17, 1978, after hearing the arguments of the parties, respondent judge announced in open court that he would issue an order dismissing the case 'because determination of the issue of ownership of the real property involved is beyond the jurisdiction of the court.'

"On July 18, 1978, respondent Judge rendered a decision dismissing the case for the reason expressed therein thus: 'the issue of ownership cannot be ignored. This case cannot be decided without resolving the issue of ownership . . . determination of ownership of real property is beyond the jurisdiction of the court. Wherefore, premises considered, the complaint in this case is hereby dismissed for lack of jurisdiction.'

"On September 13, 1978, plaintiff through counsel filed a Motion for Reconsideration of the decision, in substance alleging that the case should stand as the issue is not one of ownership, for the plaintiff was already the owner.

"Further, complainant pointed out that the aforesaid Motion for Reconsideration was not even scheduled for hearing on a definite date or specified date and time, the last pan of the motion merely slating:

'The Deputy Clerk of Court
Branch IV

Greetings:

Please set the foregoing motion for consideration and approval of this Court at the earliest date possible.

EDUARDO A. CLAUDIO II'

"On September 16, 1978, one day after said motion was filed in Court, a xerox copy thereof was sent by registered mail, posted at Makati and addressed to Atty. Francisco Carreon who received the same on September 30, 1978, long after respondent had acted favorably upon plaintiff's motion for reconsideration.

"Herein complainant presses the position that in acting on the motion for reconsideration without giving defendant a chance to be heard,, respondent Judge displayed gross ignorance of the law and jurisprudence, in view of the settled doctrine of the Supreme Court that 'the three-day notice required by law in the filing of motions is intended not for the movant's benefit but to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion' (J.M. Tuason & Co., Inc., v. Magdangal, L-15539, January 30, 1962, 4 SCRA 84). Further, complainant emphasized that respondent Judge 'exhibited gross incompetence and gross inefficiency in failing to note that plaintiffs' aforesaid motion for reconsideration does not even state on what date and time it would be submitted for hearing; that there is nothing on plaintiffs' motion to indicate how adverse counsel was served with copy of said motion; that on September 18, 1978 when respondent Judge issued the order complained of, adverse counsel including the undersigned had not received copies of same; and that there was no proof at all that receipt of copy of said motion had already been acknowledged.'

"On the other hand, respondent Judge when made to comment, explained that following his decision dismissing the complaint in Civil Case No. 17595 for lack of jurisdiction, the plaintiff filed a motion for reconsideration on September 15, 1978, upon which on September 18, 1978, he issued an order setting aside said decision and scheduling the case for hearing on October 9, 1978 at 1:30 in the afternoon. Further, he said:

'It is indeed true that the undersigned committed an error in having resolved the said Motion for Reconsideration without setting it for hearing. After thoroughly reading the said Motion for Reconsideration

when it was presented to me for action under the principle of ventilation of all the issues and deciding a case after trial on the merits, the undersigned reacted immediately by issuing the order in question.

'It is unfortunate, however, that before the error was brought to my attention the complainant, Atty. Francisco Carreon, immediately filed this administrative case and simultaneously withdrew from the case. However, the substituting counsel for the defendant filed a Motion for Reconsideration and as seen above, when this motion was set for hearing the parties through their respective counsels informed the Court that they will submit an amicable settlement of said Civil Case No. 17595.'

"Altogether, the thrust of this administrative complaint is to question the favorable action taken by respondent on the motion for reconsideration filed by the plaintiff on September 15, 1978, which came without scheduling it for hearing to afford the defendant the chance to oppose and be heard.

"Section 6, Rule 15 of the New Rules of Court provides:

'Proof of Service, to be filed with motion.— No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected.'

"It is clear that no motion should be acted upon by the court without the proof of service of notice thereof, together with a copy of the motion and other papers accompanying it, to all parties concerned, at least three (3) days before the hearing thereof, stating the time and place for the hearing of the motion. When the motion does not comply with this requirement, it is not a motion. It presents no question which the court could decide. And the court acquires no jurisdiction to consider it (*Laserna vs. Javier, et al.*, CA-G.R. No. 7885-R, April 22, 1955, XXI L.J. 36, citing *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866; *Manakil vs. Revilla*, 42 Phil. 81). Notice of motion is necessary and without proof of service thereof, a motion is nothing but a useless piece of paper which the clerk should not receive for filing (*Philippine National Bank vs. Donasco, et al.*, G.R. No. L-18638, Feb. 28, 1963, XXVIII L.J. 123; *Viacrusis et al., vs. Estenzo, et al.*, No. L-1845-R, June 30, 1962; *Manakil vs. Revilla*, *supra*; *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, *supra*; and *Director of Lands vs. Sanz*. 45 Phil. 117).

"In this administrative complaint, respondent admitted having erred in deciding plaintiffs' motion for reconsideration without giving the defendant a chance to be heard. It may not be error to pass upon a motion without giving notice to the adverse party if the ruling is unfavorable to the moving party. However, if the rights of the adverse party will be affected, it is clearly an error to act upon said motion without giving him the opportunity to oppose and be heard."

The aforesaid report and recommendation are hereby approved.

WHEREFORE, respondent Judge Manuel B. Acosta is hereby censured and warned that a repetition of the same or analogous incident will be dealt with more sternly.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero and Melericio-Herrera, JJ., concur.

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