

FERDINAND A. CRUZ, 332 EDANG ST., PASAY CITY, PETITIONER, VS. JUDGE PRISCILLA MIJARES, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 108, PASAY CITY, METRO MANILA, PUBLIC RESPON...

G.R. No. 154464. September 11, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Certiorari, Prohibition and Mandamus, with prayer for the issuance of a writ of preliminary injunction under Rule 65 of the Rules of Court. It was directly filed with this Court assailing the Resolutions dated May 10, 2002[1] and July 31, 2002[2] of the Regional Trial Court (RTC), Branch 108, Pasay City, which denied the appearance of the plaintiff Ferdinand A. Cruz, herein petitioner, as party litigant, and the refusal of the public respondent, Judge Priscilla Mijares, to voluntarily inhibit herself from trying the case. No writ of preliminary injunction was issued by this Court.

The antecedents:

On March 5, 2002, Ferdinand A. Cruz (petitioner) sought permission to enter his appearance for and on his behalf, before the RTC, Branch 108, Pasay City, as the plaintiff in Civil Case No. 01-0410, for Abatement of Nuisance. Petitioner, a fourth year law student, anchors his claim on Section 34 of Rule 138 of the Rules of Court[3] that a non-lawyer may appear before any court and conduct his litigation personally.

During the pre-trial, Judge Priscilla Mijares required the petitioner to secure a written permission from the Court Administrator before he could be allowed to appear as counsel for himself, a party-litigant. Atty. Stanley Cabrera, counsel for Benjamin Mina, Jr., filed a Motion to Dismiss instead of a pre-trial brief to which petitioner Cruz vehemently objected alleging that a Motion to Dismiss is not allowed after the Answer had been filed. Judge Mijares then remarked, "Hay naku, masama `yung marunong pa sa Huwes. Ok?" and proceeded to hear the pending Motion to Dismiss and calendared the next hearing on May 2, 2002.

On March 6, 2002, petitioner Cruz filed a Manifestation and Motion to Inhibit,[4] praying for the voluntary inhibition of Judge Mijares. The Motion alleged that expected partiality on the part of the respondent judge in the conduct of the trial could be inferred from the contumacious remarks of Judge Mijares during the pre-trial. It asserts that the judge, in uttering an uncalled for remark, reflects a negative frame of mind, which engenders the belief that justice will not be served.[5]

In an Order[6] dated April 19, 2002, Judge Mijares denied the motion for inhibition stating that throwing tenuous allegations of partiality based on the said remark is not enough to warrant her voluntary inhibition, considering that it was said even prior to the start of pre-trial. Petitioner filed a motion for reconsideration[7] of the said order.

On May 10, 2002, Judge Mijares denied the motion with finality.[8] In the same Order, the trial court held that for the failure of petitioner Cruz to submit the promised document and jurisprudence, and for his failure to satisfy the

requirements or conditions under Rule 138-A of the Rules of Court, his appearance was denied.

In a motion for reconsideration,[9] petitioner reiterated that the basis of his appearance was not Rule 138-A, but Section 34 of Rule 138. He contended that the two Rules were distinct and are applicable to different circumstances, but the respondent judge denied the same, still invoking Rule 138-A, in an Order[10] dated July 31, 2002.

On August 16, 2002, the petitioner directly filed with this Court, the instant petition and assigns the following errors:

I.

THE RESPONDENT REGIONAL TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED THE APPEARANCE OF THE PETITIONER, FOR AND IN THE LATTER'S BEHALF, IN CIVIL CASE NO. 01-0401 [sic] CONTRARY TO RULE 138, SECTION 34 OF THE RULES OF COURT, PROVIDING FOR THE APPEARANCE OF NON-LAWYERS AS A PARTY LITIGANT;

II.

THE RESPONDENT COURT GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT DID NOT VOLUNTARILY INHIBIT DESPITE THE ADVENT OF JURISPRUDENCE [sic] THAT SUCH AN INHIBITION IS PROPER TO PRESERVE THE PEOPLE'S FAITH AND CONFIDENCE TO THE COURTS.

The core issues raised before the Court are: (1) whether the extraordinary writs of certiorari, prohibition and mandamus under Rule 65 of the 1997 Rules of Court may issue; and (2) whether the respondent court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the appearance of the petitioner as party litigant and when the judge refused to inhibit herself from trying the case.

This Court's jurisdiction to issue writs of certiorari, prohibition, mandamus and injunction is not exclusive; it has concurrent jurisdiction with the RTCs and the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as an absolute, unrestrained freedom to choose the court where the application therefor will be directed.[11] A becoming regard of the judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against the RTCs should be filed with the Court of Appeals.[12] The hierarchy of courts is determinative of the appropriate forum for petitions for the extraordinary writs; and only in exceptional cases and for compelling reasons, or if warranted by the nature of the issues reviewed, may this Court take cognizance of petitions filed directly before it.[13]

Considering, however, that this case involves the interpretation of Section 34, Rule 138 and Rule 138-A of the Rules of Court, the Court takes cognizance of herein petition. Nonetheless, the petitioner is cautioned not to continue his practice of filing directly before this Court petitions under Rule 65 when the issue raised can be resolved with dispatch by the Court of Appeals. We will not tolerate litigants who make a mockery of the judicial hierarchy as it necessarily delays more important concerns before us.

In resolving the second issue, a comparative reading of Rule 138, Section 34 and Rule 138-A is necessary.

Rule 138-A, or the Law Student Practice Rule, provides:

RULE 138-A

LAW STUDENT PRACTICE RULE

Section 1. Conditions for Student Practice. - A law student who has successfully completed his 3rd year of the

regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

Sec. 2. Appearance. - The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

The respondent court held that the petitioner could not appear for himself and on his behalf because of his failure to comply with Rule 138-A. In denying petitioner's appearance, the court a quo tersely finds refuge in the fact that, on December 18, 1986, this Court issued Circular No. 19, which eventually became Rule 138-A, and the failure of Cruz to prove on record that he is enrolled in a recognized school's clinical legal education program and is under supervision of an attorney duly accredited by the law school.

However, the petitioner insisted that the basis of his appearance was Section 34 of Rule 138, which provides:

Sec. 34. By whom litigation is conducted. - In the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

and is a rule distinct from Rule 138-A.

From the clear language of this provision of the Rules, it will have to be conceded that the contention of the petitioner has merit. It recognizes the right of an individual to represent himself in any case to which he is a party. The Rules state that a party may conduct his litigation personally or with the aid of an attorney, and that his appearance must either be personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the course of proceedings from commencement to the termination of the litigation.^[14] Considering that a party personally conducting his litigation is restricted to the same rules of evidence and procedure as those qualified to practice law,^[15] petitioner, not being a lawyer himself, runs the risk of falling into the snares and hazards of his own ignorance. Therefore, Cruz as plaintiff, at his own instance, can personally conduct the litigation of Civil Case No. 01-0410. He would then be acting not as a counsel or lawyer, but as a party exercising his right to represent himself.

The trial court must have been misled by the fact that the petitioner is a law student and must, therefore, be subject to the conditions of the Law Student Practice Rule. It erred in applying Rule 138-A, when the basis of the petitioner's claim is Section 34 of Rule 138. The former rule provides for conditions when a law student may appear in courts, while the latter rule allows the appearance of a non-lawyer as a party representing himself.

The conclusion of the trial court that Rule 138-A superseded Rule 138 by virtue of Circular No. 19 is misplaced. The Court never intended to repeal Rule 138 when it released the guidelines for limited law student practice. In fact, it was intended as an addendum to the instances when a non-lawyer may appear in courts and was incorporated to the Rules of Court through Rule 138-A.

It may be relevant to recall that, in respect to the constitutional right of an accused to be heard by himself and counsel,^[16] this Court has held that during the trial, the right to counsel cannot be waived.^[17] The rationale for this ruling was articulated in *People v. Holgado*,^[18] where we declared that "even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence."

The case at bar involves a civil case, with the petitioner as plaintiff therein. The solicitous concern that the Constitution accords the accused in a criminal prosecution obviously does not obtain in a civil case. Thus, a party litigant in a civil case, who insists that he can, without a lawyer's assistance, effectively undertake the successful pursuit of his claim, may be given the chance to do so. In this case, petitioner alleges that he is a law student and impliedly asserts that he has the competence to litigate the case himself. Evidently, he is aware of the perils incident to this decision.

In addition, it was subsequently clarified in Bar Matter 730, that by virtue of Section 34, Rule 138, a law student may appear as an agent or a friend of a party litigant, without need of the supervision of a lawyer, before inferior courts. Here, we have a law student who, as party litigant, wishes to represent himself in court. We should grant his wish.

Additionally, however, petitioner contends that the respondent judge committed manifest bias and partiality by ruling that there is no valid ground for her voluntary inhibition despite her alleged negative demeanor during the pre-trial when she said: "Hay naku, masama `yung marunong pa sa Huwes. Ok?" Petitioner avers that by denying his motion, the respondent judge already manifested conduct indicative of arbitrariness and prejudice, causing petitioner's and his co-plaintiff's loss of faith and confidence in the respondent's impartiality.

We do not agree.

It must be noted that because of this incident, the petitioner filed an administrative case^[19] against the respondent for violation of the Canons of Judicial Ethics, which we dismissed for lack of merit on September 15, 2002. We now adopt the Court's findings of fact in the administrative case and rule that there was no grave abuse of discretion on the part of Judge Mijares when she did not inhibit herself from the trial of the case.

In a Motion for Inhibition, the movant must prove the ground for bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial,^[20] as voluntary inhibition is primarily a matter of conscience and addressed to the sound discretion of the judge. The decision on whether she should inhibit herself must be based on her rational and logical assessment of the circumstances prevailing in the case before her.^[21] Absent clear and convincing proof of grave abuse of discretion on the part of the judge, this Court will rule in favor of the presumption that official duty has been regularly performed.

WHEREFORE, the Petition is PARTIALLY GRANTED. The assailed Resolution and Order of the Regional Trial Court, Branch 108, Pasay City are MODIFIED. Regional Trial Court, Branch 108, Pasay City is DIRECTED to ADMIT the Entry of Appearance of petitioner in Civil Case No. 01-0410 as a party litigant.

No pronouncement as to costs.

SO ORDERED.

Tinga*, Chico-Nazario, Velasco, Jr.^[*], and Reyes, JJ., concur.

[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

[1] Rollo, pp. 34-35.

[2] Id. at 43-45.

[3] Section 31-Rule 138. By whom litigation conducted. - In the court of justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an

attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

[4] Manifestation and Motion to Inhibit, rollo, pp. 29-30.

[5] Rollo, p. 30.

[6] Id. at 31.

[7] Annex "D" of the Petition, id. at 32-33.

[8] Rollo, pp. 34-35.

[9] Annex "F" of the Petition, id. at 36-42.

[10] Annex "G" of the Petition, id. at 43-45.

[11] *People v. Cuasmas*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-424.

[12] *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529, 543 (2004).

[13] *Cruz v. Mina*, G.R. No. 154207, April 27, 2007, 522 SCRA 382, 386; *United Laboratories, Inc. v. Isip*, G.R. No. 163858, June 28, 2005, 461 SCRA 574, 593; *Ark Travel Express, Inc. v. Abrogar*, 457 Phil. 189, 202 (2003).

[14] *Santos v. Lacurom*, A.M. No. RTJ-04-1823, August 28, 2006, 499 SCRA 639, 648-649.

[15] *Maderada v. Mediodea*, 459 Phil. 701, 716-717 (2003).

[16] CONSTITUTION, Art. III, Sec. 14(2).

[17] *Flores v. Ruiz*, 179 Phil. 351, 355 (1979).

[18] 86 Phil. 752 (1950).

[19] *Ferdinand Cruz v. Judge Priscilla Mijares*, OCA IPI No. 02-1452-RTJ,

[20] *People v. Ong*, G.R. Nos. 162130-39, May 5, 2006, 489 SCRA 679, 688.

[21] *Abrajano v. Heirs of Augusto F. Salas, Jr.*, G.R. No. 158895, February 16, 2006, 482 SCRA 476, 487.

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