DOUGLAS LU YM, PETITIONER, VS. ATTY. MAKILITO B. MAHINAY & HON. JUDGE OLEGARIO SARMIENTO, JR., RESPONDENTS.

G.R. NO. 169476. June 16, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for indirect contempt in connection with the respondents' alleged defiance of the February 23, 2005 Decision rendered by this Court in G.R. No. 161309, entitled Douglas Lu Ym v. Gertrudes Nabua.[1]

The undisputed facts show that Gertrudes Nabua and five of her 10 children filed an action for Accounting with Temporary Restraining Order (TRO) and Injunction, docketed as Civil Case No. CEB-27717, against his son, the herein petitioner, Douglas Lu Ym (Douglas)[2] before the Regional Trial Court of Cebu City, Branch 24, presided by respondent Judge Olegario Sarmiento, Jr. (respondent Judge). Gertrudes alleged that she was the common law wife of the deceased Cayetano Ludo (Cayetano) with whom she had 10 children, including the petitioner. During the lifetime of Cayetano, he founded Ludo and Lu Ym Corporation and acquired numerous real properties like beach resorts, houses, condominium units, commercial and agricultural lots; as well as personal properties like shares of stocks in various corporations, a private jet, a fleet of imported cars such as BMW, Mercedes Benz, Ferrari, Porsche, Jaguar, etc. Gertrudes claimed to be entitled to 50% of all these properties.

Sometime in 1970, petitioner was allowed to manage all the properties of Cayetano. When the latter's death was impending, petitioner was able to convince his siblings and Gertrudes to execute an alleged simulated last will and testament to evade payment of excessive inheritance tax. After the death of Cayetano, the will was probated. Gertrudes and her children allegedly gave their consent thereto because they were made to believe that the same was for the purpose of keeping the properties intact, including the 50% share of Gertrudes which Douglas continued to manage.

Petitioner filed a motion to dismiss contending that (1) Gertrudes and the other plaintiffs' claims are barred by prior judgment because the allowance of Cayetano's will settled all the claims over the properties; (2) Gertrudes has no legal capacity to sue because she is not the common law wife of Cayetano who was legally married to a certain Florame delos Reyes Ludo, as indicated in the death certificate of Cayetano;[3] and because Ludo and Lu Ym Corporation is the real party in interest, the distributive share of Cayetano having been assigned to the latter; and (3) the alleged action based on fraud in the execution of the will has already prescribed. In addition, their admission of being party to the fraudulent will purportedly precluded them from asking relief from the court.[4]

The respondent Judge denied the motion to dismiss ratiocinating that:

> There are justiciable questions raised in the pleadings of the herein parties which are proper subject of a full blown trial. The Omnibus Motion to Dismiss Amended Complaint is hereby denied.[5]

On petition with the Court of Appeals, the latter affirmed the denial of the motion to dismiss.

Unfazed, petitioner elevated the case to this Court in G.R. No. 161309, entitled Douglas Lu Ym v. Gertrudes

Nabua. On February 23, 2005, the Court held that the court a quo erred in deferring the resolution on the motion to dismiss and in not specifying which among the grounds raised by petitioner require a full blown trial. The case was thus remanded to the trial court for further proceedings. Pertinent portion thereof, states:

> However, while it was error for the appellate court to rule that the trial court did not commit grave abuse of discretion in denying petitioner's motion to dismiss, it does not necessarily follow that the motion to dismiss should have been granted. The instant petition raises significant factual questions as regards petitioner's claim that the Amended Complaint should have been dismissed which are properly addressed to the trial court. Moreover, it cannot be gainsaid that the trial court should be given the opportunity to correct itself by evaluating the evidence, applying the law and making an appropriate ruling. A remand of the case to the trial court for further proceedings is, therefore, in order.
>
> WHEREFORE, the petition is GRANTED in part. The Decision of the Court of Appeals dated August 20, 2003 sustaining the trial court's denial of petitioner's motion to dismiss, as well as its Resolution dated December 16, 2003 denying reconsideration, is REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court of Cebu City for further proceedings to resolve anew with deliberate dispatch the motion to dismiss in accordance with Section 3, Rule 16 of the 1997 Rules of Civil Procedure as elucidated in this Decision.
>
> SO ORDERED.[6]

Respondent Judge received a copy of the said decision on March 28, 2005, while respondent Atty. Makilito B. Mahinay (Atty. Mahinay), counsel for Gertrudes and the other plaintiffs, received the same on March 29, 2005.

Petitioner filed a motion for reconsideration but was denied with finality on June 20, 2005.[7]

In the meantime, since no TRO/injunction was issued by the appellate courts, the proceedings before the trial court continued. Petitioner was declared in default and plaintiffs were allowed to present evidence ex parte. On March 16, 2005, respondent Judge rendered a decision holding that the plaintiffs are entitled to their share in the properties of Cayetano; and for which reason, petitioner should make an accounting of said properties. The dispositive portion thereof, reads:

> WHEREFORE, in view of the foregoing, this Court finds for plaintiffs and hereby enters judgment ordering defendant Douglas Lu Ym to account the following real properties owned by the late Cayetano Ludo and held by him in trust and for the benefit of herein plaintiffs, on the following properties, as follows: Tax Declaration No. 01616 under defendant's name covering Lot No. 1 (Exh. "H"); Tax Declaration No. 02207 under defendant's name covering Lot No. 3 (Exh. "I"); Tax Dec. No. 02143 under the name of Lu Ym Annabel (wife of defendant Douglas Lu Ym) (Exh. "J"; Tax Dec. No. 00024 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "K"); Tax Dec. No. 02827 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "L"); Tax Dec. No. 02826 under the name of Annabelle Lu Ym (defendant's wife) (M); Tax Dec. No. 03157 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "N"); Transfer Certificate of Title No. 102557 under the name of defendant Douglas Lu Ym (Exh. "0-1"); Tax Dec. No. 02143 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "P"); Tax Dec. No. 0028 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "S"); Tax Dec. No. 01615 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "U"); Tax Dec. No. 01617 under the name of Annabelle Lu Ym (defendant's wife) (Exh. "W"); Tax Dec. No. 02208 under the name of defendant Douglas covering Lot No. 3 (Exh. "Y"); the 1/3 share of the late Cayetano Ludo with the Lu do & Lu Ym Development Corporation, among which are the following: Transfer Certificate of Title Nos. 17029 (Exh. "AA"), 17032 (Exh. "BB"), 22325 (Exh. "CC"); 22323 (Exh. "DD"); 44057 (Exh. "EE"); 20514 (Exh. "FF"); 20515 (Exh. "GG"; and 20516 (Exh. "HH"), registered under the Ludo and Lu Ym Development Corporation of which defendant Douglas is one of the major stockholders as shown in the Certification issued by the Corporate Secretary (Exh. "II") of the said Corporation; the proceeds of the sale of the following properties of the late Cayetano Ludo sold by defendant as follows: (a) of the private jet

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> plane amounting to P100 million pesos; shares of stocks with Crown Oil Corporation amount[ing] to $30 million dollars; shares of stocks with Philippine Bank of Communications amounting to P53 million pesos; luxurious cars amounting P50 million pesos; rent of anscestral house (the White House) located at F. Ramos St. beside Robinson's Department Store, Cebu City; and proceeds of the sale of the Ranudo property; and all other properties which defendant held and continue to hold in trust for all the heirs of the late Cayetano Ludo.
>
> The Bureau of Internal Revenue is specifically directed to compute and impose the estate taxes due on the above mentioned properties of the late Don Cayetano Ludo.
>
> SO ORDERED.[8]

Invoking the decision in G.R. No. 161309, petitioner filed a motion for reconsideration praying that the March 16, 2005 decision of the trial court be set aside.[9] However, on May 20, 2005, respondent Judge denied the motion for reconsideration. Pertinent portion of his order denying the motion, provides:

> This Court received copy of above-cited Decision on March 28, 2005, after it has rendered decision in the main case on March 16, 2005. This Court has complied with the mandate of the Supreme Court to further proceed into the case and to resolve with deliberate dispatch. Only that, it has not only resolved the Motion to Dismiss but the whole case.
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> x x x x
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> Meanwhile, as there was no restraining order from the Supreme Court, plaintiffs continued to present evidence. Exhibit was formally offered on March 31, 2004 which was admitted in evidence in an Order dated April 30, 2004. Until this Court entered judgment in the main case.
>
> In the light also of a recent Supreme Court Circular, wherein defendant in a civil case is directed to observe restraint in filing a Motion to Dismiss and instead alleged the grounds thereof as defenses in the answer, this Court was confident that its ruling on the Motion to Dismiss which was upheld by the Court of Appeals is in accord with the said rule. It has already reached a point of no return. Had the Honorable Supreme Court dismissed the main case, which is one of the reliefs in a Petition for Certiorari, it would have been different.
>
> WHEREFORE, the Motion to Set Aside Judgment is hereby DENIED.
>
> SO ORDERED.[10]

Hence, petitioner appealed to the Court of Appeals where the case is now pending.

In the present recourse, petitioner contends that the decision in G.R. No. 161309, which ordered the trial court to rule on the motion to dismiss, nullified the respondent Judge's March 16, 2005 decision on the merits. He theorizes that when the Court ruled that the respondent Judge must rule on the affirmative defenses in the motion to dismiss, it logically resulted in the nullification of the trial and all other proceedings that transpired after the trial court's denial of the motion to dismiss. Petitioner thus argues that respondent Judge defied this Court's decision when he rendered judgment on March 16, 2005 and denied petitioner's motion for reconsideration on May 20, 2005, notwithstanding actual receipt on March 28, 2005 of the decision in G.R. No. 161309. Petitioner thus prays that the Court of Appeals before whom the March 16, 2005 decision was appealed be ordered to remand the records of the case to the trial court for the latter to rule on the motion to dismiss; and that the case be re-assigned to the pairing judge of herein respondent Judge.

On the part of respondent Atty. Mahinay, his defiance of the February 23, 2005 Decision of the Court allegedly consists in the filing of the following pleadings, to wit:

> (1) Motion to direct the government (thru the Office of the President) to enter its appearance. Filed on April 5, 2005, this motion was based on the dispositive portion of the March 16, 2005 Decision of the trial court

> ordering the Bureau of Internal Revenue to compute the inheritance tax on the properties of the late Cayetano;
>
> (2) Comment on petitioners' motion seeking the inhibition of respondent Judge where respondent Atty. Mahinay stated that the February 23, 2005 Decision of the Court in G.R. No. 161309, is now moot and academic;
>
> (3) April 27, 2005 letter-pleading addressed to a certain Mr. John L. Lu Ym, President and Chairman of Ludo Development Corporation informing him that his clients are withdrawing any authority of petitioner to act as trustee of Gertrudes and the other plaintiffs.[11]
>
> (4) Motion for issuance of an entry of Judgment in Civil Case No. CEB-27717;[12] and
>
> (5) Manifestation in G.R. No. 161309 stating that the trial court's March 16, 2005 verdict rendered the Decision in G.R. No. 161309, moot and academic.[13]

In his Comment, respondent Judge contends that he never had the slightest intention to disobey, much more to insult the Court. He further states that he has always been a good soldier of the Court and was in fact cited by the Rotary Club as the Regional Trial Court Judge with the highest number of disposed cases in Region VII for the year 2005.

Atty. Mahinay likewise claims that he never intended to offend or defy the Court and that there is nothing contumacious in the pleadings he filed and in the theories he advanced as they were merely intended to advance the legitimate cause of his clients.

The sole issue here is whether respondents are guilty of indirect contempt.

We rule in the negative.

Pertinent portions of Section 3, Rule 71 of the Rules of Court, read:

> Sec. 3. Indirect contempt to be punished after charge and hearing. - After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of or resistance to a lawful writ, process, order or judgment of a court x x x.

Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[14] Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties litigant or their witnesses during litigation.[15]

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice.[16] However, such power should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power being drastic and extra-ordinary in its nature should not be resorted to unless necessary in the interest of justice.[17]

In the present case, the assailed acts of respondents do not constitute disobedience to, or defiance of the decision in G.R. No. 161309. The Court never stated therein that the March 16, 2005 decision of respondent Judge, or any judgment on the merits rendered pending decision of the Court, should be set aside. Note that no TRO or injunction was issued to restrain the proceedings below. Unrestrained, the trial, presentation of evidence and rendition of judgment would logically take their course, and respondent Judge could not be faulted for proceeding with the rendition of judgment.

Moreover, the main thrust of the Court's decision in G.R. No. 161309, was to order the trial court to rule on the issues raised by petitioner in the motion to dismiss. This had already been substantially satisfied by the respondent Judge in his March 16, 2005 decision. In holding that the probated will of Cayetano did not in fact settle his estate as the same was simulated and intended merely to evade payment of taxes, respondent Judge in effect debunked the claim of valid assignment of rights over the properties in favor of petitioner and the Lu Ym Corporation as well as petitioner's assertion that the probate of Cayetano's will constituted res judicata and a bar to the relitigation of the same properties. So also, the pronouncement of respondent Judge that Gertrudes is the common law wife of Cayetano is recognition of Gertrudes' capacity to sue. In the same vein, the full faith and credence accorded by respondent Judge on the allegations and testimonies of Gertrudes and her witnesses addressed the issue of fraud invoked by petitioner.

It is therefore clear that to nullify the March 16, 2005 decision of respondent Judge and to conduct anew the proceedings before the trial court for the sole purpose of ruling on the motion to dismiss, would be a waste of time which would further delay the resolution of this case. Furthermore, the assailed March 16, 2005 decision of the trial court is now on appeal before the Court of Appeals. It is therefore before the latter court where the issue of the nullification of the trial court's decision should be addressed.

In sum, we find that respondents did not commit any act amounting to indirect contempt. To reiterate, respondent Judge's March 16, 2005 Decision and May 20, 2005 Order do not constitute defiance of the Court's verdict in G.R. No. 161309. It follows therefore that the pleadings filed by respondent Atty. Mahinay in reliance of the aforesaid decision and order of the trial court are not as well contumacious. Indeed, an act to be considered contemptuous must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[18]

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] 452 SCRA 298. Penned by Associate Justice Dante O. Tinga and concurred in by Associate Justices Reynato S. Puno, Ma. Alicia Austria-Martinez, Romeo J. Callejo, Sr. and Minita V. Chico-Nazario.

[2] Alias "Crispin N. Lu."

[3] In his petition for naturalization, Cayetano allegedly declared that his wife is Uy Ching Gee (Rollo, p. 40).

[4] Rollo, pp. 39-42.

[5] Id. at 29.

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[6] Supra note 1 at 311.

[7] Rollo, p. 136.

[8] Id. at 60-61.

[9] Id. at 92-93.

[10] Id. at 122-123.

[11] Id. at 94-96.

[12] Id. at 117-119.

[13] Id. at 133-135.

[14] Heirs of De Leon Vda. De Roxas v. Court of Appeals, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 115.

[15] Id. at 114.

[16] Id. at 115.

[17] Abad v. Somera, G.R. No. 82216, July 2, 1990, 187 SCRA 75, 85.

[18] Id.

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