

## SECOND DIVISION

**[ A.M. No. RTJ-10-2255 (Formerly OCA IPI No. 10-3335-RTJ), January 17, 2011 ]**

**SPOUSES DEMOCRITO AND OLIVIA LAGO, COMPLAINANTS,  
JUDGE GODOFREDO B. ABUL, JR., REGIONAL TRIAL COURT,  
BRANCH 43, GINGOOG CITY, RESPONDENT.**

### DECISION

**NACHURA, J.:**

The case arose from an amended complaint<sup>[1]</sup> dated December 29, 2009, filed by Spouses Democrito C. Lago and Olivia R. Lago (complainants), charging Judge Godofredo B. Abul, Jr. (respondent judge) of the Regional Trial Court (RTC), Branch 43, Gingoog City, with acts and omissions violative of the Standards of Conduct Prescribed for Judges by Law, the Rules of Court, and the Code of Judicial Conduct.

Complainants were the defendants in a civil action for Preliminary Injunction, Easement of Road Right of Way, and Attorney's Fees, with prayer for a Temporary Restraining Order (TRO), filed on July 2, 2009 by Christina M. Obico (Obico) before the RTC, Gingoog City, Misamis Oriental, and docketed as Civil Case No. 2009-905. The action was spawned by the alleged threats of complainants to close the access road leading to Obico's property, where the latter's milkfish (*bangus*) farm is located. Obico claimed that, if the access road leading to her property was closed, she would be prevented from harvesting her milkfish, causing massive fish kills, and leading to heavy financial losses on her part.

Complainants assert that the civil complaint was never raffled, and that no notice of raffle was ever served upon them, yet the case went directly to Branch 43, where respondent judge is the acting presiding judge. He is also the acting executive judge of RTC, Gingoog City. Complainants claim that this is violative of Section 4(c), Rule 58 of the Rules of Court.

On July 7, 2009, respondent judge issued an Order<sup>[2]</sup> directing the issuance of a TRO "effective seventy two (72) hours from date of issue," without requiring Obico to put up a bond. Complainants allege that at that time, they were not yet in receipt of the summons and copy of the complaint, as well as Obico's affidavit and bond. Complainants claim that this is violative of Section 4(c) and (d) of Rule 58 of the Rules of Court.

On July 14, 2009, respondent judge issued an Order<sup>[3]</sup> extending the 72-hour TRO, which had already expired, "for another period provided that the total period should not exceed twenty days." Again, respondent judge failed to require Obico to put up a bond even as complainants assert that it is already of judicial notice that a TRO under the amended new rules has been elevated to the level of an injunction.

In his Resolution<sup>[4]</sup> dated August 11, 2009, respondent judge ordered, among others, the issuance of the writ of preliminary injunction conditioned upon the application of a bond by Obico in the amount of P100,000.00. Complainants argue, however, that said directive was violative of Section 5, Rule 58 of the Rules of Court since they were not required "to show cause, at a specific time and place, why the injunction should not be granted."

Due to these acts of respondent judge, complainants filed a motion for inhibition<sup>[5]</sup> from further hearing the case, since they perceive that respondent judge was bereft of the cold neutrality of an impartial judge. The motion was denied by respondent judge in his Resolution<sup>[6]</sup> dated October 28, 2009. Complainants thus consider respondent judge's non-inhibition as violative of the Code of Judicial Conduct, as it denied them due process and equal protection of the law.

On November 11, 2009, respondent judge issued an Order<sup>[7]</sup> upon Obico's motion, directing the reduction of the bond from P100,000.00 to P50,000.00.

Complainants then filed a Motion to Hold in Abeyance Further Proceedings<sup>[8]</sup> on the ground of the pendency of their appeal before the Supreme Court of the Order denying the motion for inhibition. However, at the December 15, 2009 setting for pre-trial of the civil case, respondent judge issued an Order<sup>[9]</sup> denying the motion to hold in abeyance further proceedings. Respondent judge also allowed Obico to present evidence *ex parte* on January 26, 2010 for failure of complainants to appear during the pre-trial.<sup>[10]</sup>

In his Comment<sup>[11]</sup> dated February 11, 2010, respondent judge clarifies that, as of the time of the filing of the civil complaint, Branches 27 and 43 of the RTC, Gingoog City, had no regular presiding judges. Branch 27 was temporarily presided over by Judge Rustico Paderanga, the regular presiding judge of RTC, Camiguin Province, while Branch 43 was presided over by respondent judge, who is the regular judge of RTC, Branch 4, Butuan City.

Respondent judge claims that he had faithfully observed the provisions of Rule 58 of the Rules of Court, with respect to Civil Case No. 2009-905. He explains that, as the acting executive judge of RTC, Gingoog City, he took cognizance of the civil case, convinced that it had to be acted upon immediately. Thus, the issuance of the 72-hour TRO on July 7, 2009 was by virtue of his sound discretion based on the civil complaint and its annexes.

Respondent judge said that he explained in his July 14, 2009 Order that he extended the 72-hour TRO to 20 days in this wise--

Considering that the TRO previously granted was only for seventy-two hours, the same can be extended for another period provided that the total period should not exceed twenty days. In order to prevent plaintiff from incurring serious damage and heavy financial losses on her part, this court is inclined to grant the extension of the Temporary Restraining Order for another period not exceeding twenty (20) days inclusive of the

seventy two (72) hour period already granted previously by this court.

[12]

With respect to the July 14, 2009 hearing for the TRO, respondent judge claims that it was justified since he, as a mere acting presiding (and executive) judge of RTC, Gingoog City, conducts hearings in that sala only on Tuesdays and Wednesdays because he has to travel about 144 kilometers from Butuan City, where he is actually stationed. In the same July 14, 2009 Order, respondent judge asserts that the conduct of the summary hearings on days other than Tuesdays and Wednesdays would cause undue prejudice to the other cases already scheduled way ahead of the subject civil action, thus, the sheer improbability of being accommodated.

Respondent judge asseverates that the writ of injunction was issued only after a serious consideration of all the factual and legal circumstances of the case. On the other hand, he insists that the denial of the motion for inhibition was due to its lack of factual and legal basis.

After due investigation of this administrative case, the Office of the Court Administrator (OCA) issued its Report dated September 13, 2010, recommending that this case be re-docketed as a regular administrative matter, and, based on its finding that respondent judge was grossly ignorant of the law and rules of procedure, recommended that he be meted a fine in the amount of P25,000.00, with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely.

The OCA found respondent judge to have been grossly and deliberately ignorant of the law and procedure for violation of Rule 58 of the Rules of Court, specifically by means of the following acts: (1) when the civil complaint with prayer for the issuance of a TRO was filed on July 2, 2009, respondent judge assumed jurisdiction thereon and, without the mandated raffle and notification and service of summons to the adverse party, issued a 72-hour TRO on July 7, 2009; (2) when respondent judge set the case for summary hearing on July 14, 2009, purportedly to determine whether the TRO could be extended for another period, when the hearing should be set within 72 hours from the issuance of the TRO; (3) when he eventually granted an extension of an already expired TRO to a full 20-day period; and (4) when he issued a writ of preliminary injunction in favor of Obico without prior notice to herein complainants and without the required hearing.

We find the recommendations of the OCA to be well-taken.

Sections 4 and 5 of Rule 58 of the Rules of Court on preliminary injunction, pertinent to this case, provide —

*SEC. 4. Verified application and bond for preliminary injunction or temporary restraining order.*— A preliminary injunction or temporary restraining order may be granted only when:

- (a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and
- (b) Unless exempted by the court, the applicant files with the

court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

- (c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

- (d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.

SEC. 5. *Preliminary injunction not granted without notice; exception.*--No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance,