

NOEL G. WABE, COMPLAINANT, VS. LUISITA P. BIONSON, CLERK OF COURT OF MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, RESPONDENT.

A.M. No. P-03-1760 (Formerly AM No. 01-1223-P). December 30, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The administrative case before us arose upon the filing of a verified Letter-Complaint[1] dated September 17, 2001 against Luisita P. Bionson, Clerk of Court, Municipal Trial Court in Cities of Malaybalay City, for grave misconduct. Noel G. Wabe, the complainant, alleged that the respondent acted without authority in issuing summons before a case was even filed, and in adding certain amounts to be paid by the defendant where none were awarded in the judgment, thus:

Firstly, she issued a Summons to my wife, Flora A. Wabe dated November 15, 1999 when there was as yet no case filed against her, copy of Summons hereto attached as Annex "A", as the case was filed only on May 12, 2000.

Secondly, when the judgment was rendered, copy attached as Annex "B", only the following sums were awarded Plaintiff:

- P10,000.00 as actual damages;
- Interest of the above (6%) beginning December 30, 1998 (when this should correctly begin on May 12, 2000, the date of the filing of the case;
- P1,000.00 as litigation expenses plus cost.

That in the Writ of Execution, however, Luisita P. Bionson added the following sums:

- The legal rate of interest was to begin October 17, 1998 and increased to 10% in violation of the judgment and the law, as well.
- Exemplary damages P1,000.00 was added where none was awarded; and
- Attorney's fees of P1,000.00 was, likewise, added when none was awarded.[2]

In her Comment, the respondent admitted the error in the issuance of the Writ of Execution[3] dated August 14, 2001, but was quick to point out that by reason of the Opposition filed by therein defendant Flora A. Wabe, the writ was recalled and a new one, September 24, 2001 was issued in its place. There was, however, no explanation with respect to the issuance of summons to complainant's wife notwithstanding the absence of a complaint for sum of money.

On February 21, 2002, Deputy Court Administrator Christopher O. Lock found that the respondent's plain admission would not exonerate her from the charges leveled against her. Deputy Court Administrator Lock noted

that the errors made were so glaring that they were not made through mere inadvertence, and recommended that the respondent be suspended for one (1) month, with a stern warning that a repetition of the same or similar acts in the future be dealt with more severely.

In a Resolution[4] dated March 31, 2003, the instant case was assigned to Executive Judge Rolando S. Venadas, Sr., Regional Trial Court, Malaybalay City, Bukidnon, for investigation, report and recommendation.

The respondent, through counsel, manifested to the Court that the sending of summons even before the actual filing of the complaint had been a long standing practice of the court, dating back to the time of previous judges.[5] The respondent also presented documents[6] issued by her and/or previous judges as proof thereof, contending that these were all issued to call the parties to the case for possible settlement without resorting to actual trial, thus:

Q - The Writ of Execution in "Paña v. Wabe" for which you are being charged here does not tally with the judgment. For example, the payment for the interest is 10 percent whereas in the judgment the interest is only 6 percent, can you explain that?

A - I admit that mistake but that is without malice. The truth being that our court is only one sala and I am very busy so that when the stenographer presented that Writ of Execution to me, I signed it knowing that my stenographer can be trusted and [is] a[n] honest employee.[7]

Executive Judge Venadas, Sr., thereafter, submitted his Report and Recommendation dated September 22, 2003, and made the following findings:

Evidently and without any doubt whatsoever, the respondent issued the said summons (Exhibit "B") without any legal authority or basis as emphasized under Section 1 Rule 14 of the 1997 Rules of Civil Procedure, which allows only the issuance of a summons upon filing of a complaint and payment of the requisite legal fees. Hence, if no complaint is filed and no payment of the required fees is made, a Clerk of Court has no authority whatsoever to issue any summons and could be guilty of Grave Abuse of Authority under her "adjudicative support function to prepare and sign summons, subpoenas and notices and writs of execution in Civil Cases.

...

What is to be noted further was that the respondent still went on to commit another serious violation which can never be justified by any amount of reasoning or logic for clearly it was against the very decision of the MTCC she was serving as Clerk of Court by issuing a Writ of Execution, duly signed by her as Clerk of Court, on August 15, 2001 (Exhibit "I") directing the Sheriff of Bukidnon to seize and attach properties of the defendant Flora Wabe for the satisfaction of the following:

a)

The sum of P10,000.00 with legal rate of interest from October 17, 1998, until date of payment of the rate of 10% per annum;

b)

Exemplary damages of P1,000.00 and

c)

Litigation expenses of P1,000.00 plus

d)

Attorney's fees of P1,000.00 together with legal fees

when the Judgment of the MTCC of Malaybalay was only for the following: "To pay actual damage of P10,000.00 and interest of 6% per annum of the collective amount computed from December 30, 1998, until the amount to be paid and to pay expenses of litigation of P1,000.00.

Clearly, the foregoing conduct and actuation of the respondent was in violation of her adjudicative support functions to prepare and sign summons and writs of execution as a Clerk of Court and her authority should always be and at all times in accordance with the dispositive portion of the decision of the Court she is serving as a Clerk of Court.[8]

For issuing summons to a party without a case being filed, and for including awards in the writ of execution not included in the decision or judgment of the court, the respondent clearly acted beyond the scope of her duties as a clerk of court.

A clerk of court shall issue summons
only upon the filing of the complaint
and the payment of the requisite legal
fees.

Section 1, Rule 14 of the 1997 Rules of Civil Procedure provides that "upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the correspondent summons to the defendants." This rule is clear, and it is the duty of the clerk of court to abide by it. The respondent needs no reminder that as an important officer in the dispensation of justice, one of her primary duties is to uphold the law and implement pertinent rules. He must be assiduous in the performance of his duties because he performs delicate administrative functions essential to the prompt and proper administration of justice.[9]

The respondent usurped a
judicial function when she
issued an "amended" writ of
execution.

The dispositive portion of the Decision[10] in Civil Case No. 1346 dated June 26, 2001 reads as follows:

By preponderance of evidence judgment is hereby rendered in favor of plaintiff ordering defendant to pay the following:

- By way of actual damages Ten Thousand (P10,000.00) Pesos and;
- To pay interest of six (6%) percent per annum of the collectible amount computed from December 30, 1998 until the amount will be paid and to pay expenses of litigation of One Thousand (P1,000.00) pesos plus cost.

SO ORDERED.[11]

On the other hand, the writ of execution issued and duly signed by the respondent in the same case reads, thus:

WRIT OF EXECUTION

We command you that of the goods and chattels of FLORA A. WABE you cause to be made the sum of Ten Thousand (P10,000.00) Pesos, Philippine Currency, together with the legal rate of interest thereon from the 17[th] day of October 1998, until the date of payment of the rate of ten (10%) percent per annum; and Exemplary damage of One Thousand (P1,000.00) pesos and litigation expenses of One Thousand P1,000.00) Pesos plus attorney's fees of One Thousand (P1,000.00) Pesos together with your lawful fees for service of this

execution all in the money of the Philippines, which amount shall be recovered in our City Court on the 15[th] day of September 2001 against said defendant and that you tender the same to said plaintiff aside from your own fees on this execution and to likewise return this writ to this Court within sixty (60) days from the date of receipt hereof with your proceedings indorsed thereon.

But if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said defendant you cause to be made the sum of money in the manner required by law and the Rules of Court and to make return of your proceedings with this writ within sixty (60) days from the date of receipt hereof.[12]

The respondent, thus, issued a writ of execution and included awards not contained in the judgment of the court. As we held in *Equatorial Realty Development, Inc., v. Mayfair Theater, Inc.*: [13]

A writ of execution must conform to the judgment to be executed and adhere strictly to the very essential particulars. An order of execution, which varies the tenor of the judgment or exceeds the terms thereof is a nullity. The writ of execution may not vary the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives life, and in fact exceeds it, has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law. ...[14]

In issuing process, a clerk of court must adhere to the express directive of the court and refrain from exercising functions exclusively within the province of the judge to act upon. Before he or she can amend the writ, the court's order granting its issuance should first be amended.[15] By amending the writ on her own initiative, the respondent clearly usurped a judicial function.[16] The fact that the respondent admitted the error, and that a new writ was thereafter issued cannot exculpate her from the charges against her.

The respondent is guilty of misconduct, which is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[17] Civil Service Commission (CSC) Memorandum Circular No. 19 classifies misconduct as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. Considering the respondent's long years of service in the government and the fact that no bad faith was attributed to her, the Court finds that the penalty of suspension for three (3) months is proper in this case.

Clerks of court must be reminded that they are essential and ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice.[18] They serve as an exemplar for other court employees, whose duties and responsibilities must be strictly performed. They play a key role in the complement of the court and cannot be permitted to slacken on the job under one pretext or another.[19] In fact, the conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[20]

WHEREFORE, respondent Luisita P. Bionson, Clerk of Court, Municipal Trial Court in Cities, Malaybalay City, is adjudged GUILTY of MISCONDUCT and is suspended for Three (3) Months with a STERN WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Rollo, p. 2.

[2] Rollo, p. 2.

[3] Exhibit "I."

[4] Rollo, p. 20.

[5] TSN, 21 July 2003, pp. 10-13.

[6] Exhibits "N-1" to "N-25."

[7] Affidavit-Testimony, p. 3 (Bionson).

[8] Report and Recommendation, pp. 26-30.

[9] Elena F. Pace v. Reno M. Leonardo, A.M. No. P-03-1675, August 6, 2003.

[10] Entitled Ma. Olga Paña v. Flora A. Wabe, penned by Judge Benjamin P. Estrada.

[11] Annex "B-1," Rollo, p. 6 (underscoring ours).

[12] Annex "C," Rollo, p. 9 (emphasis supplied).

[13] 332 SCRA 139 (2000).

[14] Id at 148-149.

[15] Santos v. Silva, Jr., 349 SCRA 426 (2001).

[16] Ibid., citing Viray v. Court of Appeals, 286 SCRA 468 (1998).

[17] Executive Judge Leandro T. Loyao, Jr. v. Mamerto J. Caube, A.M. No. P-02-1599, April 30, 2003.

[18] Reyes-Domingo v. Morales, 342 SCRA 6 (2000).

[19] Supra, at note 8.

[20] Almario v. Resus, 318 SCRA 742 (1999).

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