EDESIO ADAO, COMPLAINANT, VS. JUDGE CELSO F. LORENZO, REGIONAL TRIAL COURT, BRANCH 1, BORONGAN, EASTERN SAMAR, RESPONDENT.

A.M. No. RTJ-99-1496. October 13, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint filed against Judge Celso F. Lorenzo of the Regional Trial Court, Branch 1, of Borongan, Eastern Samar in connection with the issuance by him of a temporary restraining order in Civil Case No. 3391, entitled "Nerio B. Naputo v. Edesio Adao and the Municipal Local Government Officer of Taft, Eastern Samar." The case was assigned by special raffle to Branch 2 of the RTC of Borongan, Eastern Samar to which respondent judge had been designated as Acting Presiding Judge. The administrative complaint charges that, in issuing the TRO, respondent acted with gross inexcusable negligence, manifest partiality, and evident bad faith.

Complainant Edesio Adao was elected barangay captain of Mabuhay, Taft, Eastern Samar. It is alleged that after his proclamation as barangay captain, the losing candidate, Nerio Naputo, filed against him an election protest, which was docketed as Civil Case No. 56-97 in the Municipal Trial Court of Taft, Eastern Samar; that on June 13, 1997, Naputo's lawyers, Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr., also filed a complaint for injunction (Civil Case No. 3391) to prevent complainant from being elected president in the elections held on June 14, 1997 for officers of the Association of Barangay Captains of the Municipality of Taft, Eastern Samar; that on the same day the said complaint was filed (June 13, 1997), respondent judge issued a temporary restraining order; that on June 23, 1997, after successfully preventing complainant from participating in the elections, Naputo's lawyer, Atty. Edwin Docena, filed a notice of dismissal of Civil Case No. 3391; that complainant objected; that until now complainant's objection to the dismissal of the case remains unacted upon; that respondent judge acted in violation of Supreme Court Administrative Circular 20-95, as the temporary restraining order was issued by him without notice to complainant and a summary hearing and in the absence of urgency for the issuance of the same; that respondent judge was politically motivated in issuing the TRO because he was promoted to RTC judge through the efforts of former Rep. Jose Ramirez, one of whose supporters is Nerio Naputo's lawyer, Atty. Edwin Docena; and that respondent judge is guilty of violation of §3, par. 2 (Dishonesty and violation of the Anti-Graft and Corrupt Practices Act); §3, par. 3 (Violation of the Code of Judicial conduct); and §3, par. 9 of Rule 140 (Gross ignorance of the law and procedure) and the following provisions of the Code of Judicial Conduct:

> Rule 2.03 — A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.
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> Rule 2.04 – A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

> Rule 3.02 – In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

Respondent judge filed two comments. In his first comment, dated July 7, 1999, respondent judge alleged that after Civil Case No. 3391 had been brought to his attention on June 13, 1997, he issued an order requiring herein complainant to comment within ten (10) days from notice on the application for preliminary injunction; that he later issued a temporary restraining order after "careful perusal of the petition and the attached affidavit of merit of complainant" and after concluding that "no fair and reasonable redress can be had by petitioner unless a temporary restraining order is issued"; that his issuance of the temporary restraining order was in accordance with §8 of the Interim Rules'[1] that despite receipt of the temporary restraining order at 8:30 in the morning of July 14, 1997, complainant never questioned the propriety of the same; that while former Rep. Ramirez had helped him get appointed as RTC judge, this fact did not influence him to issue a temporary restraining order in favor of Nerio Naputo; and that the present complaint was filed only after one year and 11 months from the issuance of the temporary restraining order and was intended to malign him and put pressure on him because he was trying criminal cases for attempted and frustrated murder against some relatives of the complainant.

In his second comment, dated July 14, 1999, respondent judge further alleged that Civil Case No. 3391 was assigned by special raffle to Branch 2 to which he had been designated Acting Presiding Judge; that it was "almost physically impossible" for him to act on complainant's objection to the notice of dismissal of said case because of his multifarious duties as Presiding Judge of Branch 1, Acting Presiding Judge of Branch 2, and Judge-Designate of Branch 4 at Dolores and Branch 5 at Oras, Eastern Samar; and that he did not resolve the matter because he thought it best that it be resolved by the permanent judge of the RTC, Branch 2, Borongan, considering that complainant had filed both an administrative and a criminal complaint against him.

The complaint is meritorious.

A. Re Issuance of Temporary Restraining Order

It is not clear whether respondent judge issued the temporary restraining order in Civil Case No. 3391 in his capacity as Executive Judge or as Acting Presiding Judge of Branch 2 of the RTC of Borongan, Eastern Samar. There is a difference with respect to the requisites for the issuance of a temporary restraining order and the life of the TRO when it is issued by an Executive Judge or by a Presiding Judge of a court.

If the temporary restraining order was issued by respondent in his capacity as Executive Judge, the TRO was good for 72 hours only. Within that period he was required to summon the parties to a conference before issuing the TRO and then assign the case by raffle. Thus, par. 3 of Administrative Circular No. 20-95 provides:

> If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the Executive Judge shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge. (Emphasis added)

On the other hand, if the TRO was issued after Civil Case No. 3391 had been raffled to Branch 2 and respondent judge issued it in his capacity as Acting Judge, then he should have complied with the following provision of Administrative Circular No. 20-95, par. 2:

The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted

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within twenty-four (24) hours after the records are transmitted to the branch selected by raffle. The records shall be transmitted immediately after raffle.

The TRO issued by respondent judge indicates that the same was issued by him as "Executive Judge." The heading of the order shows it was issued by Branch 1 of the RTC of which he was the Presiding Judge, thus:

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REGIONAL TRIAL COURT
Eighth (8th) Judicial Region
BRANCH 1
Borongan, Eastern Samar

The same information appears in another order of respondent judge of the same date, June 13, 1997, requiring complainant to file his answer to the complaint for injunction. The order, according to respondent judge, was issued prior to the temporary restraining order. The heading of subsequent pleadings filed by the parties in Civil Case No. 3391 (plaintiff's Notice of Dismissal and herein complainant's Memorandum in opposition thereto) also show that Civil Case No. 3391 was heard in Branch 1. It would thus appear that respondent issued the temporary restraining order and the order requiring answer, both dated June 13, 1997, in his capacity a Executive Judge. Respondent himself states in his comment, dated July 7, 1999, that "my issuance of the TRO may be said to be necessary and incidental to the performance of my functions as [executive judge] despite the fact that I am burdened by workload, that aside from being the executive judge, I am also the judge designate of branches 4 and 5 located at Dolores and Oras, Eastern Samar approximately more or less one hundred kilometers from the municipality of Borongan, Eastern Samar." (Emphasis added)

However, respondent judge alleges at the same time that he issued the TRO after Civil Case No. 3391 had been assigned by special raffle to Branch 2 of which he was Acting Presiding Judge. In his comment, dated July 14, 1999, respondent alleged:

> When said case was filed before the multiple sala of RTC, Borongan, Eastern Samar and forthwith assigned to Branch 2 by way of a special raffle, I was the designated Acting Presiding Judge of said court. (Emphasis added)

In his comment, dated July 7, 1999 he stated:

> a. When the records of Civil Case No. 3391 was brought to my attention by way of a special raffle on June 13, 1997 (minutes of the raffle is hereto attached as annex "A") I accordingly issued an order requiring respondents to answer within a period of ten (10) days (order to answer the complaint is hereto attached as annex "B");
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> ...
>
> c. As regards the allegation of bad faith by complainant in the issuance of the TRO, the same has no basis in fact and law. As expressly provided under Supreme Court Circular No. 6, on the powers and duties of the executive judge, I could have acted on the application of the TRO upon the filing of the complaint without waiting for the required raffle. However, to show good faith, I ordered for the raffle of the case regardless of the fact that I preside [over] branches I and II of the Regional Trial Courts of Borongan, Eastern Samar. (Emphasis added)

Respondent seems to be justifying his order granting a TRO simultaneously under par. 3 of Administrative Circular No. 20-95 and under par. 2 of the same. But this cannot be done because, as already shown, different rules apply depending whether respondent acted as Executive Judge or as Acting Presiding Judge. At all events,

the TRO he issued was for 20 days. However, the minutes of Civil Case No. 3391 do not show that before the TRO was issued the parties were summoned and heard. Indeed, respondent does not dispute the fact that no notice, much less a hearing, was ever given complainant before the TRO was issued.

Respondent claims that "In the nature of a TRO, the same is generally granted without notice to the opposite party until the propriety of granting an injunction can be determined and goes no further than to preserve the status quo until the determination." This is certainly not so, being contrary to the provisions of Administrative Circular No. 20-95 as above quoted. The purpose of Administrative Circular No. 20-25 precisely to minimize the ex-parte issuance of temporary restraining orders.

Nor was there any irreparable injury to Nerio Naputo to justify the issuance of a temporary restraining order enjoining complainant from participating in the elections for officers of the barangay captains of the Municipality of Taft. Complainant had been proclaimed and had been serving as barangay captain. Unless his election was annulled, he was entitled to all the rights as such, including the right to take part in said elections.

As Executive Judge, respondent is expected to be familiar with the requirements of pertinent rules and regulations. The hedging and trimming earlier noted in his two comments as to whether he issued the temporary restraining order in his capacity as Executive Judge or as the Acting Presiding Judge of the RTC to which the case had been raffled is an indication that he acted not so much in ignorance of Administrative Circular No. 20-95 as in deliberate disregard of the same.

Nor can respondent point to his order, dated June 13, 1997, requiring herein complainant to show cause why preliminary injunction should not be granted, as evidence of his (respondent's) good faith and impartiality. In the same order he set the hearing on the application for preliminary injunction on June 23, 1997, long after the June 14, 1997 elections of officers of the Association of Barangay Captains of the Municipality of Taft, Eastern Samar. Respondent judge ought to have known that by that time the case would be moot. If anything, this circumstance only makes his non-observance of Administrative Circular No. 20-95 more glaring and flagrant.

Respondent judge argues that complainant could have questioned the propriety of the issuance of the TRO by means of "Objection to or Motion for Dissolution of restraining order (Rule 58, Section 6 of the Rules of Court), Motion for Reconsideration [as] a precondition to the filing of Petition for Certiorari under Rule 65 (temporary restraining order being an interlocutory order)." However, the fact is that complainant received the temporary restraining order only at 8:20 a.m. of June 14, 1997, the very day that the elections for officers of the Association of Barangay Captains of the Municipality of Taft, Eastern Samar were to be held. There was little time for him to question the order. On the other hand, had respondent observed the requirements of Administrative Circular No. 20-95, complainant would have been given more time to be heard on his objections to the issuance of the temporary restraining order in question.

Respondent judge's failure to abide by Administrative Circular No. 20-95 in issuing the TRO constitutes an offense of grave abuse of authority, misconduct, and conduct prejudicial to the proper administration of justice.[2] Under the circumstances, a fine of P5,000.00 should be imposed on him.

B. Re Failure to act on Complainant's Opposition to the Dismissal of Civil Case No. 3391.

Respondent does not deny that he has failed to rule on complainant's objection to the dismissal of Civil Case No. 3391 filed by Nerio Naputo on June 13, 1997. In his comment, dated July 14, 1999, he cites pressure of work and his belief that the matter be better left to the permanent judge of Branch 2 considering the administrative and criminal complaints filed against him (respondent) by complainant.

Respondent's excuse is unjustifiable. The fact that respondent judge presides over four branches of the RTC is

not a valid excuse for his inaction. As we stated in Request of Judge Irma Zita V. Masamayor, RTC-Branch 52, Talibon, Bohol for Extension of Time to Decide Criminal Case No. 96-185,[3]

> A heavy caseload may excuse a judge's failure to decide cases within the reglementary period, but not his/her failure to request an extension of time within which to decide the case on time.

Nor can respondent use as an excuse the administrative and criminal complaints filed against him by complainant as the complaints were filed only in May, 1999, more than a year after complainant filed his memorandum in opposition to the notice of dismissal on September, 1997. Under Art. VIII,§15(1) of the Constitution, judges of lower courts are required to decide cases or resolve matters within three months from the date of their submission for resolution. In at least two cases,[4] we considered the failure of judges to decide even a single case within the 90-day period gross inefficiency warranting the imposition on them of fines ranging from P5,000.00 to the equivalent of their salary for one month. In this case, we believe that a fine of P5,000.00 would be an appropriate sanction for respondent's inaction.

WHEREFORE, the Court finds respondent Judge Celso F. Lorenzo GUILTY of grave abuse of authority and of undue delay in resolving an incident in Civil Case No. 3391 and IMPOSES on him a fine in the total amount of Ten Thousand Pesos (P10,000.00) with warning that repetition of the same or similar acts will be dealt with more severely.

The complaint against Attys. Edwin B. Docena and Rodolfo Joji A. Acol, Jr. is referred to the Office of the Bar Confidant for appropriate action after docketing it as a separate administrative case.

SO ORDERED.

Quisumbing, Buena, and De Leon, Jr., JJ., concur.

Bellosillo, J., (Chairman), on leave on official business.

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[1] The same provides:

> Preliminary injunction not granted without notice; issuance of restraining order. – No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the Court to which the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. Within the said twenty-day period, the court must cause an order to be served on the defendant, requiring him to show cause, at a specified time and place, why the injunction should not be granted, and determine within the same period whether or not the preliminary injunction shall be granted, and shall accordingly issue the corresponding order. In the event that the application for preliminary injunction is denied, the restraining order is deemed automatically vacated.
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> Nothing herein contained shall be construed to impair, affect or modify in any way any rights granted by, or rules pertaining to injunctions contained in, existing agrarian, labor or social legislation.

[2] Golangco v. Villanueva, 278 SCRA 414, 422-423 (1997). Reiterated in Reynaldo V. Abundo v. Judge Gregorio E. Manio, Jr., A.M. No. RTJ-98-1416, Aug. 6, 1999.

[3] A.M. No. 99-1-16-RTC, June 21, 1999.

[4] Id., Re: Judge Danilo M. Tenerife, 255 SCRA 184 (1996).

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