

EN BANC

[A.M. NO. RTJ-05-1921 (FORMERLY OCA IPI NO. 04-1973-RTJ), September 30, 2005]

MA. TERESA H. DE JESUS, COMPLAINANT, VS. JUDGE RENATO J. DILAG, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 73, OLONGAPO CITY, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J:

In a complaint^[1] dated February 4, 2004 filed with the Office of the Court Administrator (OCA), complainant Maria Teresa H. De Jesus charged respondent Judge Renato J. Dilag of the Regional Trial Court of Olongapo City, Branch 73, with gross ignorance of the law, rendering unjust orders, abuse of authority and misuse of court processes.

Complainant alleged *inter alia* that on August 26, 2002, her husband Wolfgang Heinrich Konrad Harlinghausen (Harlinghausen) filed a petition for declaration of nullity of their marriage with the Regional Trial Court of Olongapo City, Branch 73, docketed as Civil Case No. 364-0-2002.

On August 27, 2002, Harlinghausen, through counsel, filed an "*Urgent Ex-Parte Motion to Preserve Properties to be Collated*." On the same day, respondent judge issued an Order^[2] setting the hearing of the motion on August 30, 2002.

On August 29, 2002, complainant received summons in Civil Case No. 364-0-2002. Forthwith, she filed a motion to dismiss the complaint on the ground of improper venue. This was denied by respondent judge.

On August 30, 2002, respondent judge considered the "*Urgent Ex-Parte Motion to Preserve Properties to be Collated*" submitted for resolution after hearing the testimonies of Harlinghausen's attorney-in-fact, Harry E. Joost, and his counsel of record, Atty. Edmundo S. Carian.

On September 3, 2002, respondent judge issued an Order^[3] granting the urgent *ex-parte* motion and placing under legal custody the properties enumerated therein. The Register of Deeds of Tarlac, among others, was directed to annotate the Order on the 62 land titles allegedly purchased by Harlinghausen's wife using his money without his consent.

On October 2, 2002, Harlinghausen, through counsel, filed another *Ex-Parte Motion* praying for the issuance of an Order directing the Bureau of Immigration and Deportation (BID) to allow him to enter this country in order to prosecute his petition for declaration of nullity of marriage.

On October 4, 2002, respondent judge issued an Order granting Harlinghausen's *Ex-Parte* Motion.

Eventually, complainant filed with the Court of Appeals a petition for *certiorari* assailing respondent judge's Order dated September 3, 2002 granting Harlinghausen's Urgent *Ex-Parte Motion to Preserve Properties to be Collated*; Order dated October 4, 2002 granting his Urgent *Ex-Parte* Motion to enter this country; and Order denying her (complainant's) motion to dismiss the complaint for improper venue. Complainant averred that in issuing the challenged Orders, respondent judge acted with grave abuse of discretion tantamount to lack or excess of jurisdiction. The petition was docketed as CA-G.R. SP No. 74167.

On February 20, 2003, the Court of Appeals rendered a Decision^[4] granting complainant's petition, declaring void the assailed Orders dated September 3 and October 4, 2002 and dismissing the complaint in Civil Case No. 364-0-2002 for declaration of marriage for improper venue.

Harlinghausen filed a motion for reconsideration, but it was denied by the Appellate Court. He then filed with this Court a petition for review on *certiorari*, docketed as G.R. No. 158333. In a Resolution of June 23, 2003, we denied the petition for his failure to show that the Court of Appeals committed a reversible error. Upon finality of our Resolution on August 12, 2003, an Entry of Judgment was made on October 3, 2003.^[5]

Complainant now contends that respondent judge, in issuing the Order of September 3, 2002 granting Harlinghausen's *Urgent Ex-Parte Motion to Preserve Properties to be Collated*, is ignorant of the law and abused his authority. The motion lacks the notice of hearing to be served upon the adverse party three (3) days before the hearing; and proof of service of the motion upon the adverse party.

Complainant further contends that in issuing the Order dated October 4, 2002 directing the BID to allow Harlinghausen to enter this country, respondent judge abused his authority and misused court processes.

In his comment, respondent judge explained that he did not disregard the basic procedural rules. Although the *Urgent Ex-Parte Motion to Preserve Properties to be Collated* lacks a notice of hearing, nevertheless he set the motion for hearing to enable the adverse party, herein complainant, to participate therein or to file an opposition. Besides, the Rules allow him to act upon an ex-parte motion requiring "quick action," like the motion before him. There was urgency considering that the conjugal funds are being misappropriated by complainant. Moreover, he conducted clarificatory hearing. At any rate, his questioned Order is not tainted with "bad faith or fraud."

With respect to the Order of October 4, 2002, respondent judge explained that he did not overstep his jurisdiction. He recognized the authority of the BID. In fact, he stated in his questioned Order that it is without prejudice to the authority of the BID over Harlinghausen.

In his Report and Recommendation, Court Administrator Presbitero J. Velasco, Jr. stated *inter alia* that:

"A thorough examination of the instant case reveals abuse of authority bordering on gross ignorance of the law. Records show that, relative to the petition for declaration of nullity of marriage, respondent Judge issued at least two orders that were bluntly nullified by the appellate court. The rules and principles ignored were so basic, and haste was characteristically palpable from the incidents.

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Likewise, respondent cannot take shield from the fact that his assailed orders were already set aside by the appellate court through the proper judicial remedies. Precisely, his cited jurisprudence itself explicitly states, "It is only after the available judicial remedies have been exhausted or when the appellate tribunal have spoken with finality that the door to an inquiry to his administrative liability may be said to have opened or closed." A display of haste and disregard of basic rules is a norm incompatible with the prudent attitude and sobriety expected of a good judge."

He recommended that:

- "1. The instant complaint be **RE-DOCKETED** as a regular administrative matter;
2. The respondent Judge, for abuse of authority and gross ignorance of the law, be accordingly meted a **FINE** in the amount of twenty thousand pesos (P20,000.00) with a **WARNING** that future similar infractions shall be dealt with more severely."

In our Resolution^[6] dated January 24, 2005, we required the parties to manifest whether they are submitting the case for resolution on the basis of the pleadings and records filed.

Subsequently, both parties submitted their respective Manifestations stating their willingness to submit the case for decision based on the records.

On the challenged Order of September 3, 2002, Sections 4, 5 and 6, Rule 15 of the 1997 Rules of Civil Procedure, as amended, are pertinent, thus:

SECTION 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.