ALFREDO G. BOISER, COMPLAINANT, VS. JUDGE JOSE Y. AGUIRRE, JR., REGIONAL TRIAL COURT, BRANCH 55, HIMAMAYLAN CITY, NEGROS OCCIDENTAL, RESPONDENT.

A.M. NO. RTJ-04-1886. May 16, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The instant administrative case arose from the complaint[1] of Alfredo G. Boiser filed with the Office of the Court Administrator (OCA) charging Judge Jose Y. Aguirre, Jr., Regional Trial Court (RTC) of Himamaylan City, Negros Occidental, Branch 55, with Grave Abuse of Discretion and Gross Ignorance of the Law.

Complainant Alfredo Boiser was the plaintiff in an ejectment case filed before the Municipal Trial Court (MTC) of Himamaylan City, Negros Occidental. On 11 July 2003, the MTC rendered a decision[2] in favor of complainant, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:
>
> 1) For the defendant to vacate subject land known as Lot No. 2023 situated at Brgy. Candumarao, Hinigaran, Negros Occiental, consisting of 5.5536 hectares leased by the plaintiff from Mary Nonasco and Ofelia Donado, heirs of the registered owners, the late spouses Narciso Gayares and Paz Nava, and to peacefully turn over possession thereof to the plaintiff;
>
> 2) For the defendant to pay plaintiff the amount of P200,000.00 by way of actual damages;
>
> 3) For defendant to pay plaintiff attorney's fees in the amount of P10,000.00 plus P1,000.00 as appearance fee and to pay the cost.
>
> The writ of preliminary injunction issued by the Court is hereby ordered dismissed.

The case was appealed to the RTC of Negros Occidental, Branch 55.

On 15 October 2003, defendant-appellant Salvador Julleza filed a motion to release bond on the ground that the MTC of Hinigaran, Negros Occidental, in its decision dated 11 July 2003, had already resolved the writ of preliminary injunction without mentioning the applicant's liability.

On 16 October 2003, respondent judge granted the motion.[3]

Complainant alleged that the issuance by respondent judge of the Order dated 16 October 2003 is indicative of his ignorance of the law considering that the motion did not state that he was furnished a copy of the motion thereby depriving him of his right to due process. He also averred that the motion was a mere scrap of paper for failure to state the time and date of hearing. He further alleged that respondent manifested gross ignorance when he resolved to grant the motion to release the injunction bond considering that the same was meant to answer for damages that he may suffer due to defendant's continued illegal possession of the land.

On 15 January 2004, the OCA required[4] respondent to file his comment.

In his comment[5] dated 12 February 2004, respondent judge maintained that the filing of the administrative complaint against him is hasty and uncalled for. He said there must have been a miscommunication between the complainant and his counsel because had either of them exerted effort to find out the result of the appealed case, they would have discovered that he affirmed in toto the decision of the lower court in favor of the complainant.

On 14 April 2004, complainant filed[6] a motion to withdraw complaint.

On 3 August 2004, the OCA submitted its recommendation,[7] thus:

> Respectfully submitted to the Honorable Court our recommendation that this administrative case be RE-DOCKETED as a regular administrative matter and that respondent Judge Jose Y. Aguirre, Jr., be FINED in the amount of P21,000.00 for Gross Ignorance of the Law and be STERNLY WARNED that a repetition of the same or similar acts will be dealt with more severely.

On 17 November 2004, we referred[8] the case to Court of Appeals Justice Monina Zenarosa for investigation, report and investigation. Consequently, the case was scheduled for preliminary conference on 17 February 2005. On the said date, complainant Alfredo Boiser, with his counsel Atty. Salvador Sabio, and respondent judge appeared. During the preliminary conference, Atty. Sabio manifested that the complainant had already filed his motion to withdraw the complaint and was no longer interested in pursuing the case. On the other hand, respondent judge manifested he had retired from the service as of 01 November 2004 and is now appearing as a private citizen. He further informed the court that he was submitting the case without further comment as he had already filed his comment to the complaint.

After investigation, Justice Zenarosa submitted her report[9] recommending the dismissal of the complaint.

Prefatorily, the Court must reiterate the rule that mere desistance on the part of the complainant does not warrant the dismissal of an administrative complaint against any member of the bench. The withdrawal of complaints cannot divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made and to discipline, such as the results of its investigation may warrant, an erring respondent. The court's interest in the affairs of the judiciary is a paramount concern that must not know bounds.[10]

Anent respondent's retirement on 01 November 2004, it has been settled that the Court is not ousted of its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.[11] This was expounded in the case of Perez v. Abiera,[12] cited in the case of Judge Rolando G. How v. Teodora Ruiz, et. al.,[13] thus:

> [T]he jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. x x x If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

We shall now discuss respondent's liability relative to the lack of notice of hearing and proof of service of the questioned motion.

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The Rules of Court requires that every motion must be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service. Sections 4, 5 and 6 of Rule 15 of the 1997 Rules on Civil Procedure provide:

> SECTION 4. Hearing of motion.- Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> SEC. 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.
>
> SEC. 6. Proof of service necessary.- No written motion set for hearing shall be acted upon by the court without proof of service thereof.

It appears that the Motion to Release Bond was defective as it did not have a proper notice of hearing. The date and time of the hearing were not specified. Neither complainant nor his counsel was furnished a copy thereof. These were never controverted by respondent judge.

A motion without notice of hearing is pro forma, a mere scrap of paper. It presents no question which the court could decide. The court has no reason to consider it and the clerk has no right to receive it. The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which he may file his reply or opposition.[14] The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and ensure impartiality in the trial.[15]

Also, without proof of service to the adverse party, a motion is nothing but an empty formality deserving no judicial cognizance.[16] The rule mandates that the same shall not be acted upon by the court. Proof of service is mandatory.[17]

As can be seen the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less.[18]

Clearly, respondent judge had ignored a fundamental rule. He acted too precipitately in granting defendant's motion despite the absence of the requirements as above prescribed. As a judge, Judge Aguirre is expected to keep abreast of laws and prevailing jurisprudence.[19] Unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. A judge must be acquainted with legal norms and precepts as well as with procedural rules.[20] When a judge displays utter lack of familiarity with the rules, he erodes the confidence of the public in the courts.[21] Ignorance of the law by a judge can easily be the mainspring of injustice.[22]

Thus, in the following cases a fine of Five Thousand Pesos was imposed:

> - In Mutilan v. Adiong,[23] A.M. No. RTJ-00-1581, 2 July 2002, 383 SCRA 513, the Court found respondent judge guilty of gross ignorance of the law for granting a motion for garnishment without compliance with the proof of service and notice of hearing requirements, and was sentenced to pay a fine of Five Thousand (P5,000.00) Pesos with a stern warning that repetition of the same or similar acts in the future will be dealt

with more severely.

- In Espino v. Salubre,[24] the court found respondent judge guilty of gross ignorance of the law and was sentenced to pay a fine of Five Thousand Pesos (P5,000.00), when respondent judge continued with the investigation and subsequent issuance of a warrant of arrest against complainant notwithstanding that the records of the case had been transmitted to the provincial fiscal and an information has already been filed in court.

- In Josefina M. Villanueva v. MTC Judge Benjamin E. Almazan,[25] the court found respondent judge guilty of gross ignorance of the law and was sentenced to pay a fine of Five Thousand Pesos (P5,000.00), with stern warning that a repetition of the same or similar act shall be dealt with more severely, when he conducted a preliminary investigation in a case cognizable by the Municipal Trial Court.

- In Acting Solicitor General Romeo de la Cruz v. Judge Carlito A. Eisma, RTC, Branch 13, Zamboanga City,[26] a fine of P5,000.00 was imposed on the respondent judge for gross ignorance of the law and abuse of authority, for preventing the execution of the decision of the RTC, Branch 17, a court of equal rank and jurisdiction.

Ignorance of the law, which everyone is bound to know, excuses no one[27] - much more so judges. It is a truism that the life chosen by a judge as a dispenser of justice is one which is demanding. By virtue of the delicate position which he occupies in the society, he is duty bound to be the embodiment of competence and integrity.[28] Because of this, a judge who is not knowledgeable of the law which he is obligated to implement will not be able to live up to the judiciary's exacting standards.[29]

WHEREFORE, the Court finds Judge Jose Y. Aguirre, Jr., of the Regional Trial Court of Negros Occidental, Branch 55, guilty of gross ignorance of the law, and hereby imposes on him a fine of FIVE THOUSAND PESOS (P5,000.00) to be deducted from his retirement benefits.

SO ORDERED.

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

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[1] Rollo, pp. 1-2.

[2] Rollo, pp. 7-10.

[3] Rollo, pp. 5-6.

[4] Rollo, p. 11.

[5] Rollo, p. 12.

[6] Rollo, pp. 13-14.

[7] Rollo, pp. 15-17.

[8] Rollo, p. 18.

[9] Rollo, pp. 29-37.

[10] Marcelino v. Singson, Jr., A.M. No. MTJ-94-962, 24 April 1995, 243 SCRA 685.

[11] Aquino, Jr. v. Miranda, A.M. No. P-01-1453, 27 May 2004.

[12] A.C. No. 223-J, 11 June 1975, 64 SCRA 302, 306-307.

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[13] A.M. No. P-05-1932, 15 February 2005.

[14] People v. Court of Appeals, G.R. No.125164, 25 September 1998, 296 SCRA 418.

[15] Meris v. Ofilada, A.M. No. RTJ-97-1390, 5 August 1998, 293 SCRA 606.

[16] Lutgarda Cruz v. Court of Appeals, People of the Philippines and the Heirs of Estanislaw C. Reyes, G.R. No. 123340, 29 August 2002, 388 SCRA 72, 80.

[17] Mutilan v. Adiong, A.M. No. RTJ-00-1581, 02 July 2002, 383 SCRA 513.

[18] Villanueva v. Almazan, A.M. No. MTJ-99-1221, 16 March 2000, 328 SCRA 230.

[19] Office of the Court Administrator v. Judge Lorenzo B. Veneracion, A.M. No. RTJ-99-1432, 21 June 2000, 334 SCRA 145.

[20] Hermogenes T. Gozum v. Hon. Daniel B. Liangco, A.M. No. MTJ-97-1136, 30 August 2000, 339 SCRA 253.

[21] Jovenal Oporto v. Judge Eddie Monserate, A.M. No. MTJ-96-1109, 16 April 2001, 356 SCRA 443.

[22] Melvin Espino et al. v. Hon. Ismael Salubre, A.M. No. MTJ-00-1255, 26 February 2000, 352 SCRA 668.

[23] Supra, note 17.

[24] Supra, note 22.

[25] Supra, note 18.

[26] A.M. No. RTJ-00-1544, 15 March 2000, 328 SCRA 151.

[27] Alvarado v. Laquindanum, A.M. No. MTJ-93-835, 3 July 1995, 245 SCRA 501.

[28] Rule 1.01, Canon 1, Code of Judicial Conduct.

[29] Espino v. Salubre, supra.

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