

**WONG JAN REALTY, INC., BY ABDULLAH M. JAN, PRESIDENT,
PETITIONER, VS. HON. JUDGE DOLORES L. ESPAÑOL, REGIONAL
TRIAL COURT, DASMARIÑAS, CAVITE, BRANCH 90, RESPONDENTS.**

A.M. NO. RTJ-01-1647. October 13, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In a verified letter-complaint dated June 9, 2000,[1] complainant Wong Jan Realty, Inc., through its President Abdullah M. Jan, charged Judge Dolores Español, Presiding Judge, Regional Trial Court, Branch 90, Dasmariñas, Cavite with gross ignorance of the law or procedure, and manifest bias and partiality.

The complaint alleged that in an unlawful detainer case filed by complainant against the spouses Patricio Gubagaras and Erlinda Gubagaras, the Municipal Trial Court (MTC) of Dasmariñas, Cavite, in a decision dated November 5, 1999, rendered judgment in favor of complainant and ordered the Gubagaras spouses to vacate the premises subject of the suit and pay the sum of P5,000.00 a month from January, 1994 until they shall have vacated the same premises, as reasonable compensation for their use and occupancy thereof. Against that decision, the Gubagaras couple filed a Notice of Appeal without any supersedeas bond. Hence, the decision became final and executory and a writ of execution was ordered issued by the court on January 3, 2000. To the order directing issuance of the writ, the spouses Gubagaras filed a motion for reconsideration, attaching thereto a purported supersedeas bond. On January 31, 2000, the court denied the spouses' motion for reconsideration but approved their Notice of Appeal. The appeal was docketed in the RTC, Dasmariñas, Cavite as Civil Case No. 120-00 which was raffled to Branch 90 thereof presided by the herein respondent judge.

During the pendency of the appeal, the spouses Gubagaras filed with the RTC, Dasmariñas, Cavite a Petition for Certiorari with Prayer for Temporary Restraining Order and Preliminary Injunction, thereunder questioning the MTC's denial of their motion for reconsideration of its order for a writ of execution. The petition, docketed in the RTC as Civil Case No. 2049-00, was likewise raffled to the same branch of that court presided by the respondent judge and received in her sala at 10:10 o'clock in the morning of February 7, 2000.

Controversy sprung when, on that very same day " February 7, 2000 " respondent judge issued in Civil Case No. 2049-00 a status quo ante Order,[2] directing as follows:

In view of the foregoing, let a STATUS QUO ANTE be issued enjoining the above-named respondents (among whom is herein complainant Wong Jan Realty, Inc.) and the Sheriff of this Court or any Sheriff of the Multiple Sala, Imus, Cavite, from implementing the Writ of Execution and the disputed Decision upon the petitioners. Let the hearing on the Preliminary Injunction be set on February 10, 2000 at 1:30 in the afternoon.

SO ORDERED.

Complainant alleged that the aforequoted February 7, 2000 status quo ante Order was issued by the respondent judge without a prior summary hearing, in gross violation of SC Adm. Circular No. 20-95 which mandates that an

application for a TRO shall be acted upon only after all the parties are heard in a summary hearing conducted within 24 hours from the time the records are transmitted to the branch of the court to which the main case was raffled. Complainant proceeds to argue that while SC Adm. Circular No. 20-95 authorizes lower courts to issue a TRO for a maximum period of twenty (20) days only, the February 7, 2000 status quo ante Order of the respondent judge did not contain any expiration period, thereby indefinitely restraining the implementation of the writ of execution issued by the MTC in favor of complainant in the earlier unlawful detainer suit.

As it were, so complainant submits, the respondent judge displayed bias or partiality in issuing her status quo ante Order as she had already prejudged the Gubagaras couple's petition for certiorari in Civil Case No. 2049-00. Perceiving bias and evident partiality on the part of respondent judge, complainant then filed a motion to Inhibit the respondent.

Via a 1[st] Indorsement, then Court Administrator Alfredo L. Benipayo referred the subject letter-complaint to the respondent judge for comment. In a return 2[nd] Indorsement, the respondent judge, by way of COMMENT,[3] denied the accusations against her. She explained that the issues in the Unlawful Detainer case and in the Petition for Certiorari (Civil Case No. 2049-00) are closely intertwined with another civil case (Civil Case No. 867-94) which is an action for Annulment of Deed of Sale filed by the Gubagaras couple against the herein complainant. According to respondent, the issue of ownership over the disputed property subject of Civil Case No. 867-94 is a prejudicial question which must first be resolved before the status quo ante Order issued in Civil Case No. 2049-00 could be lifted. Otherwise, so respondent contends, complainant's, president, Abdullah M. Jan, who is a foreigner, may be allowed to acquire the property through a simulated suit of unlawful detainer and evict the original owners thereof. According to respondent, the need to minimize the damages which the parties may suffer impelled her to issue the status quo ante Order in question. Additionally, so respondent avers, the writ of execution in the unlawful detainer case was issued by the MTC when the appeal (Civil Case 120-00) in that case had already been perfected. Respondent denies the accusations of bias and partiality, claiming that the same do not have any basis in fact and in law.

In its Reply to respondent's comment, complainant additionally charged respondent with Gross Inefficiency on account of respondent's failure to seasonably decide Civil Cases No. 120-00 and 2049-00. Complainant alleged that despite the passage of several months from the time those cases were deemed submitted for decision, the same remained unresolved.

In her answer[4] to the additional charge, respondent reiterated her allegation that since the three cases (Civil Cases No. 120-00, 2049-00 and 867-94) pending before her sala are related, it was indispensable for her to first resolve the issue of ownership of the property in question as raised in Civil Case No. 867-94 which, to respondent, is a prejudicial question insofar as the appeal (Civil Case No. 120-00) in the unlawful detainer case and the petition for certiorari (Civil Case No. 2049-00) are concerned.

The complaint is not without basis.

A prejudicial question is a question which arises in a case the resolution of which is a logical antecedent to the issue involved in said case and the cognizance of which pertains to another tribunal.[5] A civil case constitutes a prejudicial question only if: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue is determinative of whether or not the criminal action may proceed.[6] The three (3) cases before the respondent judge do not, evidently, meet the elements of a prejudicial question, as each involves issues which can be decided independently of each other.

The issue in Civil Case No. 120-00 (appeal in the Unlawful Detainer case) is possession. The issue in Civil Case No. 2049-00 (Petition for Certiorari) is whether the MTC judge abused his discretion in issuing a writ of

execution, and the issue in Civil Case No. 867-94 (Annulment of Deed of Sale) is the validity of the sale. Obviously, Civil Cases No. 120-00 and 2049-00 can be resolved independently of Civil Case No. 867-94. Contrary to respondent's justification, the resolution of Civil Cases No. 120-00 and 2049-00 will not affect the issue of ownership.

Record discloses that respondent judge issued the status quo ante Order without conducting a summary hearing, as required under SC Adm. Circular No. 20-95. Worse, the same Order does not contain any expiry date. Unlike a temporary restraining order which has a life of only twenty (20) days, the Order in question has an indefinite period of duration. Indeed, there was a lapse of judgment on the part of respondent judge in issuing that status quo ante Order.

As an Executive Judge, respondent may issue ex-parte a temporary restraining order effective for seventy-two (72) hours only. Beyond that period, respondent should have conducted a summary hearing to determine whether the ex-parte TRO she issued should be extended for seventeen (17) more days, the period within which the application for preliminary injunction is to be heard and resolved[7]. In the event the application for preliminary injunction is denied or not resolved within the 20-day period, the TRO is deemed automatically vacated.

As it is, respondent's February 7, 2000 status quo ante Order was in full force and effect for more than two (2) years, or until November 12, 2002 when the Court of Appeals, on complainant's recourse thereto, eventually reversed and set aside said Order.[8] Obviously, respondent disregarded the rules on the issuance of temporary restraining order and preliminary injunction.

Be that as it may, there was no showing of malice on the part of respondent judge in issuing said status quo ante Order. In the absence of malice, fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even if erroneous. Malice implies that the act complained of must be the result of an evil intent that excludes a mere voluntary act, deliberated to inflict damage on either party.[9]

Besides, the filing of an administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists.[10]

Here, complainant filed an action for certiorari with the appellate court[11] questioning the propriety of the status quo ante Order and has, in fact, obtained favorable judgment, as mentioned earlier.

As regards the charge of bias and partiality, no evidence was presented by complainant to substantiate the same. Bias and partiality of a judge must be proved by clear and convincing evidence. Mere suspicion that a judge is bias or partial is not enough.

As to the denial of complainant's motion to Inhibit, suffice it to say that while disqualification of judges based on specific grounds provided by the Rules of Court and the Code of Judicial Ethics is compulsory, inhibition partakes of voluntariness on their part.[12]

Finally, on the charge of gross inefficiency for failing to act on Civil Cases No. 120-00 and 2049-00 within the reglementary period, records show that Civil Case No. 120-00 was submitted for decision on April 17, 2000 but was decided only on January 7, 2003, while Civil Case No. 2049-00, submitted for decision on May 16, 2000, was decided only on January 6, 2003.[13]

The Court has repeatedly emphasized the rule for the guidance of judges manning the courts that cases pending before them must be decided within the three (3)-month period, and non-observance thereof constitutes a ground for administrative sanction against the defaulting judge.[14]

Accordingly, respondent judge is found administratively liable for failure to decide Civil Cases No. 120-00 and

2049-00 within the reglementary period and is imposed a fine of Five Thousand Pesos (P5,000.00). It appearing that respondent has since reached compulsory retirement on January 9, 2004, the same amount of fine is to be taken from her retirement benefits.

WHEREFORE, the Court resolves as follows:

(a)

The charges for gross ignorance of the law, and bias and partiality are dismissed for lack of merit; and

(b)

A fine of Five Thousand Pesos (P5,000.00) is imposed on respondent Judge Dolores L. Español, for failure to decide Civil Cases No. 120-00 and 2049-00 within the reglementary period therefor, said amount to be deducted from her retirement benefits.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Rollo, pp. 1-5.

[2] Rollo, pp. 22-24.

[3] Rollo, pp. 35-40.

[4] Rollo, pp. 140-150.

[5] *People v. Aragon*, 94, Phil. 357 [1954] and *Berbari v. Concepcion*, 40 Phil 837 [1920].

[6] Rule III, Section 5, *Dichaves v. Judge Apalit*, A.M. No. MTJ-00-1274, June 8, 2000.

[7] Section 5, Rule 58 Rule of Court.

[8] CA-G.R. SP No. 66413, Rollo, pp. 430-453.

[9] *Sanlakas ng Barangay Julo San Antonio, Inc., et al. vs. Hon. Tiburcio Empaynado*, 351 SCRA 201[2001].

[10] *Zamora vs. Gako, Jr.* 328 SCRA 324 [2000].

[11] See footnote No. 8.

[12] *Estrada vs. Desierto*, 353 SCRA 452 [2001].

[13] Per respondent's own admission in her 2[nd] Motion for Early Resolution, Rollo, pp. 627-629.

[14] *Alfonso-Cortes vs. Romeo Maglalang*, 227 SCRA 482 [1992].

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