ATTY. REX G. RICO, COMPLAINANT, VS. JUDGE ANASTACIO C. RUFON (RTC, BACOLOD CITY, BRANCH 51), RESPONDENT.

A.M. NO. RTJ-04-1822. June 25, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This case involves a Complaint dated January 6, 2003, filed by Atty. Rex G. Rico charging respondent Judge Anastacio C. Rufon, Acting Presiding Judge, of the Regional Trial Court, Branch 51, Bacolod City with gross ignorance of the law, incompetence and violations of the Code of the Judicial Conduct, particularly Canon 1, Rules 1.01 and 1.02; Canon 2, Rule 2.01; and Canon 3, Rules 3.01 and 3.02.

The complainant alleged that:

> - He was the counsel for the plaintiffs in Civil Case No. 32482 entitled "Dos Amigos Branch IV, Teodoro Ko and Carmelina B. Suplido vs. Rachel J. Akol" pending before RTC, Branch 155, Pasig City. In the decision dated April 26, 1983, the Pasig court decided in favor of the plaintiffs. Defendant Rachel Akol appealed the case but the Court of Appeals affirmed the decision. Some of the properties in the name of Claudio Akol as spouse of Rachel Akol which were located in Bacolod City where thereafter levied in execution by the Bacolod City Sheriff who annotated a "Notice of Embargo" dated May 16, 1989 on the TCTs;
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> - On June 7, 2000, as counsel for the plaintiffs, he filed a motion for the issuance of a writ of execution with RTC, Branch 155, Pasig City. The motion was granted and the Branch Sheriff of Bacolod City was directed to implement the writ of execution on the properties of defendant Akol in Bacolod City;
>
> - On September 7, 2000, Claudio G. Akol, Jr., filed a petition for Cancellation of Notice of Embargo (CAD Case No. 00-1204) at the RTC, Branch 51, Bacolod City, Negros Occidental presided over by Judge Anastacio C. Rufon in an acting capacity. In an Order dated October 27, 2000, Judge Rufon granted the petition and ordered the cancellation of the Notice of Embargo on the ground of prescription;
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> - On the other hand, the RTC, Branch 155, Pasig City issued an Order dated November 29, 2000 holding in abeyance the enforcement of the writ of execution. It was only on January 2, 2001 that the said court directed the implementation of the writ;
>
> - Subsequently, Judge Rufon issued another Order dated March 21, 2001 directing the Register of Deeds of Bacolod City to comply with his October 27, 2000 Order by canceling the Notice of Embargo on the TCTs. On April 25, 2001, the Clerk of Court of RTC, Branch 51, Bacolod City issued a Certification that the court Order dated March 21, 2001 had become the final and executory.

Complainant claimed that Judge Rufon exhibited gross ignorance of the law and incompetence when he (1) violated the principle of judicial stability of taking cognizance of the Petition for Cancellation of Notice of Embargo on Transfer Certificate of Title (TCT) Nos. T-469321, Y-19969 and T-19968; (2) failed to notify plaintiffs Dos Amigos Branch IV, Teodoro Ko and Carmelina Suplido on the October 27, 2000 hearing on the petition for Cancellation of Notice of Embargo; and (3) issued an Order dated October 27, 2000 in the nature of a

judgment without adequate legal and factual basis.

On the first issue of violation of the principle of judicial stability, the following positions were taken by the parties:

- Complainant stated that the RTC, Branch 155, Pasig City issued the writ of execution pursuant to which the Bacolod City Sheriff annotated a Notice of Embargo on the titles of the conjugal properties of Claudio and Rachel Akol. Accordingly, any challenge on the effectivity, enforceability or legal effects of the writ of execution upon the rights and interests of the parties involved should be addressed exclusively to the court which issued it. The complainant cited Pajarito v. Señeris, et al. (87 SCRA 275, 283[1978]) which held that, "There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution;"

- Judge Rufon, however, claimed that his court has special and limited jurisdiction as a cadastral court to take cognizance of the petition pursuant to Section 112 of Act 496 (the Land Registration Act) now found in Sec. 108 of P.D. No. 1529 (the Property Registration Decree). He cited the last paragraph of Section 108 of P.D. No. 1529 which expressly provides that, "all petitions or motions filed under this Section as well as under any other provision of this Decree after original registration, shall be filed and entitled in the original case in which the decree or registration was entered." Moreover, Judge Rufon claimed that he relied in good faith on the verification and certification on non-forum shopping in taking cognizance of the case;

- Complainant would refute Judge Rufon's reliance on Section 112 of Act 496 by explaining that the method for amendment or alteration outlined in this section is summary or administrative in nature. He claimed that the power of correction is subject to the limitation that there must be "unanimity among the parties" or there is no adverse interest otherwise the case becomes controversial and must be threshed out in an ordinary case or in the case wherein the incident belongs (Martinez vs. Evangelista, G.R. No. L-26399, January 31, 1981). Complainant argued that the Petition for Cancellation of Notice of Embargo is not cadastral in nature but an action to quiet title and/or remove clouds under Articles 476, 478 and 481 of the new Civil Code. Hence, Section 112 of Act 496 is off-tangent and, moreover, it has been repealed by Section 108 of P.D. No. 1529. Judge Rufon's claim of good faith would therefore fall. Ignorance of the law excuses no one from compliance therewith.

On the second issue of failure to notify the plaintiffs in Civil Case No. 32482, the following contentions were put forward:

- Complainant stated that the judgment creditors (plaintiffs Dos Amigos Branch IV, Teodoro Ko and Carmelina Suplido in Civil Case No. 32482) were not given actual notice of the 27 October 2000 hearing on the Petition of Cancellation despite the fact that they are parties in interest as clearly indicated in the Notice of Embargo. Thus they were deprived of their right to due process. He cited Southwestern University v. Laurente (26 SCRA 52, 55 [1968]) which held that, "The cancellation of the annotation of an encumbrance cannot be ordered without giving notice to the parties annotated in the certificate of title itself."

- Respondent judge asserted that the Petition for Cancellation of Notice of Embargo is a proceeding in rem, hence it may be instituted and carried to judgment without need of personal service upon the claimants. He states that the Sheriff's Return dated September 18, 2000 showing that the Order dated September 13, 2000 setting the date, time and place of the hearing of the petition was duly posted in three (3) conspicuous public places for at least three(3) weeks before the scheduled October 27, 2000 hearing and that this is a constructive notice.

- Complainant would refute this by stating that since the petition for the cancellation challenges the notice of embargo issued in Civil Case No. 32482, this would nullify the rights of the adverse party, namely Dos Amigos IV, Teodoro Ko and Carmelina Suplido. Clearly, the Petition for Cancellation of Notice of Embargo is

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> an action in personam, not directed against the whole world, but only against the plaintiffs in Civil Case No. 32482, although it concerns the right to a tangible thing (res).

On the third issue of granting an order in the nature of a judgment without basis:

> - Complainant alleged that the records of the petition show that respondent judge did not require reception of evidence to prove that prescription had set in, which is a question of fact. Judge Rufon's Order dated October 27, 2000 granting the petition grounded on the alleged prescription does not state the facts and the law upon which it is based. A perusal of the Order shows that it is not interlocutory but one in the nature of a judgment hence it is required by the Constitution and the Rules of the Court to state the facts and the law upon which it is based.
>
> - Judge Rufon argued that considering that the time that has lapsed from the annotation of the Notice of Embargo on May 16, 1989 until the filing of the petition on September 11, 2000 was more than ten (10) years, the Notice of Embargo has become stale, void, and ineffective by sheer lapse of time or by prescription. As such, cancellation of the entry of the Notice of Embargo was in order, pursuant to Section 108 of P.D. No. 1529.

On July 18, 2003, the Office of the Court Administrator (OCA) required respondent judge to manifest in writing whether he is willing to submit this case for resolution on the basis of the evidence at hand. In response, respondent manifested in a letter dated July 30, 2003 that he is submitting the case for resolution.

After considering the Report of the OCA, the Court finds that the allegations of gross ignorance of the law are substantiated by the evidence. As shown on the face of TCT Nos. T-469321, T-19968 and Y-19969, the titles were issued in the name of Claudio G. Akol, Jr., married to Rachel J. Akol. Furthermore, at the back of the titles, Entry No. 159694 states that there is a Notice of Embargo in Civil Case No. 32482 issued by the Ex-Officio City Sheriff, entitled "Dos Amigos, et al. vs. Rachel J. Akol." The inscription is dated May 16, 1989.

Respondent judge should have caused actual service of notice to the plaintiffs in Civil Case No. 32482. The petition for the cancellation of notice of embargo is not cadastral in nature but is an action to quiet title and/or remove cloud therefrom, under Articles 476, 478 and 481 of the Civil Code. The petition challenged the notice of embargo issued in Civil Case No. 32482 and prayed that the annotations on the TCTs be cancelled. This would nullify the rights of the adverse parties, specially the plaintiffs in Civil Case No. 32482. Clearly, the petition for the cancellation of the notice of embargo is an action in personam. It is not directed against the whole world but only against the plaintiffs in Civil Case No. 32482 although it concerns their right to a specific property.

In Hernandez v. Rural Bank of Lucena, Inc.,[1] this Court clarified the concepts of a real action, a personal action, a proceeding in rem and a proceeding in personam, thus:

> A real action is not the same as an action in rem and a personal action is not the same as an action in personam.
>
> In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of the damages. In a real action, the plaintiff seeks the recovery of real property, or, as indicated in section 2 (a) of Rule 4, a real action is an action affecting title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of a mortgage on, real property.
>
> An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person (1 C.J.S. 943-4). Hence, a real action may at the same time be an action in personam and not necessarily an action in rem.[2]

Following these concepts, Claudio Akol, Jr.'s petition for cancellation of notice of embargo is a real action as it seeks the recovery of real property; but it is also an action in personam because it is directed only against the

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plaintiffs in Civil Case No. 32482. Thus, there is a need for personal service upon the plaintiffs in Civil Case No. 32482 who would be adversely affected by the cancellation of the notice of embargo on the TCTs.

In his Order dated September 13, 2000, respondent judge Rufon merely required posting in three (3) conspicuous public places for three weeks prior to the scheduled hearing. This is not the notice required in an action in personam. Since the plaintiffs Dos Amigos, et al. were not notified, they were deprived of the opportunity to be heard during the hearing scheduled on October 27, 2000.

Respondent judge Rufon also exhibited gross ignorance of the law when he failed to require the parties to present evidence to prove or disprove prescription as a defense at the October 27, 2000 hearing on the Petition for Cancellation of Notice of Embargo. Instead, he immediately issued the Order of October 27, 2000, as follows:

> REPUBLIC OF THE PHILIPPINES
>
> REGIONAL TRIAL COURT OF NEGROS OCCIDENTAL
> 6[TH] Judicial Region
> BRANCH 51, BACOLOD CITY
> -o0o-
>
> LOT 2, BLOCK 21 SUBD. PLAN
> PSD-37776, BEING A PORTION
> OF LOT NO. 1468-C-2; LOT NO.
> 249 AND 250, OF THE SUBD. PLAN
> PSD-12396, BEING A PORTION OF CAD. CASE NO. 00-1204
> LOT NO. 410-B ALL SITUATED IN FOR: CANCELLATION OF
> BACOLOD CITY, G.L.R.O. "NOTICE OF EMBARGO"
> CADASTRAL RECORD NO. 55,
>
> CLAUDIO G. AKOL, JR,
>
> Petitioner.
>
> x - - - - - - - - - - - - - - - - - -- x
>
> O R D E R
>
> There being no opposition to the petition filed by the petitioner, the petition is GRANTED. ACCORDINGLY, cancellation of notice of embargo is hereby ordered.
>
> SO ORDERED.
>
> Bacolod City, Philippines, 27 October 2000.
>
> (Sgd.) ANASTACIO C. RUFON
>
> Pair Judge

Clearly, this Order not merely interlocutory but is in the nature of a final judgment or decision. As such, it does not comply with the requirement under the Constitution to state the facts and the law upon which it is based.[3] It also confirms that respondent judge did not require evidence to show that prescription had set in.

Respondent judge's lack of familiarity with the rules undermines public confidence in the competence of the court. His failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law for which he should be subjected to disciplinary action.[4]

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Although a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives.[5]

In Villa Macasasa, et al. v. Judge Faustino H. Imbing,[6] this Court found the respondent judge guilty of ignorance of the law and ordered him to pay a fine of Ten Thousand Pesos (P10,000) for issuing an Order which gratuitously included the astronomical amount of One Million Two Hundred Thousand Pesos (P1,200,000) as incidental expenses.

Similarly, in Evelyn De Austria v. Judge Orlando D. Beltran,[7] the respondent judge was fined Ten Thousand Pesos (P10,000) for gross ignorance of the law in failing to comply with Sec. 14, Rule 114 of the Revised Rules of Court, which requires submission of a certificate of cash deposit and a written undertaking before an accused may be released on a cash bail.

Also, in German Agunday v. Judge Nieto T. Tresvalles,[8] this Court imposed a fine of Ten Thousand Pesos (P10,000) on the respondent judge after finding that he had shown gross ignorance of the law when he failed to deny outrightly a Motion to Quash despite the fact that it is a prohibited pleading under the Revised Rule on Summary Procedure.

Considering the foregoing and the fact that this is respondent judge Rufon's first infraction in his six (6) years of service in the Judiciary, the Court deems the amount of Ten Thousand Pesos (P10,000) as a reasonable fine.

WHEREFORE, respondent Judge Anastacio C. Rufon, Acting Presiding Judge, Regional Trial Court, Branch 51, Bacolod City, is hereby FOUND GUILTY of gross ignorance of the law and FINED in the amount of Ten Thousand Pesos (P10,000), with a stern WARNING that a repetition of the same will be dealt with more severely.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] G.R. No. L-29791, January 10, 1978, 81 SCRA 75.

[2] Id. at 84. Emphasis supplied.

[3] Sec. 14, Art. VIII, Constitution: "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

[4] Lalaine O. Apuya v. Judge Tranquilino V. Ramos, A.M. No. MTJ-01-1353, December 13, 2001, 372 SCRA 198, 202.

[5] Jonathan Vileña v. Judge Bienvenido Mapaye, A.M. No. MTJ-02-1424, 24 April 2002, 312 SCRA 385.

[6] A.M. No. RTJ-99-1470, August 16, 1999, 312 SCRA 385.

[7] A.M. No. RTJ-98-1406, September 1, 1999, 313 SCRA 443.

[8] A.M. No. MTJ-99-1236, November 25, 1999, 319 SCRA 134.

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