

PILAR BARREDO-FUENTES, LOURDES J. ESTRELLADO, CLARITA ESTRELLADO-MAINAR, AND FLORENDA ESTRELLADO-DIAZ, COMPLAINANTS, VS. JUDGE ROMEO C. ALBARRACIN, MTCC, BRANCH 3, DAVAO CITY, R...

A.M. NO. MTJ-05-1587 [FORMERLY IPI NO. 04-1588-MTJ]. April 15, 2005

Ponente: TINGA, J.

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TINGA, J.:

This administrative case arose when a Complaint-Affidavit dated 31 May 2004 of Pilar Barredo-Fuentes, Lourdes J. Estrellado, Clarita Estrellado-Mainar and Florenda Estrellado-Diaz (complainants) charged Judge Romeo C. Albarracin (respondent judge) of MTCC, Branch 3, Davao City, with Gross Ignorance of the Law and/or Procedure and Grave Abuse of Discretion. The charges refer to respondent judge's acting on an Urgent Ex-Parte Motion without hearing and without the motion served on the complainants.[1] The Urgent Ex-Parte Motion sought the issuance of an order specifically directing Sheriff Aguinaldo Del Campo to enforce the writ of execution and special writ of demolition, including the demolition of defendants' buildings and other improvements filed by plaintiffs in the following cases:

- (1) Special Civil Case No. 6, 298-C-98 entitled "Heirs of Dr. Jovito S. Francisco, et al. v. Pilar E. Barredo-Fuentes" for Forcible Entry;
- (2) Special Civil Case No. 6, 297-C-98 entitled "JS Franciso and Sons, Inc. v. Nicolas Estrellado and Narcisa Trono-Estrellado" for Forcible Entry; and
- (3) Special Civil Case No. 6, 296-C-98 entitled "JS Francisco & Sons, Inc. v. Lourdes J. Estrellado" for Forcible Entry.

As gleaned from the complaint, complainants are the defendants in the aforementioned cases. After trial on the forcible entry cases, judgments were rendered in favor of the plaintiffs. Thus, complainants filed with the Regional Trial Court (RTC) of Davao City a petition for annulment of judgments under Rule 47 of the Revised Rules of Court. The case was raffled to RTC Branch 13 and is pending resolution.[2]

On 4 March 2004, respondent judge issued a writ of demolition despite the pendency of the case for annulment of judgments. Complainants requested respondent judge to await the result of the annulment of judgments case. Respondent judge, however, still issued the questioned writ of demolition. This prompted complainants to file a petition for prohibition to restrain respondent judge from further acting on the subject cases during the pendency of the case for annulment of judgments. During the pendency of the petition, respondent judge, after notice and hearing, issued three (3) separate writs of execution and special writs of demolition on 30 April 2004 relative to the subject cases.[3]

On 20 May 2004, the plaintiffs in the ejectment cases filed the aforementioned Urgent Ex-Parte Motion. Complainants aver that they were not served a copy of the motion. Neither was the motion set for hearing in

violation of Sections 5 and 6 of Rule 15 of the Revised Rules of Court. Respondent judge, however, still granted the motion, an act which allegedly constituted gross ignorance of the law and procedure.[4]

Respondent judge denies the charges filed against him. In his Comment dated 23 August 2004, he argues that the case filed against him was dilatory in nature.

Respondent judge narrates his own account of the doggedness of the complainants in pursuing their claims through judicial processes. He alleges that on 9 October 1998, JS Francisco & Sons, Inc., one of the plaintiffs in the civil cases, filed against complainants cases for forcible entry which were raffled to his sala at MTCC Branch 3. After trial, judgments were rendered in favor of plaintiff corporation. Complainants appealed to the RTC Branch 12 which affirmed the decisions of the MTCC. Unperturbed, complainants filed petitions for review before the Court of Appeals. The appellate court also denied the petitions.[5]

Optimistic of a favorable outcome, complainants filed with the RTC the petition seeking to annul the judgments of the MTCC. The complainants also prayed for the issuance of a writ of preliminary injunction and temporary restraining order (TRO) seeking, among others, that respondent judge be provisionally enjoined from taking immediate possession of the parcels of land. The Executive Judge of RTC Davao City, however, denied the application for the issuance of TRO and directed the inclusion of the case in the special raffling of cases. The case was raffled to RTC Branch 13 which eventually dismissed the case. Undeterred, complainants filed a petition for review on certiorari before the Supreme Court which is still pending resolution. Complainants also filed with the RTC petitions for cancellation of adverse claim of JS Francisco & Sons, Inc. which was eventually dismissed.[6]

Respondent judge further contends that on 24 March 2004, upon motion of the plaintiff corporation and after several hearings, he issued an order granting plaintiff corporation's prayer for the issuance of a special order of demolition. However, Sheriff Del Campo failed to fully implement the demolition. Plaintiff corporation thus filed the Urgent Ex-Parte Motion which was eventually granted in an Order dated 26 May 2004.[7]

Subsequently, complainants filed a consolidated motion seeking to expunge the Urgent Ex-Parte Motion. Respondent judge inhibited himself from further handling the ejectment cases since complainants had already filed the present administrative case. In view of the inhibition, the cases were raffled to MTCC Branch 6, Davao City. The consolidated motion was eventually denied.[8]

Respondent judge denies complainants' charge that the granting of plaintiff's corporations motion which directed Sheriff Del Campo to enforce the special writ of demolition despite the pendency of the case for annulment of judgments at the RTC Branch 13 reflects gross ignorance of the law. He argues that the RTC where the forcible entry cases were elevated did not issue any TRO or any injunctive relief to restrain him from granting the motion to enforce/implement the writ of demolition. He contends that the granting of the motion was incidental to the motion for execution which has long been granted. In addition, the Court of Appeals in its decisions affirmed the decisions of the lower court.[9]

On the charge that he granted without hearing plaintiff corporation's Urgent Ex-Parte Motion, respondent judge asserts that a hearing is not necessary because the special writ of demolition had already been granted after several hearings and the ex-parte motion was merely for the enforcement or implementation of said writ.[10]

After a perusal of the evidence on record, the Office of the Court Administrator (OCA) ruled that complainants have no basis for their charges. It noted that the wheels of justice would run smoothly if the members of the judiciary who perform their functions conscientiously are not hampered by groundless and vexatious charges. Complainants' contention that respondent judge should not have acted on the motion for issuance of special writ of demolition due to the pendency of the petition for annulment of the decisions in the subject cases with the RTC

is baseless. It would not bar respondent judge from acting on the said motion considering that there was no TRO or injunction to prevent him from proceeding with the subject cases. Further, the decisions in the subject cases had already become final and executory. However, due to the numerous delaying tactics employed by complainants the same remained unexecuted.[11]

The OCA concluded that the allegation that respondent judge violated Sections 5 and 6 of Rule 15 of the Revised Rules of Court had no leg to stand on. The ex-parte motion was merely to request the branch sheriff to implement the special writ of demolition which had long been issued by the court after several hearings. As such, it could be considered as a non-litigable motion which may be acted upon by the court without prejudicing the rights of herein complainants. Thus, the OCA recommended that the administrative case be dismissed for lack of merit and that complainants be FINED in the amount of Ten Thousand Pesos (P10,000.00) each for filing this baseless harassment administrative case.[12]

We sustain the findings of the OCA except as to the imposition of fine on complainants.

This Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law.[13] However, gross ignorance of the law is more than an erroneous application of legal provisions. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are generally not subject to disciplinary action, even though such acts are erroneous.[14] For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous but, most importantly, it must be established that he was moved by bad faith, dishonesty, hatred or some other like motive.[15]

Such circumstances are not obtaining in the case at bar. In fact, respondent judge correctly applied Sections 5 and 6 of Rule 15 of the Revised Rules of Court which read, thus:

SECTION 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SECTION 6. Proof of service necessary. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

The evidence reveals that respondent judge notified complainants and conducted a hearing before the issuance of the writ of execution and special writ of demolition.[16] It was only when the execution and demolition were not implemented that, upon ex-parte motion of the plaintiffs, respondent judge directed Sheriff del Campo to enforce the writ of execution and special writ of demolition despite the absence of notice and hearing considering that these rights had already been availed of by complainants. It is worthy to note that the second order was a mere implementation of a prior order implementing execution and demolition. Even Section 10(d) of Rule 39 is silent as to the need for a second hearing in case the first motion for the issuance of writ of execution and special order of demolition was not fully implemented:

SEC. 10. Execution of judgments for specific act.-

(d). Removal of improvements on property subject of execution. – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

Procedural rules are primarily designed to promote expeditious administration of justice. Procedural remedies not expressed in the law or rules and which may cause unreasonable delay in the final determination and enforcement of cases must be ignored to give significance to the drafting of the Rules of Court. Thus, in issuing the assailed order, respondent judge merely sought to carry out the expeditious implementation of a judgment which was already final and executory. For such commendable act, respondent judge should be praised, not condemned.

As to the recommendation to impose fine on the complainants, we rule that the circumstances of the case fail to warrant such course of action. The OCA cannot just penalize complainants by way of imposing fine on them without the benefit of a thorough determination of the liability based on evidence adduced by the parties. They must be given an opportunity to refute the charges by adducing evidence on specific charges against them, not in a mere administrative case which involves a matter different from the alleged culpability of the complainants. This requirement is fundamentally a part of due process enshrined in the Constitution^[17] that a person can only be penalized for a charge of which he was sufficiently informed and only after he was given an opportunity to be heard and present evidence to prove the contrary.

Nonetheless, assuming that the acts of the complainants may be considered as “delaying tactics,” remedial action may be enforced against them through contempt of court proceedings. A brief review of the rules governing contempt proceedings is useful.

Contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation.^[18]

There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so.^[19] Indirect contempt or constructive contempt is that which is committed out of the presence of the court.^[20] Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt.^[21] The employment of delaying tactics to obstruct the administration of justice falls under this latter category.

Section 3, Rule 71 of the Revised Rules of Court provides for the following requisites prior to conviction of indirect contempt: (a) a charge in writing to be filed; (b) an opportunity given to the respondent to comment thereon within such period as may be fixed by the court; and (c) to be heard by himself or counsel.^[22] With respect to constructive contempts or those which are committed without the actual presence of the court, it is essential that a hearing be allowed and the contemner permitted, if he so desires, to interpose a defense to the charges before punishment is imposed.^[23] The proceedings for punishment of indirect contempt are criminal in nature. The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions.^[24]

Section 4 of Rule 71, however, provides that proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. There is no way for this Court to initiate indirect contempt proceedings against complainants for the injury was not committed against this tribunal, but against respondent judge.

There is no basis for this Court to initiate contempt proceedings or condemn the complainants to suffer the penalty for contempt, considering that the “contemptuous” act was not directed against the Court itself. The penalty as

recommended by the OCA cannot be sustained and the question of whether the complainants should be penalized for filing the instant complaint is best litigated in a separate proceeding, if warranted, within the confines of Rule 71 of the Revised Rules of Court.

WHEREFORE, in view of the foregoing, we modify the conclusion reached by the OCA. The administrative case filed against Judge Romeo C. Albarracin is hereby DISMISSED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, p. 107.

[2] Ibid.

[3] Id. at 107-108.

[4] Id. at 108.

[5] Ibid.

[6] Id. at 109.

[7] Ibid.

[8] Ibid.

[9] Id. at 109-110.

[10] Id. at 110.

[11] Ibid.

[12] Id. at 111.

[13] Guillen v. CaHon, 424 Phil. 81 (2002).

[14] Ang v. Asis, 424 Phil. 105 (2002).

[15] Araos v. Luna-Pison, 428 Phil. 290, 296 (2002), citing De la Cruz v. Conception, 235 SCRA 597 (1994).

[16] Rollo, p. 109.

[17] Section 1, Article III thereof provides: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[18] Abad v. Somera, G.R. No. 82296, July 2, 1990, 187 SCRA 75.

[19] Rule 71, Section 1 of the Revised Rules of Court.

[20] Moran, Comments on the Rules of Court, Vol. III, 1997 ed., p. 446.

[21] Rule 71, Section 3(d) of the Revised Rules of Court.

[22] Soriano v. Court of Appeals, G.R. No. 128938, June 4, 2004, 431 SCRA 1.

[23] Ibid citing Balasabas v. Hon. Aquilisan, 193 Phil. 639, 650.

[24] Ibid.

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