

BERNABE MORTEL, COMPLAINANT, VS. JUDGE VICENTE LEIDO, JR., RESPONDENT.

A.M. No. RTJ-91-714. September 10, 1993

Ponente: MELO, J.

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MELO, J.:

The Honorable Vicente P. Leido, Jr., Presiding Judge of Branch 43 of the Regional Trial Court stationed in Roxas, Occidental Mindoro, is the respondent in this administrative case filed by Bernabe Mortel. The charges levelled against respondent judge are as follows:

1. Serious misconduct, ignorance of the law and gross incompetence in issuing a decision after the filing of a petition for certiorari and after a temporary restraining order was issued by the Court of Appeals;
2. Undue haste in deciding the case pending the petition for certiorari and without any trial on the merits;
3. Serious misconduct, ignorance of the law and gross incompetence in issuing a writ of execution and an alias writ of execution in violation of the decision of the Court of Appeals which had become final and executory ten (10) months prior to the issuance of the alias writ of execution; and
4. Serious misconduct, ignorance of the law or gross incompetence in approving the bailbond of Gary Atienza, using the same property already used as bond in another case by another accused.

(Complainant's Memorandum, pp. 468, 473, Record)

The Court in its Resolution dated October 22, 1992 referred the case to Justice Eduardo G. Montenegro of the Court of Appeals for investigation, report, and recommendation.

As culled from the records, the first, second, and third charges, stemmed from Civil Case No. C-130 of the Court of First Instance of Occidental Mindoro, (Branch 43, Roxas), presided over by respondent judge. The case was for damages and accounting filed by Roxas College Inc., represented by Arnulfo Sison, against the Roxas College Teachers and Employees Union, represented by Bernabe S. Mortel, Nelia F. Mortel, and Reynaldo Rey.

The defendants in said case filed a motion to dismiss on the ground of lack of jurisdiction over the subject matter which motion was denied by respondent judge in his order dated July 16, 1990.

A motion for reconsideration was later denied by respondent on November 15, 1990. Similarly treated on January 22, 1991 was a second motion for reconsideration.

On March 4, 1991, defendants filed a petition for certiorari and prohibition with the Court of Appeals, later docketed as CA-G.R. SP No. 24313, praying that the orders of respondent denying the motion to dismiss and the first and second motions for reconsideration be annulled and set aside.

In a resolution promulgated March 21, 1991, the Court of Appeals issued a temporary restraining order enjoining respondent from conducting further proceedings in Civil Case No. C-130 so as not to render moot and academic

the issues raised in the petition. Four days thereafter or on March 25, 1991, respondent rendered a judgment on the pleadings in Civil Case No. C-130.

On June 21, 1991, the Court of Appeals promulgated its decision in CA-G.R. SP No. 24313, granting the writ of certiorari and prohibition prayed for, enjoining respondent from taking any further action on Civil Case No. C-130 except for the purpose of dismissing the same. This decision became final and executory, and judgment was entered on April 13, 1992. Six months later, on December 14, 1992, respondent issued a writ of execution in Civil Case No. C-130.

Complainant asserts that respondent is guilty of serious misconduct, ignorance of the law, and gross incompetence for rendering a judgment on the pleadings in Civil Case No. C-130, after the filing of the petition for certiorari and prohibition (CA-G.R. SP No. 24313) and after the issuance of a temporary restraining order and for issuing a writ of execution in Civil Case No. C-130 after the decision in CA-G.R. SP No. 24313 had become final and executory.

With respect to the fourth charge, complainant alleged that during the pendency of Civil Case No. C-130 and CA-G.R. SP No. 24313, he received information that Arnulfo Sison and his son, Ferdinand, wanted him killed; that on March 11, 1991, at around 8:30 in the evening, a hired killer by the name of Gary Wilson Atienza entered the compound of complainant's residence and shot by mistake the brother-in-law of complainant; that on July 1, 1991, Gary Atienza was captured by NBI agents in Manila resulting in the filing against him of Criminal Case No. R-434, which was assigned to respondent judge. Subsequently, Gary Atienza was released on bail, using as bond a property covered by TCT No. T-7477 in the name of Perlita P. Sison. Later, complainant further alleged, he discovered that TCT No. T-7477 was already used to bail out a certain Isagani Gelindon in Criminal Case No. 418 for Murder. The bond of Gelindon was never cancelled before the same TCT No. T-7477 was used as bond for Gary Atienza.

Complainant also asserts that respondent guilty of serious misconduct, ignorance of the law, and gross incompetence for approving the property bond of Gary Atienza using the same property already used as bond by Gelindon in another criminal case.

For his part, respondent judge maintained that -

1. He did not violate the Resolution of the Court of Appeals in CA-G.R. SP No. 24313 dated March 25, 1991; that the subject resolution was sent by registered mail to him on March 25, 1991, and received by the Batangas City Sub. DC Post Office on March 27, 1991 and by the Post Office of Roxas, Oriental Mindoro on April 3, 1991. In short, respondent maintained he was apprised of the said resolution only after he had rendered his decision in Civil Case No. C-130 on March 25, 1991. Besides, respondent also asserted, the defendants in Civil Case No. C-130 who were represented by counsel made no attempt to request the court to suspend or hold in abeyance further proceedings pending resolution of the petition for certiorari and prohibition with the Court of Appeals.

2. He cannot be held administratively liable for any errors committed in deciding Civil Case No. C-130. In the hearing held in open court on January 22, 1991, defendants' counsel conceded that the court has jurisdiction over the nature of the action or suit and requested 10 days within which to file his comment or opposition to the plain-tiffs' proposed motion for judgment on the pleadings. The motion for judgment on the pleadings was filed by plaintiffs on the following day, January 23, 1991. Following the filing of the comment and manifestation of the defendants on March 19, 1991, the same was granted, and on March 25, 1991, a decision was rendered. Any errors committed by him, in evaluating the evidence in Civil Case No. C-130 respondent contended, constitute only errors of law for which he cannot be held liable administratively.

3. The issuance of a writ of execution pursuant to a final and executory judgment is mandatory. Admittedly, a writ of execution was issued in Civil Case No. C-130. This was due to the decision dated March 25, 1991 becoming final and executory on November 21, 1991 because although counsel for the defendants filed a notice of appeal, the appeal was dismissed for failure to pay docketing fees. The decision having become final and executory, respondent thus concluded, it was ministerial on his part to issue the corresponding writ of execution.

4. The release on bail of the accused Gary Atienza based on TCT 7477 was not anomalous. There was an attempt by Isagani Gelindon to post the real property covered by TCT No. T-7477 in the name of Perlita Sison as property bond for his provisional liberty but it did not push through. This is the reason why respondent judge did not sign the order dated April 4, 1991. Stated differently, respondent contended, the property covered by TCT 7477 was never used as property bond for Gelindon.

In due time, the Investigating Justice submitted his well written Report and Recommendation with the following apt observations and findings which deserve to be quoted:

Respondent Judge's explanation that he received the Court of Appeals Resolution with restraining order, promulgated March 21, 1991, on April 3, 1991, days after he rendered judgment on the pleading on March 25, 1991 (Exhibit A-9, Record, p. 204) is amply established by evidence. The letter-envelope containing the resolution promulgated March 21, 1991, xerox copy of which was presented in evidence as Exhibit 2 (Record, p. 273) shows that it was registered at the Central Post Office, Manila, on March 25, 1991 (Exhibits 2-A and 2-B) and received in Roxas, Oriental Mindoro on April 3, 1991 (Exhibit 2-C). Charge No. 1, therefore, that respondent Judge proceeded with Civil Case No. C-130 in violation of the restraining order is without basis.

The second charge that respondent Judge is guilty of undue haste in deciding Civil Case No. C-130 pending the petition for certiorari and prohibition and without any trial on the merits is likewise without merit.

There is no provision of the law or rules or precedent mandating that upon the filing of a petition for certiorari or prohibition a Judge should suspend further proceedings. On the contrary, there is an authority to the effect that an application for certiorari is an independent action, not a part of continuation of the trial which resulted in the rendition of the judgment complained of. An independent action does not interrupt the course of a cause unless there be a writ of injunction stopping it (*Palomares, et. al vs. Jimenez, et.al.*, 90 Phil. 773). There are of course decisions which say that upon filing of a petition for certiorari or prohibition, the trial judge should suspend proceedings out of respect to the Court where the petition is filed and in order to give said Court sufficient time to act on the petition. But it is doubtful whether the failure of a trial Judge to give time to the Court where the petition is filed to act would give rise to an administrative liability.

The undue haste imputed by complainant to respondent Judge is not amply substantiated by evidence. The explanation of respondent Judge, embodied in his affidavit (Exhibit 1, Record, p. 259) is not rebutted that in "the hearing held in open court on January 22, 1991, defendant's (complainant herein) counsel conceded that the court has jurisdiction over the nature of the action or suit and requested a ten-day period within which to file his comment or opposition to the plaintiffs' proposed motion for judgment on the pleadings. The Motion for Judgment on the pleadings was filed by the plaintiffs on the following day, January 23, 1991. After a Comment and Manifestation was filed by the defendants on March 19, 1991, undersigned granted the motion and on March 25, 1991, undersigned rendered a decision in Civil Case No. C-130". The explanation of respondent Judge is likewise not rebutted that counsel for defendants in Civil Case No. C-130 made no attempt to request the court to suspend or hold in abeyance further proceedings pending resolution of the petition for certiorari and prohibition (Par. 11, *id.*). The rollo of CA-G.R. SP No. 24313 reveals that the petition for certiorari and prohibition was filed on March 4, 1981. There is no showing when respondent Judge received a copy of the petition inasmuch as the return cards are not attached to the petition, only the registry receipts. The petition was not accompanied by a certification that there is no similar petition involving the same subject matter that has been previously filed, withdrawn or dismissed in the Supreme Court or in the Court of Appeals.

The requirement was complied with by complainant's counsel only on March 8, 1991. Assuming, therefore, that a copy of the petition for certiorari and prohibition was received by respondent Judge a few days after the filing of the petition on March 4, 1991, it would not be reasonable in law to expect respondent Judge to immediately suspend further proceedings on his own volition and without having received any restraining order, on the basis of a defective petition.

Anent the third charge that respondent Judge is guilty of serious misconduct, ignorance of the law and gross incompetence in issuing a writ of execution and an alias writ of execution in violation of the decision of the Court of Appeals which had become final and executory, the evidence on rebuttal shows that on December 14, 1992, Clerk of Court Mariano S. Familara III issued a writ of execution (Exhibit C-2, Record, pp. 424-425), citing as basis of the issuance, a motion for execution filed July 16, 1992 and granted by the Court in an Order dated October 20, 1992. Under date March 1, 1993, a motion for issuance of alias writ of execution and appointment of a special sheriff was filed (Exhibit C-1, Record, p. 426). A copy of the Order of respondent Judge issued on March 16, 1993 granting the motion for issuance of an alias writ of execution is marked in evidence as Exhibit F-Rebuttal (Record, p. 452). It must be recalled that in the decision in CA-G.R. SP No. 24313 (Exhibit A-10, Record, p. 213), the Court of Appeals enjoined respondent Judge from taking any further action on Civil Case No. C-130 except for the purpose of dismissing it. The decision became final and executory on February 17, 1992 and entry of judgment made on April 13, 1992 (Exhibit A-23, Record, p. 241). In granting the motion for execution filed July 16, 1992 in his Order of October 20, 1992, and the motion for issuance of an alias writ of execution on March 16, 1993, respondent Judge committed gross misconduct warranting more than a reprimand. Respondent Judge's explanation that defendants in Civil Case No. C-130, through their former counsel, filed a notice of appeal which was dismissed by the Court of Appeals for failure to pay docket fee, hence the decision became final and executory and because the decision became final and executory, it became ministerial on respondent Judge's part to issue the corresponding writ of execution deserves no consideration whatsoever. The final and executory decision of the Court of Appeals in CA-G.R. SP-No. 24313 which laid down the law in the case, enjoined respondent Judge from taking any further action on the case except for the purpose of dismissing it.

Anent the fourth charge of serious misconduct, ignorance of the law or gross incompetence in approving the bailbond of Gary Atienza using the same property bond already used as bond in another case by another accused, the charge is found not adequately established by the evidence. The explanation of respondent Judge stands unrebutted that there was only an attempt by Isagani Gelindon to post the real property covered by TCT No. T-7477 in the name of Perlita Sison as property bond for his provisional liberty but the same did not push through (Par. 17, respondent Judge's Affidavit, Exhibit 1, Record, p. 259). The Order, dated April 4, 1991, appearing in the record of Criminal Case No. R-118, a xerox copy of which was marked in evidence as Exhibit 14 (Record, p. 292), indeed appears unsigned. Complainant presented in evidence a purported copy of the Order dated April 4, 1991 bearing a signature purportedly of respondent Judge (Exhibit A-21, Record, pp. 237-238). This Investigator was expecting that complainant would submit the document to a handwriting expert for comparison of signature therein with genuine signatures of respondent Judge, but no move was made by complainant in that direction. The testimony of respondent Judge that the signature is not his should, therefore, be accepted in the absence of evidence that the questioned signature is really that of respondent Judge. The certification Exhibit D-1-Rebuttal (Record, p. 429) issued by Officer-in-Charge Arnaldo M. Moratin of the Office of the Provincial Jail at Oriental Mindoro certifying that according to the records of Orders of Release of said Office, Isagani Gelindon was released by virtue of an Order issued by Judge Vicente P. Leido, Jr., dated April 4, 1991, does not belie the explanation of respondent judge or disprove his claim that he did not sign the contemplated Order dated April 4, 1991. All that the certification at the most confirms is the existence of the Order dated April 4, 1991 purportedly signed by respondent Judge, which respondent Judge claims to be spurious, but nonetheless was used in the release of Isagani Gelindon.

(pp. 6-9, Report and Recommendation)

Upon the above premises, Justice Montenegro recommended:

1. Respondent Judge be absolved of Charges 1, 2 and 4;
2. On Charge No. 3, that respondent Judge be found guilty of serious misconduct and fined the equivalent of his salary for two (2) months with a warning that a repetition of the same offense shall be dealt with more severely.

Upon a final decision of a higher court, like the Court of Appeals, a trial judge no matter how much he differs with the views of the higher court, has no alternative but to comply. This is part of every Judge's duty to uphold the integrity of the judiciary (Canon 1, Code of Judicial Conduct) and the avoidance of impropriety and the appearance of impropriety in all activities (Canon 2, id.).

(p. 9, Ibid.)

The Court has reviewed the record of this case and has thereby satisfied itself that the findings of the Investigating Justice are in truth adequately supported by the evidence and are in accord with applicable legal principles. Said findings are, therefore, hereby adopted as the Court's own findings.

Indeed, respondent judge overstepped the limits of his authority as a subordinate court. His is the duty to execute, enforce, and implement the final decisions of a higher court.

The Investigating Justice gave one final observation on respondent's culpability, thus --

Charge No. 3 bears some similarity with the finding of serious misconduct against Judge Teresita Dizon-Capulong in Adm. Matter No. RTJ-91-766 who was dismissed from the service with forfeiture of all retirement benefits. The difference lies, however, in the degree of disobedience. The respondent judge therein was shown, among others, to have blatantly and continually disobeyed the lawful orders of superior courts by issuing a series of orders which ran counter to the directives of this Court and the final decision of the Supreme Court. Moreover, in an obvious display of gross ignorance of the law, she cancelled the titles of the complainants, who were not parties to the case, upon a mere motion, in a probate proceeding. Without necessarily downplaying herein respondent judge's own actuation, his is an isolated case of willful disobedience of Our lawful order which does not merit so grave a penalty as was meted out in the aforementioned case.

(p. 10, Ibid.)

WHEREFORE, respondent Judge Vicente Leido, Jr. is hereby found guilty of serious misconduct in office and is hereby FINED Ten Thousand Pesos (P10,000.00). In addition, the Court Resolved to CENSURE and to WARN him to exercise much greater care and diligence in the performance of his duties as a judge and that the same or a similar offense in the future will be dealt with more severely.

A copy of this Resolution shall be spread in the personal record of respondent in the Office of the Court Administrator.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Quiason, Puno, and Vitug, JJ., concur.

Bellosillo, J., see concurring opinion.

Feliciano, J., on leave.

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CONCURRING OPINION

BELLOSILLO, J.:

I agree with the ponencia of Mr. Justice Jose A. R. Melo. I just wish to point out, however, that the Dizon-Capulong case (Adm. Matter No. RTJ-91-766) cited by the investigating Justice and incorporated in the instant Resolution was subsequently modified in the sense that she was allowed to receive her earned leave benefits per Resolution dated 15 July 1993. This is intended to avoid the impression that may be created from the quoted statement found on page 13 of the ponencia that respondent Dizon--Capulong "was dismissed from the service with forfeiture of all retirement benefits."

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