

THIRD DIVISION

[A.M. No. RTJ-10-2236 (Formerly OCA I.P.I. NO. 09-3083-RTJ), July 05, 2010]

RUBEN N. SALCEDO, COMPLAINANT, VS. JUDGE GIL G. BOLLOZOS, RESPONDENT.

RESOLUTION

BRION, J.:

We pass upon the verified Letter-Complaint, dated August 29, 2008, filed by Ruben N. Salcedo (*complainant*), charging Judge Gil G. Bollozos (*respondent judge*), Presiding Judge, Regional Trial Court, Branch 21, Cagayan de Oro City, with Grave Misconduct and Ignorance of the Law in the handling of SPEC. PROC. No. 2008-009, entitled "*Jose Tanmalack, Jr., represented by Jocelyn Tanmalack Tan v. Police Officers of Police Precinct No. 3, Agora, Lapasan, Cagayan De Oro City, and Insp. Wylen Rojo.*"

THE FACTUAL BACKGROUND

The complaint arose from a verified handwritten petition for the Writ of *Habeas Corpus* and the Writ of *Amparo* (*the petition*) filed by Jose Tanmalack, Jr. against the Police Officers of Police Precinct No. 3, Agora, Lapasan, Cagayan de Oro City, and Inspector Wylen Rojo. The complainant alleged that he is a co-owner of a parcel of land (*disputed property*) covered by Original Certificate of Title No. O-740 and registered in the name of Patricio Salcedo. The disputed property is about 126,112 square meters wide and is situated in Lapasan, Cagayan de Oro City.

On January 23, 2008 at around 2:30 p.m., while the complainant (together with his niece Rebecca R. Lumbay and his nephew Alan Jose P. Roa) was supervising an on-going construction over the disputed property, Tanmalack and heavily armed men arrived and forced themselves inside the fenced premises of the disputed property. The complainant averred that Tanmalack and his companions harassed and threatened to kill and to harm him and his workers; that Tanmalack uttered defamatory statements and accused him of land-grabbing; and that Tanmalack and his companions occupied the property and destroyed building materials such as G.I. sheets, lumber and other construction materials.

The complainant forthwith reported the incident to the nearby police station. The police promptly responded and arrested Tanmalack and brought him in for questioning. That same afternoon at around 4:45 p.m., Tanmalack, represented by his sister, Jocelyn Tanmalack Tan, filed the petition^[1] on his behalf while Tanmalack was detained by the police for employing "self-help in preventing squatters from putting up improvements in their titled property."

Clerk of Court Atty. Herlie Luis-Requerme narrated the circumstances surrounding

the filing of the petition and how it came to be referred to the respondent judge's *sala*, as follows:

1. In the late afternoon of January 23, 2008, a query was received by the Office regarding the procedure in filing a petition for a Writ of Amparo. We gave the information that the established procedure is to assign cases to the different branches by raffling or in urgent cases, by a special raffle upon proper motions. But since the office has not received any case of that nature yet, and as the schedule of raffling will still be in the afternoon of the next day, it will be referred to the Executive Judge for instruction and or appropriate action;
2. That since the Executive Judge was on leave, I went to consult the 1st Vice Executive Judge Evelyn Gamotin Nery. Since Judge Nery was busy at that time, I went to see 2nd Vice Executive Judge Ma. Anita Esguerra-Lucagbo;
3. That I clarified from Judge Lucagbo the procedure to be adopted under the Rule on the Writ of Amparo (A.M. No. 07-9-12-SC);
4. That the issue if any judge can immediately act on the petition was not clearly stated in the Rule but if the case will be referred to her as the 2nd Vice Executive Judge, she will be willing to look at the petition;
5. That when I went back at the Office at a little past 5:00 P.M. already, direct from the chamber of Judge Lucagbo, I found out that a Petition for Writ of Amparo was filed at around 4:45 P.M. as stamped in the petition;
6. That since I was out of the office, the Docket Clerk in charge, Mr. Rudy Exclamador, referred the case to the Administrative Officer Mary Lyn Charisse Lagamon;
7. That thinking I was no longer around as the personnel to whom I left the information that I was going to the sala of 1st Vice Executive Judge Nery was not able to inform the Admin. Officer of my whereabouts, Mr. Exclamador was instructed by her to refer the case to you [referring to the respondent judge];
8. That upon learning of the fact, I immediately called Mr. Exclamador and Ms. Lagamon to explain why they referred the case to your sala without any instruction from me;
9. That they said that they are of the honest belief that I was no longer around; that the lawyer was insisting to refer the case immediately to a judge since it is already 5:00 P.M. and considering the novelty, urgency and importance of the case, and fearing that no judge will be left to act on the petition if they still discuss what to do, Mr. Exclamador, with the concurrence of Admin. Officer Lagamon, referred the case to you since your sala was the nearest to our office, it being adjacent to your court;

10. That there is nobody from this Office who brought the handwritten petition to Judge Lucagbo nor was there any instruction from her to any of the personnel to have the petition conform to a form acceptable to the court, such fact was confirmed by Judge Lucagbo;

11. That the office only acted what it deemed best under the circumstances and was not motivated by any ill motive or malice.^[2]

Based on the petition and answers to the clarificatory questions propounded to Tanmalack's representative and counsel, the respondent judge immediately issued a Writ of *Amparo* dated January 23, 2008, directing "the police officers of Agora Police Station 3 or Insp. Wylen Rojo x x x to release immediately upon receipt of [the] writ but not later than 6:00 P.M. today, petitioner Jose Tanmalack, Jr., to the custody of Atty. Francis V. Ku." The respondent judge also directed the police officers to file their verified return to the petition within five (5) working days, together with supporting affidavits, in conformity with Section 9 of the Rule on the Writ of *Amparo*.

Around 5:30 p.m., the Writ of *Amparo* was served upon SPO3 Aener O. Adajar, PNP Chief Investigator. At six o'clock in the evening of that same day, the police released Tanmalack to the custody of Atty. Francis Ku.

In his complaint, the complainant questions the issuance of the Writ of *Amparo* which he claims had been unusually issued with haste. The complainant claims that the handwritten petition did not give any ground to warrant the issuance of the Writ of *Amparo*; that the respondent judge acted with grave abuse of discretion, bias, and obvious partiality, and in grave disregard of the Rules and the rule of law when he acted upon and granted the letter-petition for the issuance of the Writ of *Amparo*. The complainant also alleges that the respondent judge "accommodated" the issuance of the Writ of *Amparo* because he and Atty. Francis Ku (Tanmalack's counsel) are members of the Masonic fraternity.

The respondent judge filed his Comment dated March 30, 2009, in compliance with the directive of the Office of the Court Administrator (OCA). In his defense, he alleged:

- (a) [W]hen he received the petition from the Office of the Clerk of Court, he had no option but to exercise his judicial duty without any bias or partiality, nor did he consider that the petitioner's counsel is a fraternal brother (Mason);
- (b) [A]lthough the petition is for the issuance of both writ of amparo and writ of habeas corpus, he deemed it more in consonance with the [Rule on the Writ of Amparo];
- (c) [I]t was not improper even if the x x x petition was not raffled, and was immediately assigned to his sala by the Office of the Clerk of Court, since Par. 2, Sec. 3 of A.M. No. 07-9-12-SC states that any judge of a Regional Trial Court (RTC) can issue a writ and the said Sec. 3 further states that it can be filed on any day and at any time;
- (d) [T]he person who filed the petition is the sister of Mr. Tanmalack who was detained at the Agora Police Station,

Cagayan de Oro City; that the issuance of the writ was a matter of great urgency because the alleged illegal deprivation of liberty was made in the late afternoon of January 23, 2008, which was a Friday, and that if the Court would not act on the petition, the detainee would certainly spend the night in jail;

- (e) [T]he petition, although in handwritten form, is not improper because Section 5 of the SC Circular (on the Writ of Amparo) only requires that the same be signed and verified; that he found the petition sufficient in form and in substance;
- (f) [A]lthough the Amparo rules mandate that a judge shall immediately order the issuance of the writ if on its face it ought to issue, he propounded clarificatory questions on the petitioner's representative and their counsel, thus, the following information were elicited:

- 1) That the property of petitioner's family, which is under their possession and Tanmalack registered under TCT No. T-1627491, was intruded by some persons who wanted to fence the area and put up improvements by constructing "shanties" thereon;
- 2) That when petitioner Mr. Tanmalack prevented the intrusion it resulted to heated arguments and altercations which prompted him to go to the police station to report the incident and be blotted;
- 3) That when Mr. Tanmalack arrived at the police station in the late afternoon of January 23, 2008 in order to air his complaint, the intruders came and introduced themselves as the owners of the property;
- 4) That when Police Officer Rojo (Rojo) heard the version of these intruders and despite the protestations of petitioner and his relatives, the police did not anymore allow Mr. Tanmalack to leave the police station; and,
- 5) That petitioner's counsel called up Rojo to secure the immediate release of his client from police custody but to no avail;

- (g) [A]fter he assiduously evaluated the aforestated facts, as well as the allegations in the petition, respondent Judge, in the exercise of his judicial function, found that the same warranted the issuance of the writ; the arrest of Mr. Tanmalack was unlawful because Rojo was not present in the area where the alleged incident happened, so that the statements of the complainants (Salcedo, Lumbay and Roa) would be hearsay;
- (h) [I]n the Writ of Amparo the respondents were directed to file a verified return pursuant to the rules; during the summary hearing of the petition on 25 January 2008, it was only Rojo who appeared, the alleged complainants (Salcedo, Lumbay and Roa) who caused the detention of the petitioner were absent; P/Insp. Rojo, when asked by the Court, gave the following answers:

- 1) That he would no longer file his Answer (which should be a verified return) on the complaint considering that the petitioner was already released;
- 2) That he confirmed that it was the petitioner who came first

- to the police station to complain, followed by the person who wanted to fence the property; the conflict between the petitioner and the other persons is on a property dispute, of which it was petitioner who is in possession; and
- 3) That he denied that he had arrested the petitioner and neither did he detain him but only he could not release the petitioner because of the complaint and for further evaluation.

(i) [H]e noted that the police blotter did not state that petitioner brought heavily armed men with him when he allegedly harassed the complainant.

[(j) That in the summary hearing on January 25, 2008, the petitioner as well as the respondent Rojo have arrived into an agreement that the writ be considered permanent.]

THE REPORT OF THE OCA

The OCA informed the Court that the case was already ripe for resolution in a Report dated April 8, 2010, signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva. The Report likewise presented a brief factual background of the case.

The OCA recommended that the administrative complaint against the respondent judge be dismissed for lack of merit. The recommendation was based on an evaluation which reads:

EVALUATION: The complaint is bereft of merit.

The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, as in the instant case, or of a private individual or entity. Whereas in other jurisdictions the writ covers only actual violations, the Philippine version is more protective of the right to life, liberty and security because it covers both actual and **threatened** violations of such rights.

Nowhere in the records of the instant complaint that the issuance of the writ of amparo was attended by irregularities. The detainee's sister who filed the petition is allowed under Section 2(b) of the Rule on the Writ of Amparo (SC A.M. No. 07-9-12-SC). Also, the petition was properly filed with the Regional Trial Court "where the act or omission was committed or where any of its elements occurred."

Respondent Judge, in whose sala the said petition was assigned is deemed to have complied with his oath and judicial duty when he ordered the issuance of the writ of amparo upon determination that the right to liberty of Mr. Tanmalack was being violated or threatened to be violated. There is no showing that respondent Judge, in granting the petition for a writ of amparo was motivated by bad faith, ignominy or ill