

ATTY. LOLITO G. APARICIO, PETITIONER, VS. HON. ERMELINDO C. ANDAL, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 27, 11TH JUDICIAL REGION, WITH STATION AT TANDAG, SURIGAO ...

G.R. Nos. 86587-93. July 25, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Assailed in this special civil action for certiorari, prohibition, and mandamus are the orders* of the respondent judge dated October 11 and 12, 1988 in Criminal Cases Nos. 1371, 1439, 1475, 1480, and 1476 and Civil Cases Nos. 742 and 755, denying the petitioner's Motion for Inhibition.

Textually, the Motion for Inhibition reads:

COMES NOW, the Movant to this Honorable Court respectfully states:

(1) that the Movant has just received the letter from the Supreme Court through its Deputy Court Administrator, hereto attached to the original of this Motion only, same being covered by confidentiality as for its internal operation only, issued in connection with my Petition for inhibition, also annexed to the original only of this Motion, inhibition by the Honorable Presiding Judge of this Court, to inhi-bit himself from trying, hearing or in any manner acting on all cases, civil and criminal, in which the Movant is involved and handling.

P R A Y E R

WHEREFORE, in view of the letter of the Deputy Court Administrator of the Honorable Supreme Court, undersigned Attorney is compelled to request the Honorable Presiding Judge of this Court to inhibit himself from trying, hearing or in any manner acting in any of the cases in which the undersigned Attorney is involved and is handling or will be involved, either as Complainant or otherwise.

Madrid, Surigao del Sur, Philippines.

September 26, 1988.

Respectfully submitted without argument:

(SGD.) ATTY. LOLITO G. APARICIO

Madrid, Surigao del Sur

IBP No. 172531 and PTR No.

8798243, all for 1988[1]

Considering the aforecited motion, Judge And al issued the substantially identical orders assailed herein.

The focal issue is whether or not Judge Andal acted with grave abuse of discretion amounting to lack of jurisdiction when he denied the petitioner's Motion for Inhibition in the several criminal and civil cases subject thereof and in thereafter' continuing to take cognizance of said cases and all the other cases pending before him. Concomitant thereto is the question of whether or not Judge Andal can be held civilly liable for damages under Art. 32 of the Civil Code in relation to the constitutional provision that all public officers must at all times be accountable to the people.

The petitioner maintains that there is between him and Judge Andal an existing state of hostility[2] sparked off by the filing by him of petitions for certiorari and administrative cases against the latter before this Court, prior to the filing of the Motion for Inhibition, which was, as earlier stated, denied by Judge Andal. He avers that although the Motion for Inhibition did not explicitly state on its face the valid grounds relied upon to support his motion, such grounds were known to Judge Andal.[3] He theorizes that the Judge in refusing to inhibit himself from the cases subject of the Motion for Inhibition and in all the other cases pending before him in which the petitioner is acting either as counsel or a party litigant, Judge Andal violated his constitutional rights to due process, equal protection of the law, access to the court and speedy disposition of cases, making Judge Andal civilly liable under Art. 32 of the new Civil Code.[4] He asserts that because of Judge Andal's refusal to inhibit himself, he (petitioner) and his family suffered mental anguish and incurred expenses for which they must be compensated.[5]

On the other hand, Judge Andal maintains that the motion for inhibition did not cite any valid grounds to justify his inhibition.[6] He submits that when he denied the motion for inhibition, he was not aware that A.M. No. RTJ-88-245 was filed against him as it was only on November 4, 1988 when he received a resolution of this Court directing him to comment thereon, that he first came to know about it.[7] He describes as a mere gratuitous assumption the petitioner's assertion that in denying the Motion for Inhibition he was motivated by rancor and resentment because of the certiorari and administrative cases earlier filed against him.[8] On this score, he asseverates that he does not normally resent the filing of certiorari cases against him as he has neither the reason nor the luxury of time to entertain such a feeling. Moreover, he is so preoccupied with his case load to even think of it.[9] He further stresses that he has nothing personal against petitioner, as he does not know the latter personally.[10]

On the claim for damages, he submits that the same is without basis and is purely imaginary and speculative.

Rule 137, Section 1 of the new Rules of Court provides:

Section 1. Disqualification of Judges -- No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case for just or valid reasons other than those mentioned above.

It must be observed that the Motion for Inhibition, as correctly stated by Judge Andal in his orders denying the same, cited no valid ground, which fact was confirmed by the prosecuting fiscal and the counsel for the accused in the criminal cases and the defendants in the civil cases. There is, therefore, no doubt that the denial of the said motion was not whimsical or capricious nor was the said denial intended to spite the petitioner, as the petitioner would want this Court to believe, but was done in the valid and judicious exercise of his function and duty as judge.

We agree with the Solicitor General that the state of hostility being pressed by the petitioner is purely imaginary.[11] Indeed the petitioner had not presented any evidence to support his conclusion that the filing of the petition for certiorari docketed as UDK 8748 and UDK 8822 and the administrative cases adverted to, caused the displeasure of Judge Andal as to affect his impartiality in trying petitioner's cases. In fact, such allegations were refuted by Judge Andal when he categorically stated that he does not normally resent the filing of certiorari cases before this Court where he is impleaded as a mere nominal party,[12] after all, when still a practitioner he too filed certiorari cases. Moreover, as a judge, he knows he has neither the reason nor luxury of time to entertain such a feeling, preoccupied as he is with the many cases assigned to him..[13]

A circumspective analysis of the assailed orders belies the petitioner's charge of bias or prejudice and hostility, as all of the said orders appear to have been issued in accordance with law and nowhere was there a showing of any outward manifestation of the supposed state of hostility between Judge Andal and petitioner as to warrant the inhibition or disqualification of the former. And having denied the Motion for Inhibition, Judge Andal acted within his jurisdiction when he continued to take cognizance of all the cases pending before him, there being no writ of injunction or a restraining order issued, enjoining him to cease and desist from acting on the said cases. It must be noted that it was only on February 16, 1989 that a restraining order was issued by this Court.[14] The Court has held that mere pendency of a special civil action for certiorari commenced in relation to a case pending before the lower court, does not interrupt the course of the latter when there is no writ of injunction restraining it.[15] Likewise, "the mere filing of an administrative case against respondent judge is not a ground for disqualifying him from hearing the case, for if on every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the courts. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial,[16] and on this regard the petitioner failed.

In *Pimentel vs. Salanga*,[17] we rationalized:

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approval to this ideal. It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice without respect to person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, is a matter of conscience. (Emphasis supplied).

On his claim for damages against Judge Andal in these same proceedings, the petitioner-lawyer invokes Art. 32 of the Civil Code which provides in part:

Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x

8) The right to the equal protection of the laws;

x x x

16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;

x x x

(19) Freedom of access to the courts.

X x x

The responsibility herein set forth is not demandable from the judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

In *Aberca v. Ver*,^[18] we postulated thus: "The purpose of the above codal provision is to provide a sanction to the deeply cherished rights and freedom enshrined in the constitution. Its message is clear; no man may seek to violate those sacred rights with impunity." Under said article judges are excluded from liability; provided their acts or omissions do not constitute a violation of the Penal Code and other penal statute.^[19] As we have earlier stated, the acts of Judge Andal in denying the motion for inhibition and in thereafter proceeding with the trial of the different criminal and civil cases pending before his court were done in a regular manner and were considered as his official acts, thus, he is not answerable for damages.

In *Alzua and Arnalot vs. Johnson*,^[20] this Court, adopting the concurring opinion in *Forbes, etc. vs. Chuoco Tiaco and Crossfield*,^[21] stated thus:

x x x "whenever and wherever a judge of a court of superior jurisdiction exercise judicial functions, he will not be personally liable in civil damages for the result of his actions," and "the test of judicial liability is not jurisdiction, but such liability depends wholly upon the nature of the question which is being determined when the error complained of is committed by the court. If such question is one the determination of which requires the exercise of judicial functions, the judge is not liable, even though there is in reality an absolute failure of jurisdiction over the subject matter" x x x.

An important point that should not be overlooked in this case is petitioner's audacious propensity of filing certiorari and administrative cases against the respondent judge based on flimsy and unfounded charges he can conceive. Thus, it behooves us to remind the petitioner of his basic duty "to observe and maintain the respect due to the courts of justice and judicial officers;" to conduct himself with "all good fidelity to the courts;" to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance; that his duty to render respectful civility, without fawning, to the courts is indeed essential to the orderly administration of justice. Thus, he should be courteous, fair, and circumspect, not petulant, combative, or bellicose in his dealings with the courts; and finally, that the use of disrespectful, intemperate, manifestly baseless, and malicious statements by an attorney in his pleading or motion is not only a violation of the lawyer's oath and a transgression of the canons of professional ethics, but also constitutes direct contempt of court for which a lawyer may be disciplined.^[22]

Accordingly, the petitioner is hereby admonished to be more prudent in his dealings with the court and its judicial officers.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The Restraining Order dated February 16, 1980 is lifted and set aside. Atty. Lolito G. Aparicio is hereby REPRIMANDED for conduct

unbecoming a member of the bar and an officer of the court with a WARNING that a repetition of the same or similar conduct will be dealt with more severely.

Let a copy of this resolution be entered in the bar record of Atty. Lolito G. Aparicio.

Fernan, C.J., Narvasa, Melencio--Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

* Penned by the Honorable Ermelindo G. Andal, Executive Judge and Presiding Judge of RTC, 11th Judicial Region, Branch 27, Tandag, Surigao del Sur, 37-46.

[1] Rollo, 84-85.

[2] Petition, 15.

[3] Id., 15.

[4] Id., 16.

[5] Id., 16.

[6] Comment, 80.

[7] Id., 81.

[8] Id., 82; Comment, AM No. RTJ-88-245, 88.

[9] Id., 82; id., 88.

[10] Id., 82.

[11] Comment of the Solicitor General, 123.

[12] Comment of Judge Andal, 82.

[13] Id., 82.

[14] Rollo, 61.

[15] Placida Peza, et al. vs. Hon. Federico Alikpala, G.R. No. L-29749, April 15, 1988, 160 SCRA 31.

[16] Spouses Camilo and Dorotea Rosello vs. The Hon. Court of Appeals, G.R. No. L-46274 and Gaudencia Hoyla, et al. vs. The Hon. Court of Appeals, G.R. No. L-46549, December 14, 1988.

[17] G.R. No. L-27934, Sept. 18, 1967, 21 SCRA 160.

[18] G.R. No. 69866, April 15, 1988, 160 SCRA 601.

[19] Id., 604.

[20] 21 Phil. 308, January 31, 1912, 325-326.

[21] 16 Phil. 534, July 30, 1910.

[22] Baja vs. Macandog, L-60007, February 29, 1988, 158 SCRA 391.

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