# PROSECUTOR LEO C. TABAO, REGIONAL CHAIRMAN, SPECIAL TASK FORCE ON ENVIRONMENT AND NATURAL RESOURCES (STF-ENR) OF REGION 8, TACLOBAN CITY, COMPLAINANT, VS. JUDGE FRISCO T. LILAGA...

*A.M. No. RTJ-01-1651 (Formerly A.M. No. 98-551-RTJ). September 04, 2001*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

This is an administrative complaint filed by Atty. Leo C. Tabao, Assistant City Prosecutor of Tacloban, in his capacity as Regional Chairman of the Region 8 Special Task Force on Environment and Natural Resources, against (1) Judge Frisco T. Lilagan, presiding judge of the Leyte Regional Trial Court, Branch 34, for gross ignorance of the law, gross abuse of judicial authority, and willful disobedience to settled jurisprudence; and (2) Sheriff IV Leonardo V. Aguilar of the Leyte RTC, Office of the Clerk of Court, for gross irregularity in the performance of official duties, giving unwarranted benefits to a private individual, violation of Section 1(b) and (c) of P.D. No. 1829, and conduct prejudicial to the best interest of the service.

The records of this case reveal the following facts.

On February 24, 1998, a water craft registered under the name M/L Hadija, from Bongao, Tawi-tawi, was docked at the port area of Tacloban City with a load of around 100 tons of tanbark. Due to previous irregular and illegal shipments of tanbark from Bongao, agents of the National Bureau of Investigation in Region 8 (NBI-EVRO #8) decided to verify the shipment's accompanying documents as the M/L Hadija was unloading its cargo to its consignee, a certain Robert Hernandez.

The NBI agents found the documents irregular and incomplete, and consequently they ordered the unloading of the cargo stopped. The tanbark, the boat M/L Hadija, and three cargo trucks were seized and impounded.

On March 5, 1998, NBI-EVRO #8 Regional Director Carlos S. Caabay filed a criminal complaint for violation of Section 68 (now Section 78) of P.D. No. 705,[1] the Forestry Reform Code of the Philippines (as amended), against the captain and crew of the M/L Hadija, Robert Hernandez, Tandico Chion, Alejandro K. Bautista, and Marcial A. Dalimot. Bautista was a forester while Dalimot was a Community Environment and Natural Resources Officer (CENRO) of the Department of Environment and Natural Resources (DENR) office in Tacloban City. Bautista and Dalimot were, thus, also charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act,[2] along with Habi A. Alih and Khonrad V. Mohammad of the CENRO-Bongao, Tawi-tawi. The complaint was docketed as I.S. No. 98-296 at the Prosecutor's Office of Tacloban City.

In an order dated March 6, 1998,[3] complainant directed the seizure by the DENR of the M/L Hadija, its cargo, and the three trucks pending preliminary investigation of the case. DENR thus took possession of the aforesaid items on March 10, 1998, with notice to the consignee Robert Hernandez and the NBI Regional Director.

On March 11, 1998, Hernandez filed in the Regional Trial Court of Leyte a case for replevin to recover the items

seized by the DENR. The case was raffled off to Branch 34 of said court and docketed as Civil Case No. 98-03-42.

On March 16, 1998, subpoenas were issued to the respondents in I.S. No. 98-296. On March 17, 1998, confiscation proceedings were conducted by the Provincial Environment and Natural Resources Office (PENRO)-Leyte, with both Hernandez and his counsel present.

On March 19, 1998, herein respondent Judge Frisco T. Lilagan issued a writ of replevin and directed respondent Sheriff IV Leonardo V. Aguilar to take possession of the items seized by the DENR and to deliver them to Hernandez after the expiration of five days.[4] Respondent sheriff served a copy of the writ to the Philippine Coast Guard station in Tacloban City at around 5:45 p.m. of March 19, 1998.

Thus, the filing of this administrative complaint against respondents via a letter addressed to the Chief Justice and dated April 13, 1998, by Atty. Tabao.

Complainant avers that replevin is not available where the properties sought to be recovered are involved in criminal proceedings for illegal logging. He points out that this is a well-settled issue and cites several decisions[5] of this Court and the Court of Appeals on the matter. He argues that respondent judge should have known of the existing jurisprudence on this issue, particularly since they are subject to mandatory judicial notice per Section 1, Rule 129 of the Revised Rules of Court.

Complainant submits that respondent judge is either grossly ignorant of the law and jurisprudence or purposely disregarded them. But he avers that it is respondent judge's duty to keep abreast of developments in law and jurisprudence.

Complainant claims that respondent judge cannot claim ignorance of the proceedings in I.S. No. 98-296 for the following reasons: (1) the defendants in the replevin case were all DENR officers, which should have alerted respondent judge to the possibility that the items sought to be recovered were being held by the defendants in their official capacities; and (2) the complaint for replevin itself states that the items were intercepted by the NBI for verification of supporting documents, which should have made respondent judge suspect that the same were being held by authority of law.

As regards respondent sheriff Leonardo V. Aguilar, complainant states that it was incumbent upon Aguilar to safeguard the M/L Hadija and prevent it from leaving the port of Tacloban City, after he had served a writ of seizure therefor on the Philippine Coast Guard. However, on March 19, 1998, the vessel left the port of Tacloban City, either through respondent sheriff's gross negligence or his direct connivance with interested parties, according to complainant. As of the time of the filing of the complaint, according to complainant, the whereabouts of the vessel and its crew were unknown.

Moreover, complainant points out that respondent sheriff released the seized tanbark to Hernandez on March 20 and 21, 1998, or within the five-day period that he was supposed to keep it under the terms of the writ. Complainant argues that the tanbark formed part of the people's evidence in the criminal complaint against Hernandez and the others. By his act, respondent sheriff effectively altered, suppressed, concealed, or destroyed the integrity of said evidence. For this act, complainant contends that respondent sheriff may be held liable under Section 1(b) of P.D. 1829, Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders.[6] Respondent sheriff's acts also constitute gross irregularity in the performance of his duty as a court employee.

Complainant notes that respondent sheriff was absent from his office from March 20 to March 24, 1998. This period included the dates he was supposed to have released the tanbark to Hernandez. Complainant contends that respondent sheriff not only unlawfully released the tanbark, he also made it appear that he was not physically


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present when such act was done.

In separate indorsements dated September 9, 1998, then Court Administrator Alfredo L. Benipayo referred this administrative matter to both respondents for comment.

In his comment dated October 12, 1998,[7] respondent judge calls the attention of the Office of the Court Administrator to a pending motion to dismiss filed by the defendants in the replevin case that effectively prevented him from commenting on the issue. The discussions that would have to be included in the comment, he says, would also resolve the pending motion to dismiss. Respondent judge contends that complainant should have been prudent enough to wait for the resolution of the motion to dismiss before filing the instant administrative case.

Respondent judge claims that he was unaware of the existence of I.S. No. 98-296. He only learned of the criminal case from an urgent manifestation dated March 20, 1998, filed by complainant. He argues that he issued an order dated March 25, 1998, suspending the transfer to Hernandez of possession of the subject items, pending resolution of the urgent manifestation.

Respondent judge stresses that the writ of replevin was issued in strict compliance with the requirements laid down in Rule 60 of the Revised Rules of Court. He also points out that said writ was issued provisionally and was not intended to be the final disposition of the replevin case.

Respondent judge avers that the charge of gross ignorance of the law is premature since he has not made a ruling yet on the motion to dismiss filed in the replevin case. He contends that it was too much to ask from him to take note of the fact that the defendants in said case were officials of DENR and make assumptions based on such fact. Moreover, respondent judge submits that while the complaint alleged that the cargo of tanbark was intercepted by the NBI, it also alleged that the consignee thereof produced documents to prove that the shipment was legal.

In conclusion, respondent judge points out that no apprehension report was issued by the NBI regarding the shipment. Neither did the DENR issue a seizure report. Respondent judge contends that the validity of the seizure of the subject items by the DENR is a matter that will have to be resolved in relation to the motion to dismiss.

For his part, respondent sheriff submits[8] that he served the writ of replevin on the Coast Guard precisely to prevent the departure of the subject vessel, since he does not have the means to physically prevent said vessel from sailing. The Coast Guard commander should have examined the vessel and its crew after being served the writ, to determine whether or not they were engaged in any illegal activity.

Respondent sheriff narrates that no cargo was on board the vessel when he served the writ on the Coast Guard. He verified the cargo's status with DENR, which furnished him a copy of a fax transmission stating that the tanbark came from legitimate sources except that the shipment documents were not in order.[9]

Respondent sheriff contends that it was his ministerial duty to serve the writ of replevin, absent any instruction to the contrary. He argues further that since the items subject of the writ are in the custody of the court and could be disposed of only through court order, there could not be any unwarranted benefit to a private individual as claimed by complainant.

Noting that the questioned shipment of tanbark was not covered by either an NBI apprehension report or a DENR seizure report, respondent sheriff contends that complainant should have taken steps to protect the integrity of the shipment instead of heaping blame upon others for his own negligence. Respondent sheriff avers that it was not his intention to obstruct the apprehension and prosecution of criminal offenders, contrary to complainant's claim.

Respondent sheriff refutes complainant's claim that he was absent from his office from March 20 to March 24,


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1998, and alleges that it was complainant who was absent from court hearings on several occasions, in violation of his duty as a prosecutor.

Respondent submitted two supplemental comments dated October 30, 1998,[10] and May 3, 1999,[11] (1) reiterating his contention that the tanbark seized by the DENR and subject of the replevin case had been found to come from a legitimate source, per an order signed by the Regional Director (Region 8) of the DENR,[12] and (2) informing the OCA that the main replevin case was dismissed per an order of respondent judge dated November 27, 1998.[13]

As required by resolution of the Court dated January 24, 2001, the parties herein separately manifested that they are willing to have the present case resolved based on the record on hand.

We note that in its report dated April 8, 1999, the OCA, after reviewing the case, recommended that respondent judge be fined in the amount of P15,000.00 for gross ignorance of the law. At the same time, the OCA recommended that the charges against respondent sheriff be dismissed for lack of merit.

The recommendation of the OCA is well taken, except for the amount of the fine to be imposed on said respondent judge.

The complaint for replevin itself states that the shipment of tanbark as well as the vessel on which it was loaded were seized by the NBI for verification of supporting documents.[14] It also states that the NBI turned over the seized items to the DENR "for official disposition and appropriate action."[15] A copy of the document evidencing the turnover to DENR was attached to the complaint as Annex "D".[16] To our mind, these allegations would have been sufficient to alert respondent judge that the DENR has custody of the seized items and that administrative proceedings may have already been commenced concerning the shipment. Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence.[17] Note, too, that the plaintiff in the replevin suit who seeks to recover the shipment from the DENR had not exhausted the administrative remedies available to him.[18] The prudent thing for respondent judge to have done was to dismiss the replevin suit outright.

Under Section 78-A of the Revised Forestry Code, the DENR secretary or his authorized representatives may order the confiscation of forest products illegally cut, gathered, removed, or possessed or abandoned, including the conveyances used in the commission of the offense.

In this regard, we declared in Paat v. Court of Appeals:

> "...the enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an unjustified encroachment into the domain of the administrative agency's prerogative. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. xxx"[19]

Respondent judge's act of taking cognizance of the subject replevin suit clearly demonstrates ignorance of the law. He has fallen short of the standard set forth in Canon 1, Rule 1.01 of the Code of Judicial Conduct, that a judge must be the embodiment of competence, integrity, and independence. To measure up to this standard, judges are expected to keep abreast of all laws and prevailing jurisprudence.[20] Judges are duty bound to have more than just a cursory acquaintance with laws and jurisprudence. Failure to follow basic legal commands constitutes gross ignorance of the law from which no one may be excused, not even a judge.[21]

We find, however, that respondent judge had already vacated the Writ of Seizure he issued on March 19, 1998, in a subsequent Order dated November 27, 1998, dismissing the Civil Complaint for replevin filed by Robert Hernandez against the Regional Director of the DENR and other officers. He also directed in said order the sheriff to return to CENRO, Tacloban City, all the chattels confiscated by virtue of the Writ of Seizure.[22]

Further, we find that Sheriff Aguilar in his Final Return of the Writ, dated December 15, 1998, had already delivered to CENRO the 102 tons and 120 kilos of tanbark duly receipted by CENRO representative Marcial A. Dalimot on the same date.[23]

The OCA recommends that respondent judge be fined in the amount of P15,000.00. Under the circumstances, considering that this is the first complaint against him, we deem a fine of P10,000.00 to be sufficient.

Regarding the charges against respondent sheriff, we agree with the OCA that they should be dismissed. Respondent sheriff merely complied with his ministerial duty to serve the writ with reasonable celerity and to execute it promptly in accordance with its mandates.[24]

WHEREFORE, respondent Judge Frisco T. Lilagan is hereby found liable for gross ignorance of the law and is accordingly ordered to pay a FINE of P10,000.00, with a WARNING that a repetition of the same or a similar offense will be dealt with more severely. The complaint against respondent Sheriff IV Leonardo V. Aguilar is DISMISSED for lack of merit.
SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] SEC. 78. Cutting, Gathering and/or Collecting Timber or Other Forestry Products Without License. -- Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[2] SEC. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[3] Rollo, p. 58.

[4] Id. at 74-75.

[5] Paat v. Court of Appeals, 266 SCRA 167 (1997); Dapula, et al. v. Encinas, CA-G.R. No. 37055, October 28, 1996; Sampaga, et al. v. Espina, CA-G.R. No. 28404, April 20, 1994.

[6] Sec. 1. The penalty of prision correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

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(b) Altering, destroying, suppressing or concealing any paper, record, document, or object with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases.

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[7] Rollo, pp. 81-94.

[8] See Comment dated October 11, 1998, Rollo, pp. 197-206.

[9] Rollo, pp. 216-228. See in particular p. 227.

[10] Id. at 244-246.

[11] Id. at 264-265.

[12] Id. at 247-253.

[13] Id. at 266-268.

[14] Id. at 96.

[15] Id. at 98.

[16] Id. at 117.

[17] Paat v. Court of Appeals, 266 SCRA 167, 178 (1997); Machete v. Court of Appeals, 250 SCRA 176, 182 (1995); Vidad v. RTC of Negros Oriental, Br. 42, 227 SCRA 271, 276 (1993).

[18] Paat v. Court of Appeals, supra, at 184, reiterated in Dy v. Court of Appeals, 304 SCRA 331, 337 (1999).

[19] Paat v. Court of Appeals, supra, at 177-178.

[20] Cortes v. Agcaoili, 294 SCRA 423, 456 (1998).

[21] De Austria v. Beltran, 313 SCRA 443, 452 (1999).

[22] Rollo, pp. 266-268.

[23] Id. at 268-269.

[24] Onquit v. Binamira-Parcia, 297 SCRA 354, 364 (1998).


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