

**VENANCIO INONOG, COMPLAINANT, VS. JUDGE FRANCISCO B. IBAY,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 135, MAKATI
CITY, RESPONDENT.**

A.M. NO. RTJ-09-2175. July 28, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

The present administrative case stemmed from the Sinumpaang Salaysay[1] of Venancio P. Inonog, filed with the Office of the Court Administrator (OCA) on April 26, 2005, charging Judge Francisco B. Ibay of the Regional Trial Court (RTC), Branch 135, Makati City with gross abuse of authority. The complaint involved an incident in the Makati City Hall basement parking lot for which respondent judge cited complainant in contempt of court because complainant parked his superior's vehicle at the parking space reserved for respondent judge.

Respondent judge initiated the proceeding for indirect contempt by issuing an order dated March 18, 2005 in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69, and 03-392-393, entitled *People v. Glenn Fernandez, et al.*, directing the complainant to show cause why he should not be punished for contempt. The said order read:

ORDER

For intentionally parking car with plate no. WDH 804 at the parking space reserved for the undersigned Presiding Judge, thereby causing the delay in the promulgation of the Decisions in the above-entitled cases driver Butch Inonog, c/o Permit Division, this City, is hereby ordered to appear before this Court at 10:30 A.M., March 18, 2005 and show cause why he should not be cited for Contempt for delaying the administration of justice.

SO ORDERED.

Makati City, 18 March 2005.

That same day, respondent judge issued another order, finding complainant guilty of contempt. To quote from the second order:

ORDER

For failure to appear of respondent Venancio Inonog alias Butch Inonog at today's hearing and show cause why he should not be cited for contempt, the Court finds him GUILTY OF CONTEMPT OF COURT, and hereby sentences him to suffer imprisonment for a period of five (5) days and to pay a fined [sic] of P1,000.00.

Let a warrant issue for his arrest furnishing copies thereof to the Director General Philippine National Police, the Director of the National Bureau of Investigation, and the Station Commander of Makati Police Station.

SO ORDERED.

Makati City, 18 March 2005.

The relevant facts, culled from the records, follow:

Complainant alleged that he is the security-driver of the Chief of the Business Permit Division of Makati City. According to complainant, at around 1:00 a.m. of March 18, 2005, he parked the vehicle that he drives for his boss in a vacant parking space at the basement of the Makati City Hall because the slot where he usually parked was already occupied. At the time, the parking slots at the basement of the Makati City Hall were indicated only by numbers and not by names of officials to whom they were assigned. Thereafter, complainant notified his superior that he will not be reporting for work for the rest of that day, March 18, 2005, because he was not feeling well. Thus, he left the vehicle in the said basement parking area and went home to Tanay, Rizal.

Later that morning, complainant received a call from his brother, also an employee of the City Government of Makati, informing him that he should appear before the sala of respondent judge at 10:30 a.m. to explain/show cause why he should not be cited for contempt of court for parking his vehicle at the space reserved for respondent judge. He was informed that the respondent judge blamed the usurpation of the said parking space for the delay in the promulgation of the decision in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69, and 03-392-393 scheduled at 8:00 a.m. of March 18, 2005 because the latter had a hard time looking for another parking space. Complainant was also informed that if he failed to appear at the hearing, a warrant for his arrest will be issued.

Complainant immediately left his home in Tanay to go to Makati City Hall even though he was not feeling well. However, due to the distance involved and the time consumed by using various modes of public transportation, he arrived there only at around 1:00 p.m. He found out that by then he had already been adjudged guilty of contempt of court by respondent judge for delaying in the administration of justice. He was sentenced to suffer imprisonment for five (5) days and to pay a fine of one thousand pesos (P1,000.00). A warrant for his arrest was also issued.[2]

On March 21, 2005, complainant through counsel filed an Urgent Motion for Reconsideration and/or to Lift Order of Arrest, but said motion was denied. Subsequently, complainant filed an Amended Urgent Motion for Reconsideration and/or To Lift the Order of Arrest, attaching proof of payment of the fine in the amount of one thousand pesos (P1,000.00). In his motions, complainant explained that he did not know that the parking space was reserved for the respondent judge. He also begged for forgiveness and promised not to repeat the incident. Acting on the said amended motion, respondent judge issued an Order dated March 30, 2005 finding complainant's explanation to be unsatisfactory. However, respondent judge modified his previous order by deleting the sentence for imprisonment for five (5) days but the fine of P1,000.00 was increased to P2,000.00, with a stern warning that a repetition of the same offense will be dealt with more severely. In compliance, complainant paid the additional amount of P1,000.00 as fine.

Aggrieved by the said orders of respondent judge, complainant filed the instant administrative complaint.

In his Comment dated June 10, 2005, respondent judge explained that on March 18, 2005, he proceeded to the court at around 7:00 a.m. to finalize the decision in Criminal Case Nos. 02-1320, 02-3046, 02-3168-69 and 03-392-393, all entitled *People v. Glenn Fernandez, et al.*, which were to be promulgated on the first hour of the same day. Upon reaching his parking slot, he found complainant's vehicle parked there. As a result, he had a hard time looking for his own parking space. Hence, the promulgation of the decision was delayed.

According to respondent judge, complainant knew that the parking slot was reserved for him because it bore his name. He emphasized that prior to the incident, he already had his name indicated at the said slot precisely because there had been previous occasions when other vehicles would occupy his parking space and he had been forced to park at the public parking area.

Respondent judge added that he ordered the complainant to appear before him for the hearing at 10:30 a.m. of March 18, 2005, but, complainant refused, thus, he declared him in contempt of court.

Respondent judge also averred that he neither took advantage nor exercised arbitrarily the power of the court as in fact, complainant was given a chance to be represented by a counsel of his own choice and was given an opportunity to explain his position which the latter seriously considered.

Respondent judge explained that his acts were brought about by his deep concern with the disposition of the cases assigned to him within the prescribed period. To accomplish this, he came to office at 7:00 a.m. and worked on his cases not only in his office, but even at home. Respondent judge mentioned that he was able to dispose 349 cases leaving only 171 cases pending as of December 31, 2004. He pointed out that he was able to further reduce his docket to 23 civil cases and 29 criminal cases as of May 31, 2005. Thus, he ranked 3[rd] among judges in the RTC, Makati with respect to disposition of cases.

Respondent judge added that petty disturbances, like the incident involved in the instant administrative complaint, were annoying to him since they interfered in the performance of his judicial function. Nevertheless, he did not lose his objectivity, probity, equanimity, integrity and impartiality and reacted to these incidents within the limits and boundaries of the law and justice.

On November 15, 2005, the OCA made the following evaluation and recommendation:

EVALUATION: This administrative complaint came about when Judge Francisco B. Ibay cited complainant in contempt of court simply because the latter parked his vehicle at the parking space served for him. In the exercise of his contempt power, not only did respondent deny the complainant his right to be heard but also convicted him in contempt of court based on a very loose and flimsy reason.

Contempt of court has been defined as 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 (Halili vs. Court of Industrial Relations, 136 SCRA 57).

Under the Rules of Court, contempt is classified into direct and indirect. Direct contempt, which is summary, is committed 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 (Section 1, Rule 71).

Indirect contempt, on the other hand, is not committed in the presence of the court and can be punished only after notice and hearing (Zarate v. Balderian, 329 SCRA 558). Undoubtedly, Judge Ibay cited the complainant for indirect contempt of court since the subject incident transpired not in the court's presence.

In the instant case, there was no defiance of authority on the part of the complainant when he parked his vehicle at the spot reserved for the respondent judge. The incident is too flimsy to be a basis of a contempt proceedings. At most, the act resulted to a minor inconvenience on the part of the respondent but it was unlikely that it delayed the administration of justice. Besides, it was not shown that complainant parked his vehicle at the spot intentionally to show disrespect to Judge Ibay. Respondent Judge Ibay acted precipitously in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than upholding of the court's honor.

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Assuming, without conceding, that the complainant had committed indirect contempt of court, he was nonetheless entitled to be charged in writing and given an opportunity to be heard by himself or counsel. Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before a person may be punished for indirect contempt, thus: (1) a complaint in writing which may either be a motion for contempt

filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and, (2) an opportunity for the person charged to appear and explain his conduct (*Pacuribot v. Lim, Jr.*, 275 SCRA 543). Proceedings against persons charged with contempt of court are commonly treated as criminal in nature, thus this mode of procedure should be strictly followed.

Records failed to show that complainant was properly notified of Judge Ibay's order directing the former to appear and explain why he should not be cited in contempt of court. The hearing was set at 10:30 A.M. or only about two and a half hours after respondent judge found that his parking space was occupied. The lack of notice accounts for the complainant's failure to appear at the hearing. Verily, complainant was not given a reasonable opportunity to be heard and submit evidence in support of his defense.

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RECOMMENDATION: In view of the foregoing, it is respectfully submitted to the Honorable Court our recommendations that this instant I.P.I. be REDOCKETED as a regular administrative matter and Judge Francisco B. Ibay, Regional Trial Court, Branch 35, Makati City, be penalized to pay a FINE in the amount of Five Thousand Pesos (P5,000.00) with a STERN WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.

The Court agrees with the findings of the OCA but deems it proper to impose a penalty different from the OCA's recommendation.

Rule 71 of the Rules of Court prescribes the rules and procedure for indirect contempt. Sections 3 and 4 of the said rule read as follows:

SEC. 3. Indirect contempt to be punished after charge and hearing.--After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

- (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
- (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
- (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;
- (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) Failure to obey a subpoena duly served;
- (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him. xxx xxx xxx

SEC. 4. How proceedings commenced.--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. xxx xxx xxx

The phrase "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" is so broad and general that it encompasses wide spectrum of acts that could constitute indirect contempt. However, the act of complainant in parking his car in a slot allegedly reserved for respondent judge does not fall under this category. There was no showing that he acted with malice and/or bad faith or that he was improperly motivated to delay the proceedings of the court by making use of the parking slot supposedly reserved for respondent judge. We cannot also say that the said act of complainant constitutes disrespect to the dignity of the court. In sum, the incident is too flimsy and inconsequential to be the basis of an indirect contempt proceeding.

In *Lu Ym v. Mahinay*,^[3] we held that an act, to be considered contemptuous, must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. Here, the act of complainant is not contrary or clearly prohibited by an order of the court.

The power to punish for contempt is inherent in all courts so as to preserve order in judicial proceedings as well as to uphold the administration of justice. The courts must exercise the power of contempt for purposes that are impersonal because that power is intended as a safeguard not for the judges but for the functions they exercise. Thus, judges have, time and again, been enjoined to exercise their contempt power judiciously, sparingly, with utmost restraint and with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.^[4] Respondent judge's act of unceremoniously citing complainant in contempt is a clear evidence of his unjustified use of the authority vested upon him by law.

Besides possessing the requisite learning in the law, a magistrate must exhibit that hallmark of judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge.^[5] Respondent judge himself has characterized this incident as a "petty disturbance" and he should not have allowed himself to be annoyed to a point that he would even waste valuable court time and resources on a trivial matter.

As for the appropriate penalty to be imposed, we note that this is not the first time respondent judge was charged with grave abuse of authority in connection with his misuse of his contempt power. In A.M. No. RTJ-06-1972 entitled *Panaligan v. Ibay*,^[6] the Court in its Decision dated June 21, 2006 resolved to impose a fine of P5,000.00 on respondent judge for improperly citing therein complainant for contempt and ordering his detention without sufficient legal basis. He was warned not to repeat the same or similar offense, lest a more severe penalty shall be imposed. In *Macrohon v. Ibay*,^[7] respondent judge was also found guilty of the same offense and ordered to pay a fine of P25,000.00. In the recent case of *Nuñez v. Ibay*,^[8] which involved a very similar incident regarding inadvertent usurpation of respondent judge's parking slot, the Court likewise found respondent judge guilty of grave abuse of authority for citing complainant therein in contempt of court without legal basis. In *Nuñez*, we ordered respondent judge to pay a fine in the amount of P40,000.00 to be deducted from his retirement benefits, since said respondent judge opted to avail of Optional Retirement under R.A. No. 910 (as amended by R.A. No. 5095 and P.D. No. 1438) effective August 18, 2007.

Considering that this is not the first time that respondent judge committed the same offense and in *Nuñez*, which had similar factual antecedents as the case at bar, the Court already saw fit to impose upon him a fine in the amount of P40,000.00, it is proper to impose on him the same penalty in this case.

WHEREFORE, in view of the foregoing, respondent Judge Francisco B. Ibay is found guilty of grave abuse of authority. He is ordered to pay a FINE of Forty Thousand Pesos (P40,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., (Chairperson), Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Peralta, and Bersamin, JJ., concur.

Velasco, Jr., J., no part. Participated as then Court Administrator.

Brion, J., on official leave.

[1] Rollo, pp. 1-3.

[2] Id. at 5.

[3] G.R. No. 169476, June 16, 2006, 491 SCRA 253, 263-264.

[4] Torcende v. Sardido, A.M. No. MTJ-99-1238, January 24, 2003, 396 SCRA 11, 21-22.

[5] Id. at 25.

[6] 491 SCRA 545.

[7] A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75.

[8] A.M. No. RTJ-06-1984, June 30, 2009.

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