

**EDITHA PALMA GIL, COMPLAINANT, VS. JUDGE FRANCISCO H. LOPEZ, JR., MUNICIPAL CIRCUIT TRIAL COURT, LUPON, DAVAO ORIENTAL, RESPONDENT.**

*A.M. No. MTJ-02-1453. April 29, 2003*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

A magistrate should dispose of the court's business promptly and decide cases within the required periods. Delay in the disposition of cases erodes the faith and confidence of the public in the institution of justice, lowers its standards and brings them into disrepute. Every judge must cultivate a capacity for quick decision; he must not delay the judgment which a party justly deserves. The public trust reposed in a judge's office imposes upon him the highest degree of responsibility to promptly administer justice.[1]

In an Affidavit-Complaint[2] dated October 30, 2001, complainant Editha Palma Gil charged respondent Judge Francisco H. Lopez, Jr. of the Municipal Circuit Trial Court of Lupon, Davao Oriental, with Manifest Bias and Partiality, Undue Delay in the Disposition of Case and Ignorance of the Law.

Complainant alleged that she is the defendant in Civil Case No. 1110 for Forcible Entry and Damages with Preliminary Prohibitory and Mandatory Injunction, entitled "Carlos Palen, Sr., Plaintiff versus Editha Palma Gil, Defendant," pending before the sala of respondent judge; and that respondent failed to render judgment therein within the thirty-day period required by Rule 70, Section 11 of the 1997 Code of Civil Procedure. She further averred that on October 9, 2001, the plaintiff in the said case filed a motion for temporary restraining order, which respondent Judge granted on the same day, despite procedural defects therein such as the lack of a verification, bond, and service of summons, all in violation of Rule 58, Section 4 of the 1997 Rules of Civil Procedure. Complainant further assails the manner in which the temporary restraining order was implemented with the assistance of policemen.

In his Comment dated March 1, 2002, respondent judge denied that there was a deliberate and unreasonable delay in the resolution of Civil Case No. 1110. He alleged that aside from his court, he had to hear the cases in the municipal courts in Governor Generoso and San Isidro, Davao Oriental due to the inhibition of the presiding judges therein. Moreover, he alleged that the legal and factual issues raised in Civil Case No. 1110 are complicated. Anent the alleged issuance of a temporary restraining order, respondent claims that what he issued was a status quo order because complainant's men entered the land in dispute and attempted to prevent the harvesting of palay by plaintiff. Finally, respondent states that he had to seek the assistance of the police to implement the order because his court had no regular sheriff and because there were armed guards employed by both parties. [3]

In compliance with our Resolution dated August 14, 2002,[4] both parties manifested their willingness to submit the case on the basis of the pleadings filed.[5]

After evaluation, the Office of the Court Administrator (OCA) found respondent guilty of delay in the rendition of

judgment in Civil Case No. 1110 and erred in issuing a temporary restraining order despite procedural defects. Hence, it recommended that respondent be fined in the amount of Ten Thousand Pesos (P10,000.00).

We agree with the findings of the OCA, however, we find the recommended penalty to be not commensurate with the gravity of respondent's misdeeds.

The reasons proffered by respondent judge, i.e., that he had to hear cases in the other courts, will not excuse his delay in deciding Civil Case No. 1110.[6] If he felt that he could not decide the case within the reglementary period, he should have asked for a reasonable extension of time to decide the same.[7]

The office of a judge exists for one solemn end – to promote the ends of justice by administering it speedily and impartially. The judge as the person presiding over that court is the visible representation of the law and justice.[8] Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[9]

Rules 1.02 of Canon 1 and 3.05 of Canon 3 of the Code of Judicial Conduct state:

Rule 1.02. – A judge should administer justice impartially and without delay. (Emphasis ours)

Rule 3.05. – A judge shall dispose of the court's business promptly and decide cases within the required periods. (Emphasis ours)

Moreover, SC Administrative Circular No. 13-87 provides:

- Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. . . (Emphasis ours)

Along the same vein, SC Administrative Circular No. 1-88 states:

#### 6.1

All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x.

Considering the summary nature of Civil Case No. 1110, which is an action for forcible entry, Rule 70, Section 11 of the 1997 Rules of Summary Procedure expressly provides:

Period for rendition of judgment. – Within thirty (30) days after receipt of the affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after receipt of the last affidavit or the expiration of the period for filing the same.

The court shall not resort to the foregoing procedure just to gain time for the rendition of judgment. (Emphasis ours)

Thus, respondent judge is guilty of gross inefficiency for his failure to resolve and dispose of Civil Case No. 1110 within the period prescribed by the Rules. The penalty for gross inefficiency ranges from reprimand and admonition[10] to removal from office[11] and/or a fine.[12]

Respondent judge likewise erred in issuing the temporary restraining order. Rule 58, Section 4 of the 1997 Rules

of Civil Procedure provides:

Verified application and bond for preliminary injunction or temporary restraining order. – A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court shall be raffled to only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines, temporarily absent therefrom or is a nonresident thereof, the requirement of prior contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all the parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle to which the records shall be transmitted immediately.

The records reveal that the motion for temporary restraining order was not verified.[13] Respondent judge issued the Order on the same date when the motion was filed without prior notice to the complainant and without a hearing.

The issuance of the assailed Order cannot be justified under Rule 58, Section 5 of the 1997 Rules of Civil Procedure, which reads:

Preliminary injunction not granted without notice; exception. – No preliminary injunction shall be granted without hearing and prior notice to the person or party sought to be enjoined. If it shall appear from the facts shown by the affidavits of by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party of person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted and accordingly issued the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to

determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two (72) hours provided therein. (Emphasis and italics ours)

Aside from the lack of verification of the motion, no affidavits of the applicant and his witnesses were appended thereto. Furthermore, the assailed Order did not specify the duration of the temporary restraining order.

Respondent argues that considering that the complaint in Civil Case No. 1110 was verified and prayed for the issuance of a preliminary and prohibitory injunction, the verification of the motion for issuance of temporary restraining order may be dispensed with. We do not agree.

The Rules as above-quoted explicitly mandate that the application for injunction should be verified. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to insure an orderly administration of justice.[14]

We see nothing wrong in respondent's act of securing the assistance of the police in implementing his Order. Administrative Circular No. 12-85, paragraph 7 allows a judge to designate or deputize any person to serve court processes and writs in remote areas in the absence of the regular sheriff thereat.

Furthermore, the better part of prudence, caution and plain conventional wisdom dictates the presence of the police on account of the potentially violent situation engendered by the presence of armed followers of the contending factions.

Considering the seriousness of the respondent judge's offenses, stiffer penalties should be imposed to inculcate in him the value of being proficient in both substantive and procedural laws.

In *Cañas v. Castigador*,[15] we held:

Observance of the law which he is bound to know and sworn to uphold is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.

In the case at bar, the ignorance of respondent judge is so gross that he should be held administratively liable even if he acted in good faith.[16] Hence, the imposition of a fine in the amount of P20,000.00 is a more appropriate penalty.

WHEREFORE, based on the foregoing, respondent Judge Francisco H. Lopez, Jr. of the Municipal Circuit Trial Court of Lupon, Davao Oriental, is found GUILTY of gross ignorance of the law and gross inefficiency. He is ordered to pay a FINE in the amount of Twenty Thousand Pesos (P20,000.00) and is STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

### **SO ORDERED.**

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

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[1] *Bonilla v. Gustilo*, A.M. No. RTJ-00-1569, 12 November 2000, 345 SCRA 315, 319, citing *OCA v. Benedicto*, 357 Phil. 62 [1998].

[2] *Rollo*, pp. 1-6.

[3] Id., pp. 79-84.

[4] Id., p. 108.

[5] Id., pp. 119, 120.

[6] *Casia v. Gestopa*, 371 Phil.131 [1999], citing *Perez v. Andaya*, A.M. No. RTJ-96-1367, 6 February 1998, 286 SCRA 40 [1998] and *Re: Report of Justice Felipe B. Kalalo*, 346 Phil. 742 [1997].

[7] *OCA v. Aquino*, A.M. No. RTJ-00-1555, 22 June 2000, 334 SCRA 179, citing *Casia v. Gestopa*, supra, citing *Report on the Judicial Audit Conducted in the Municipal Trial Court, Sibulan, Negros Oriental*, 347 Phil. 139 [1997].

[8] *Ruperto v. Banquerigo*, 355 Phil. 420 [1998].

[9] *Report on the Judicial Audit Conducted in Branch 34, Regional Trial Court of Iriga City*, 381 Phil. 386 [2000], citing *Re: Judge Fernando P. Agdamag*, 325 Phil. 111 [1996].

[10] *Cui v. Madayag*, 314 Phil. 846 [1995].

[11] *Report on Audit and Physical Inventory of the Records and Cases in RTC, Branch 120, Kalookan City*, A.M. No. 93-3-115-RTC, 21 November 1994, 238 SCRA 238.

[12] *Perez v. Concepcion*, 378 Phil. 918 [1999].

[13] *Rollo*, pp. 65-66.

[14] *Sajot v. Court of Appeals*, 364 Phil. 182 [1999].

[15] *G.R. No. 139844*, 15 December 2000, 348 SCRA 425, 440.

[16] *Dayawon v. Garfin*, A.M. No. MTJ-01-1367, 5 September 2002.

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