

MERIAM BALAGTAS, COMPLAINANT, VS. OLEGARIO R. SARMIENTO, JR. JUDGE, MTCC, BRANCH 2 CEBU CITY, RESPONDENT.

A.M. No. MTJ-01-1377 (Formerly OCA-IPI-99-650-MTJ). June 17, 2004

Ponente: TINGA, J.

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TINGA, J.:

The essence of due process is the right to be heard. Therefore, every motion which may prejudice the rights of a party should be set for hearing. The intendment of the law will never be achieved if notice is not served, such as in this case.

On November 27, 1998, the Office of the Court Administrator (OCA) received the sworn Letter-Complaint[1] of Ms. Meriam Balagtas (Balagtas) dated November 11, 1998 accusing Judge Olegario R. Sarmiento, Jr., MTCC, Branch 2, Cebu City, of knowingly rendering an unjust interlocutory order, gross ignorance of the law and serious irregularities in the performance of judicial duties in connection with Criminal Cases Nos. 82863-R and 83186-R, entitled “People of the Philippines versus Hermann Peith,” for violation of B.P. 22.

Balagtas was the private complainant in the aforementioned criminal cases.

In the Letter-Complaint she submitted, Balagtas alleges that on May 25, 1998, accused Hermann Peith (Peith) filed an Urgent Ex-Parte Motion to Leave for Abroad[2] which was granted by the respondent judge on the same day it was filed without notice to her or the prosecution.[3] Moreover, as shown in the Order[4] dated May 25, 1998, the respondent judge granted the motion simply because Peith executed a Deed of Real Estate Mortgage covering the value of the bounced checks.

Consequently, Balagtas filed an Urgent Motion for Reconsideration of the Order Dated May 25, 1998 dated May 26, 1998, arguing that the fact that Peith executed a Deed of Real Estate Mortgage to secure the payment of the checks is of no consequence, the cases being criminal in nature.[5] Besides, Peith cannot own real properties in the Philippines since he is a foreigner.[6]

The respondent judge denied the motion for reconsideration in his Order[7] dated May 28, 1998.

Balagtas then filed a Motion for the Inhibition of Judge Olegario Sarmiento[8] dated August 24, 1998 on grounds of bias and partiality. She claimed therein that she filed a Motion for the Issuance of a Hold Departure Order against Peith which the respondent judge did not act upon. However, in a move evincing bias in favor of Peith, the respondent judge granted his Urgent Ex-Parte Motion to Leave for Abroad.

The respondent judge granted the motion for inhibition in his Order[9] dated August 31, 1998. In the same Order, he stated that he cannot act upon Balagtas’ Motion for the Issuance of a Hold Departure Order against Peith since he is prohibited from doing so by Circular No. 39-97 of the Supreme Court which limits such authority to criminal cases within the jurisdiction of second level courts. Moreover, Balagtas had already foreclosed Peith’s property and the value of the bounced checks had already been satisfied. He further remarked that “[H]erein judge is responsibly informed that the herein parties have had a special personal relationship only that accused married

another woman. This Court does not want to be an instrument of the misgivings, sourgrapings and importunings of complainant.”[10]

Balagtas now asserts that the respondent judge’s Orders dated May 25, 1998 and August 31, 1998 are unjust and amount to gross ignorance of the law. She also claims that the respondent judge committed serious irregularities in the performance of his duties.

Balagtas essentially contends that the respondent judge should not have allowed Peith to leave the country since, as the accused in two criminal cases, he is not only liable for the amount of the checks that bounced but also for the impossible penalty for violation of the Bouncing Checks Law. She likewise objects to what she claims to be derogatory remarks made by the respondent judge against her in his Order of August 31, 1998.

In his Letter-Comment[11] dated May 24, 1999, the respondent judge explains that he allowed Peith to leave the country for one month to avail of his retirement benefits in Switzerland for the following reasons: (a) Peith has properties, family and a reputation to maintain in Cebu City; (b) he was appreciative of Peith’s gesture of asking permission to travel because Peith need not have done so; (c) he was hoping that Peith can bring in money to pay his obligation under the checks; (d) Peith had already been arraigned; hence, he may be tried in absentia; and (e) Peith executed a Deed of Real Estate Mortgage in favor of Balagtas to secure the payment of his obligation. Besides, Balagtas had allegedly already foreclosed Peith’s property and the value of the bounced checks had already been satisfied.

The respondent judge also claims that the case is already before another judge since he inhibited himself from hearing the cases in his Order dated August 31, 1998. Lastly, the respondent judge avers that Balagtas “can push through with her personal agenda of vendetta without unnecessarily dragging” him into it once Peith sets foot on Philippine soil.[12] He further states that he “cannot act as ‘Berdugo’ for complainant’s personal ill motive and selfish interest.”[13]

In her Letter-Reply[14] dated June 26, 1999, Balagtas insists that had she been notified of Peith’s motion, she could have opposed the motion with the following points, to wit: Peith has no legal wife but only a live-in-partner in Cebu; as a foreigner, Peith cannot own real property anywhere in the Philippines; and the value of the mortgaged real estate is not sufficient to satisfy Peith’s monetary obligation. She adds that the respondent judge delved into irrelevant issues when he stated in his August 31, 1998 Order that he was “informed that the herein parties have had a special personal relationship only that the accused married another woman.”[15]

In a Resolution[16] dated September 17, 2001, the Court referred the complaint to Executive Judge Galicano C. Arriessgado of RTC, Cebu City for investigation, report and recommendation. During the pendency of the investigation, Judge Pampio A. Abarintos took over from Judge Arriessgado as Executive Judge. Thus, Judges Abarintos and Arriessgado conducted the investigation with 1[st] Vice Executive Judge Isaias P. Dicdican.

The investigating judges submitted their report and recommendation[17] dated August 1, 2003 to the OCA finding as follows: (1) as a first level court judge, the respondent is not authorized to issue hold departure orders as this power is vested in a Regional Trial Court judge; (2) Balagtas erred in filing her Motion for the Issuance of a Hold Departure Order against Peith before the respondent judge’s court, hence, she is not entirely blameless; (3) upon the inhibition of the respondent judge, the cases were transferred to MTCC, Branch 5, Cebu City, presided over by Judge Oscar D. Andrino, who rendered a judgment on the cases on November 11, 2002; and (4) Peith was acquitted but was ordered to indemnify Balagtas for the face value of the checks with interest thereon. In view of these findings, the investigating judges recommend that the charges against the respondent judge be dismissed and the case considered closed and terminated.

In its Memorandum[18] dated March 16, 2004, the OCA sustains with modification the findings and recommendation of the investigating judges. The OCA notes that since Peith was charged with two counts of violation of B.P. 22, which is under the exclusive jurisdiction of first level courts and not among the criminal cases covered by Circular No. 39-97 dated June 19, 1997 of this Court where hold departure orders may be issued, the respondent judge may not deny his Urgent Ex-parte Motion to Leave for Abroad or grant Balagtas' Motion for Issuance of a Hold Departure Order against him. The OCA, therefore, recommends the dismissal of the case against the respondent judge but admonishes him to refrain from resorting to insulting and offensive language in his future judicial actions.

The Court agrees that the remark of the respondent judge in his Order dated August 31, 1998, aside from being totally irrelevant, was improper, offensive and uncalled for. He insinuated that the reason for Balagtas' filing of criminal cases against Peith was she was incensed for being dumped by the latter in favor of another woman. The respondent judge repeated his tirade against Balagtas in his Letter-Comment[19] dated May 24, 1999 where he stated that Balagtas has a "personal agenda of vendetta" against Peith and that she was motivated by "personal ill motive and selfish interest."

The respondent judge deserves the sternest reproof for making these remarks. Judges should refrain from expressing irrelevant opinions in their decisions which may only reflect unfavorably upon their competence and the propriety of their judicial actuations.[20] Moreover, intemperate speech detracts from the equanimity and judiciousness that should be the constant hallmarks of a dispenser of justice.[21]

The Court, however, deviates from the conclusion of both the OCA and the investigating judges that the respondent judge should not be held liable for gross ignorance of the law.

The OCA and the investigating judges overlooked the fact that when Peith requested permission to leave for abroad on May 25, 1998, the latter filed a motion without the required notice to the parties. The Urgent Ex-Parte Motion to Leave for Abroad attached as Annex "A" to the Letter-Complaint even states that the motion was to be submitted for resolution of the court "without further argument." [22] This was never denied by the respondent judge.

Considering the litigious nature of Peith's motion and the fact that the criminal and civil aspects of the cases were simultaneously instituted, the public prosecutor and the private offended party should have been notified, failing which, the respondent judge should not have acted upon the motion.

The Rules of Court is explicit on this point.[23] 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. The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.[24]

In granting Peith's Urgent Ex-Parte Motion to Leave for Abroad, the respondent judge violated a basic and fundamental constitutional principle, due process. When the law is elementary, not to be aware of it constitutes gross ignorance thereof. After all, judges are expected to have more than just a modicum of acquaintance with the statutes and procedural rules.[25] Hence, the respondent judge is guilty of gross ignorance of the law.

Gross ignorance of the law is classified as a serious charge[26] for which any of the following sanctions may be imposed: (a) dismissal from service with forfeiture of benefits and disqualification from reinstatement or appointment to any public office including a government-owned or controlled corporation; (b) suspension for

three to six months without salary and benefits; or (c) a fine of not less than P20,000.00 but not more than P40,000.00.[27] However, in the case of *De Jesus v. Obnamia, Jr.*[28] where the respondent judge failed to ensure compliance with the three (3)-day notice rule, the Court ordered him to pay a fine of Three Thousand Pesos (P3,000.00) with a warning that a repetition of the same or similar acts will be dealt with more severely. This Court finds the respondent judge herein similarly situated.

ACCORDINGLY, respondent Judge Olegario R. Sarmiento, Jr., Presiding Judge of the Municipal Trial Court in Cities, Branch 2, Cebu City, is hereby ordered to pay a FINE in the amount of THREE THOUSAND PESOS (P3,000.00) and ADMONISHED to refrain from resorting to insulting and offensive language in his future judicial actions, with a WARNING that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Puno, (Chairman), Quisumbing, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., on leave.

[1] Rollo, pp. 1-21, with Annexes.

[2] *Id.* at 7, Annex A of the Letter-Complaint.

[3] *Id.* at 2-3.

[4] *Id.* at 8.

[5] *Id.* at 13.

[6] *Id.* at 14.

[7] *Id.* at 16.

[8] *Id.* at 17-19.

[9] *Id.* at 21.

[10] *Ibid.*

[11] *Id.* at 23-24.

[12] *Id.* at 23.

[13] *Id.* at 24.

[14] *Id.* at 26-48, with Annexes.

[15] *Supra*, note 9.

[16] *Supra*, note 1 at 75.

[17] *Id.* at 108-113.

[18] *Id.* at 137-140.

[19] *Supra*, note 11.

[20] *Director of Prisons v. Ang Cho Kio*, No. L-30001, June 23, 1970, 33 SCRA 494.

[21] Dela Cruz v. Bersamira, A.M. No. RTJ-00-1567, January 19, 2001, 349 SCRA 626, citing Kalalang v. Fernandez, 39 SCRA 418 (1971).

[22] Supra, note 2.

[23] “Sec. 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 then (10) days after the filing of the motion.” Rule 15, 1997 Rules of Civil Procedure.

[24] Fajardo v. Court of Appeals, G.R. No. 140356, March 20, 2001, 354 SCRA 736, citing Meris v. Ofilada, 293 SCRA 606 (1998) and Santos v. Court of Appeals, 253 SCRA 632 (1996).

[25] Domondon v. Lopez, A.M. No. RTJ-02-1696, June 20, 2002, 383 SCRA 376.

[26] Section 3, Rule 140.

[27] Section 10, Rule 140.

[28] A.M. No. MTJ-00-1314, September 7, 2000, 340 SCRA 1.

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