

**KELLY R. WICKER AND ATTY. ORLANDO A. RAYOS, PETITIONERS,
VS. HON. PAUL T. ARCANGEL, AS PRESIDING JUDGE OF THE RTC,
MAKATI, BRANCH 134, RESPONDENT.**

G.R. No. 112869. January 29, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari, assailing the orders dated December 3, 1993 and December 17, 1993 of respondent Judge Paul T. Arcangel of the Regional Trial Court, Branch 134 of Makati, finding petitioners guilty of direct contempt and sentencing each of them to suffer imprisonment for five (5) days and to pay a fine of P100.00.

The antecedent facts are as follows:

Kelly Wicker, with his wife Wynnee Dieppe and the Tectonics Asia Architects and Engineering Co., brought suit in the Regional Trial Court of Makati against the LFS Enterprises, Inc. and others, for the annulment of certain deeds by which a house and lot at Forbes Park, which the plaintiffs claimed they had purchased, was allegedly fraudulently titled in the name of the defendant LFS Enterprises and later sold by the latter to codefendant Jose Poe. The case, docketed as Civil Case No. 14048, was assigned to Branch 134 formerly presided over by Judge Ignacio Capulong who later was replaced by respondent Judge Paul T. Arcangel.

It appears that on November 18, 1993, Wicker's counsel, Atty. Orlando A. Rayos, filed a motion seeking the inhibition of respondent judge from the consideration of the case.[1] The motion alleged in pertinent part:

1. That before the Acting Presiding Judge took over, defendant LFS Enterprises, Inc. was able to maneuver the three (3) successive postponements for the presentation for cross-examination of Mrs. Remedios Porcuna on her 10 August 1992 Affidavit, but eventually, she was not presented;
2. Meantime, Judge [Ignacio] Capulong who had full grasp of this case was eased out of his station. In one hearing, the Acting Presiding Judge had not yet reported to his station and in that set hearing, counsel for defendant LFS Enterprises, Inc. who must have known that His Honor was not reporting did not likewise appear while other counsels were present;
3. Plaintiffs have information that the Acting Presiding Judge was personally recruited from the south by Atty. Benjamin Santos and/or his wife, Atty. Ofelia Calcetas-Santos, one time member of the Judicial and Bar Council, against whom plaintiff Kelly R. Wicker filed Administrative Case No. 3796, and although said case was dismissed, nevertheless, plaintiffs feel that it was the reason for Atty. Ofelia Calcetas-Santos' relief;
4. Plaintiffs have reason to doubt the partiality and integrity of His Honor and to give a fighting chance for plaintiffs to prove their case, since this will be the last case to recover the partnership property, plaintiffs feel that His Honor inhibit himself and set this case for re-raffle;
5. This move finds support in the Rules of Court and jurisprudence that in the first instance that a litigant doubts the partiality and integrity of the Presiding Judge, he should immediately move for his inhibition.

The motion was verified by Kelly Wicker.

Considering the allegations to be "malicious, derogatory and contemptuous," respondent judge ordered both counsel and client to appear before him on November 26, 1993 and to show cause why they should not be cited for contempt of court."^[2]

In a pleading entitled "Opposition to and/or Comment to Motion to Cite for Direct Contempt Directed Against Plaintiff Kelly R. Wicker and his Counsel," Atty. Rayos claimed that the allegations in the motion did not necessarily express his views because he merely signed the motion "in a representative capacity, in other words, just lawyering," for Kelly Wicker, who said in a note to him that a "young man possibly employed by the Court" had advised him to have the case reraffled, when the opposing counsel Atty. Benjamin Santos and the new judge both failed to come for a hearing, because their absence was an indication that Atty. Santos knew who "the judge may be and when he would appear." Wicker's sense of disquiet increased when at the next two hearings, the new judge as well as Atty. Santos and the latter's witness, Mrs. Remedios Porcuna, were all absent, while the other counsels were present.^[3]

Finding petitioners' explanation unsatisfactory, respondent judge, in an order dated December 3, 1993, held them guilty of direct contempt and sentenced each to suffer imprisonment for five (5) days and to pay a fine of P100.00.

Petitioners filed a motion for reconsideration, which respondent judge denied for lack of merit in his order of December 17, 1993. In the same order respondent judge directed petitioners to appear before him on January 7, 1994 at 8:30 a.m. for the execution of their sentence.

In their petition^[4] before this Court, Kelly Wicker and Atty. Orlando A. Rayos contend that respondent judge committed a grave abuse of his discretion in citing them for contempt. They argue that "when a person, impelled by justifiable apprehension and acting in a respectful manner, asks a judge to inhibit himself from hearing his case, he does not thereby become guilty of contempt."

In his comment,^[5] respondent judge alleges that he took over as Acting Presiding Judge of the Regional Trial Court of Makati, Branch 134 by virtue of Administrative Order No. 154-93 dated September 2, 1993 of this Court and not because, as petitioners alleged, he was "personally recruited from the South" by Atty. Santos and/or his wife, Atty. Ofelia Calcetas-Santos; that he assumed his new office on October 11, 1993 and started holding sessions on October 18, 1993; that when all male personnel of his court were presented to petitioner Kelly Wicker he failed to pick out the young man who was the alleged source of the remarks prompting the filing of the motion for inhibition; that he was not vindictive and that he in fact refrained from implementing the execution of his order dated December 3, 1993 to enable petitioners to "avail themselves of all possible remedies"; that after holding petitioners in contempt, he issued an order dated December 8, 1993 inhibiting himself from trying Civil Case No. 14048; that Atty. Rayos' claim that he was just "lawyering" and acting as "the vehicle or mouthpiece of his client" is untenable because his (Atty. Rayos') duties to the court are more important than those which he owes to his client; and that by tendering their "profuse apologies" in their motion for reconsideration of the December 3, 1993 order, petitioners acknowledged the falsity of their accusations against him; and that the petitioners have taken inconsistent positions as to who should try Civil Case No. 14048 because in their Motion for Inhibition dated November 18, 1993 they asked that the case be reraffled to another sala of the RTC of Makati, while in their petition dated November 29, 1993, which they filed with the Office of Court Administrator, petitioners asked that Judge Capulong be allowed to continue hearing the case on the ground that he had a "full grasp of the case."

In reply to the last allegation of respondent judge, petitioners claim that although they wanted a reraffle of the case, it was upon the suggestion of respondent judge himself that they filed the petition with the Court

Administrator for the retention of Judge Capulong in the case.

What is involved in this case is an instance of direct contempt, since it involves a pleading allegedly containing derogatory, offensive or malicious statements submitted to the court or judge in which the proceedings are pending, as distinguished from a pleading filed in another case. The former has been held to be equivalent to "misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same" within the meaning of Rule 71, § 1 of the Rules of Court and, therefore, direct contempt.[6]

It is important to point out this distinction because in case of indirect or constructive contempt, the contemnor may be punished only "[a]fter charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel," whereas in case of direct contempt, the respondent may be summarily adjudged in contempt. Moreover, the judgment in cases of indirect contempt is appealable, whereas in cases of direct contempt only judgments of contempt by MTCs, MCTCs and MeTCs are appealable.[7]

Consequently, it was unnecessary in this case for respondent judge to hold a hearing. Hence even if petitioners are right about the nature of the case against them by contending that it involves indirect contempt, they have no ground for complaint since they were afforded a hearing before they were held guilty of contempt. What is important to determine now is whether respondent judge committed grave abuse of discretion in holding petitioners liable for direct contempt.

We begin with the words of Justice Malcolm that the power to punish for contempt is to be exercised on the preservative and not on the vindictive principle. Only occasionally should it be invoked to preserve that respect without which the administration of justice will fail.[8] The contempt power ought not to be utilized for the purpose of merely satisfying an inclination to strike back at a party for showing less than full respect for the dignity of the court.[9]

Consistent with the foregoing principles and based on the abovementioned facts, the Court sustains Judge Arcangel's finding that petitioners are guilty of contempt. A reading of the allegations in petitioners' motion for inhibition, particularly the following paragraphs thereof:

2. Meantime, Judge Capulong who had full grasp of this case was eased out of his station. In one hearing, the Acting Presiding Judge had not yet reported to his station and in that set hearing, counsel for defendant LFS Enterprises, Inc. who must have known that His Honor was not reporting did not likewise appear while other counsels were present;

3. Plaintiffs have information that the Acting Presiding Judge was personally recruited from the south by Atty. Benjamin Santos and/or his wife, Atty. Ofelia Calcetas-Santos, one time member of the Judicial and Bar Council, against whom plaintiff Kelly R. Wicker filed Administrative Case No. 3796, and although said case was dismissed, nevertheless, plaintiffs feel that it was the reason for Atty. Ofelia Calcetas-Santos' relief;

leads to no other conclusion than that respondent judge was beholden to the opposing counsel in the case, Atty. Benjamin Santos, to whom or to whose wife, the judge owed his transfer to the RTC of Makati, which necessitated "easing out" the former judge to make room for such transfer.

These allegations are derogatory to the integrity and honor of respondent judge and constitute an unwarranted criticism of the administration of justice in this country. They suggest that lawyers, if they are well connected, can manipulate the assignment of judges to their advantage. The truth is that the assignments of Judges Arcangel and Capulong were made by this Court, by virtue of Administrative Order No. 154-93, precisely "in the interest of an efficient administration of justice and pursuant to Sec. 5 (3), Art. VIII of the Constitution." [10] This is a matter of record which could have easily been verified by Atty. Rayos. After all, as he claims, he "deliberated" for two months whether or not to file the offending motion for inhibition as his client allegedly asked him to do.

In extenuation of his own liability, Atty. Rayos claims he merely did what he had been bidden to do by his client of whom he was merely a "mouthpiece." He was just "lawyering" and "he cannot be gagged," even if the allegations in the motion for the inhibition which he prepared and filed were false since it was his client who verified the same.

To be sure, what Wicker said in his note to Atty. Rayos was that he had been told by an unidentified young man, whom he thought to be employed in the court, that it seemed the opposing counsel, Atty. Santos, knew who the replacement judge was, because Atty. Santos did not show up in court on the same days the new judge failed to come. It would, therefore, appear that the other allegations in the motion that respondent judge had been "personally recruited" by the opposing counsel to replace Judge Capulong who had been "eased out" were Atty. Rayos' and not Wicker's. Atty. Rayos is thus understating his part in the preparation of the motion for inhibition.

Atty. Rayos, however, cannot evade responsibility for the allegations in question. As a lawyer, he is not just an instrument of his client. His client came to him for professional assistance in the representation of a cause, and while he owed him whole-souled devotion, there were bounds set by his responsibility as a lawyer which he could not overstep.[11] Even a hired gun cannot be excused for what Atty. Rayos stated in the motion. Based on Canon 11 of the Code of Professional Responsibility, Atty. Rayos bears as much responsibility for the contemptuous allegations in the motion for inhibition as his client.

Atty. Rayos' duty to the courts is not secondary to that of his client. The Code of Professional Responsibility enjoins him to "observe and maintain the respect due to the courts and to judicial officers and [to] insist on similar conduct by others"[12] and "not [to] attribute to a Judge motives not supported by the record or have materiality to the case." [13]

After the respondent judge had favorably responded to petitioners' "profuse apologies" and indicated that he would let them off with a fine, without any jail sentence, petitioners served on respondent judge a copy of their instant petition which prayed in part that "Respondent Judge Paul T. Arcangel be REVERTED to his former station. He simply cannot do in the RTC of Makati where more complex cases are heard (sic) unlike in Davao City." If nothing else, this personal attack on the judge only serves to confirm the "contumacious attitude, a flouting or arrogant belligerence" first evident in petitioners' motion for inhibition belying their protestations of good faith.

Petitioners cite the following statement in *Austria v. Masaquel*: [14]

Numerous cages there have been where judges, and even members of the Supreme Court, were asked to inhibit themselves from trying, or from participating in the consideration of a case, but scarcely were the movants punished for contempt, even if the grounds upon which they based their motions for disqualification are not among those provided in the rules. It is only when there was direct imputation of bias or prejudice, or a stubborn insistence to disqualify the judge, done in a malicious, arrogant, belligerent and disrespectful manner, that movants were held in contempt of court.

It is the second sentence rather than the first that applies to this case.

Be that as it may, the Court believes that consistent with the rule that the power to cite for contempt must be exercised for preservative rather than vindictive principle we think that the jail sentence on petitioners may be dispensed with while vindicating the dignity of the court. In the case of petitioner Kelly Wicker there is greater reason for doing so considering that the particularly offending allegations in the motion for inhibition do not appear to have come from him but were additions made by Atty. Rayos. In addition, Wicker is advanced in years (80) and in failing health (suffering from angina), a fact Judge Arcangel does not dispute. Wicker may have indeed been the recipient of such a remark although he could not point a court employee who was the source of

the same. At least he had the grace to admit his mistake both as to the source and truth of said information. It is noteworthy Judge Arcangel was also willing to waive the imposition of the jail sentence on petitioners until he came upon petitioners' description of him in the instant petition as a judge who cannot make the grade in the RTC of Makati, where complex cases are being filed. In response to this, he cited the fact that the Integrated Bar of the Philippines chose him as one of the most outstanding City Judges and Regional Trial Court Judges in 1979 and 1988 respectively and that he is a 1963 graduate of the U.P. College of Law.

In *Ceniza v. Sebastian*,^[15] which likewise involved a motion for inhibition which described the judge "corrupt," the Court, while finding counsel guilty of direct contempt, removed the jail sentence of 10 days imposed by the trial court for the reason that

Here, while the words were contumacious, it is hard to resist the conclusion, considering the background of this occurrence that respondent Judge in imposing the ten-day sentence was not duly mindful of the exacting standard [of] preservation of the dignity of his office not indulging his sense of grievance sets the limits of the authority he is entitled to exercise. It is the view of the Court that under the circumstances the fine imposed should be increased to P500.00.

The same justification also holds true in this case.

WHEREFORE, the order of December 3, 1993 is MODIFIED by DELETING the sentence of imprisonment for five (5) days and INCREASING the fine from P 100.00 to P200.00 for each of the petitioners.

SO ORDERED.

Regalado (Chairman), Romero, and Puno, JJ., concur.

[1] Petition, Annex B, Rollo, pp. 40-41.

[2] The hearing on November 26, 1993 was later postponed to December 3, 1993 at the instance of Atty. Rayos.

[3] See Wicker's Statement, Rollo, pp. 46-47.

[4] Although dated December 6, 1993, the petition was actually filed on December 21, 1993, after respondent judge had issued his order of the December 17, 1993 denying petitioners' motion for reconsideration.

[5] Rollo, pp. 82-92.

[6] *Ang v. Castro*, 136 SCRA 453 (1985); *Ante v. Pascua*, 162 SCRA 780(1988).

[7] See Rule 71, § 1,2 and 10.

[8] *Villavicencio v. Lukban*, 39 Phil. 778 (1959).

[9] *Royeca v. Animas*, 71 SCRA 1(1976).

[10] Rollo, p. 101.

[11] See Code of Professional Responsibility, Canon 19.

[12] Canon 11.

[13] Canon 11, Rule 11.04.

[14] 20 SCRA 1247 (1967).

[15] 130 SCRA 295 (1985).

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