

EN BANC

[A.M. No. RTJ-08-2111 (Formerly A.M. No. 05-2207-RTJ), May 07, 2008]

**CITY OF CEBU, Complainant, vs. JUDGE IRENEO LEE GAKO, JR.,
Presiding Judge, Regional Trial Court, Branch 5, Cebu City ,
Respondent.**

DECISION

NACHURA, J.:

Before the Court is an administrative complaint filed by the City of Cebu against now retired Judge Ireneo Lee Gako, Jr.^[1] of the Regional Trial Court (RTC), Branch 5, Cebu City, for serious misconduct, gross ignorance of the law, willful violation of rules and laws, judicial interference, tolerating forum-shopping, and violation of the Code of Judicial Ethics.

Following established procedure, the Court initially referred the complaint to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

^[2] The OCA later found the respondent judge administratively liable for undue delay in deciding Civil Case No. CEB-29570, and for gross ignorance of the law, which is tantamount to grave abuse of judicial authority, when he violated the doctrine of non-interference in Civil Case No. 30684. The OCA, therefore, recommended that the case be re-docketed as a regular administrative matter; the respondent judge be fined P11,000.00 and be suspended without pay for 6 months; and the motion to direct the respondent to compulsorily inhibit himself from all cases pending in his court in which complainant is a party-litigant be denied for being judicial in character.^[3]

Subsequently, the Court designated Court of Appeals Associate Justice Enrico A. Lanzanas to further investigate and evaluate the charges leveled against the respondent. As summarized by the said Investigating Justice, the factual backdrop of the charges is as follows:

1) Serious Misconduct and Gross Ignorance of the Law on Two Counts

1.a). *In Civil Case. No. CEB-26607: Spouses Roque and Fatima Ting vs. City of Cebu*, complainant charged respondent judge for having arrogated unto himself the duty which pertains to that of a counsel, when respondent judge called to the witness stand a certain Mr. Darza as witness of the court, when neither parties' lawyers in the said civil case were interested to present said person as their witness. During the appointed hearing, respondent judge, by himself, conducted the lengthy examination, without even making an offer of the purpose for which the witness' testimony is presented, while the counsels refused to propound

any question to the witness.

x x x x

1.b) The 2nd count under this charge of misconduct, etc., arose from the proceedings in *Civil Case No. CEB-29570: Cebu Ports Authority (CPA) vs. City of Cebu*. Plaintiff in this case sought a temporary and permanent declaration from the court of respondent judge to enjoin Cebu City from further proceeding with the auction sale of the port and plaintiff's other properties owing to the notice and warrant of levy issued against CPA after the latter refused to pay the real property taxes assessed by the city against it. CPA claimed being exempted from its coverage.

Complainant City of Cebu accused respondent judge of procrastinating and virtually sitting on the main case of injunction, which he voluntarily promised to resolve before the end of the month (December 2003). The Order dated 12 December 2003 of respondent judge shows that he suggested not to issue a Temporary Restraining Order, but, nevertheless and quite confusingly, enjoined the parties to observe the status quo, since the decision of the court on the main case of injunction is forthcoming at the end of the month. However, the decision came only on 6 December 2004 after complainant filed an Omnibus Manifestation on 10 October 2004, reminding the judge to make good his former and own commitment. This delay cost the city of Cebu to sustain substantial damages as it miserably failed to collect real property taxes.

Complainant additionally accused respondent judge of having "calculatingly failed" to take judicial notice of a decided case [*Philippine Ports Authority (PPA) vs. City of Ilo-Ilo, G.R. No. 109791, July 14, 2003*] which the city invoked as case law for the dismissal of the complaint and, at the same time, relied upon by plaintiff CPA to champion in the latter's main cause of action. Had the respondent judge considered the case with utmost circumspection, he would have resolved the main issue at the earliest possible time in the city's favor, the main issue in the case of *CPA v. Cebu City* having been squarely ruled upon already in the cited *PPA* case.

x x x x

2) Willful Violation of Rules and Laws, on Four (4) Counts including Two (2) Counts of Judicial Interference.

This involves four distinct actions perpetrated in separate incidents involving four cases, namely:

2.a) *Civil Case No. CEB-26066: Roy Feliciano, et al. vs. City of Cebu, et al.* This case is one for "Injunction, with Prayer for Issuance of Temporary Restraining Order (TRO) and Preliminary Mandatory Injunction" by reason of the defendant-city of Cebu's issuance and implementation of a Demolition Order against the houses/structures of Feliciano, et al., the plaintiffs, the latter having physically and publicly occupied a road lot and sidewalk at the North Reclamation Area in Cebu City.

During the hearing for the application of TRO, Feliciano, one of the plaintiffs, who took the witness stand, admitted in open court their occupancy of the sidewalk. Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition of property, or anything else which, among others, obstructs or interferes with the free passage of any public highway or street. The law allows the summary demolition or removal of the structures considered as public nuisance. Thus, on the basis of plaintiff's judicial admission, that they are occupying a sidewalk, the city of Cebu filed a motion to dismiss the complaint. Instead of dismissing the complaint, respondent judge proceeded with the trial. It is for this act that complainant Cebu City in this administrative case accuses respondent judge of willful violation of the foregoing laws and rules.

It is further complained that respondent judge in this *Feliciano case* granted plaintiffs' demand to be relocated absent any law to support therefor or lacking proof in plaintiffs' pleadings that they were qualified and not disqualified beneficiaries for the relocation and settlement, as required under Sections 16 and 17 of Republic Act. No. 7279; that the afore-cited laws were completely disregarded by the respondent judge, as if they never exist. It is advanced that the act of respondent judge of tolerating plaintiffs' violation of certain requirement of the law amounts to his own violation thereof.

x x x x

2.b) Civil Case No. CEB-29550: Colon Transport Terminal, represented by its Operator, Engr. Renato C. Asegurado, and Inter Urban PUV Terminal, represented by its Operator, Jessie S. Lasaleta, vs. Cebu City Police Traffic Group, et al. (For: Preliminary Injunction and Permanent Mandatory Injunction), referred to hereinafter as, **first case**.

Civil Case No. CEB-29730: Mr. Jessie S. Lasaleta, doing business under the trade name and style Inter Urban PUV Terminal, vs. City of Cebu, et al. (For: Declaration of Nullity of City Ordinance No. 1958, as amended with Prayer for Permanent Injunction), **second case** for brevity.

2.c) Civil Case No. CEB-30411: Simplicio Giltendez, doing business under the name and style Central PUV and V-hire Terminal vs. Cebu City, et al. (For Declaration of Unconstitutionality of City Ordinance No. 1958) **third case**, hereinafter.

Believing that Mr. Lasaleta, the plaintiff in the second case, is guilty of forum-shopping, which position is bolstered by his admission in the "Verification and Certification" attached to his complaint in the second case, a portion of which states that he reserves to withdraw his name in the first case after the filing of the second, Cebu City posits that the first and second case, or at least one of them should have been dismissed outright by respondent judge, failing which, judge Gako is guilty of willfully violating the rules proscribing forum shopping and for tolerating an act which amounts to direct contempt of court. The city asserts that

this issue was raised in its Motion for Summary Judgment in the foregoing consolidated terminal cases.

x x x x

Referring to the third terminal case, additional charge is posed by complainant against the judge in granting plaintiff's application for TRO, being unfounded and without legal basis. Cebu City, as defendant therein, contended that plaintiff in said case was operating without a business permit, did not comply with the requirements of the local ordinance regulating the operation of the terminal, did not have a Memorandum of Agreement with the city to operate as such, and did not possess the necessary building permit for the structures that were being used in the operation of his business. Judge Gako's act of issuing TRO, therefore, constitutes another violation of the provisions concerning the requirement of granting injunctive relief under the Rules of Court.

Likewise, the above Order of respondent judge, granting the application for a TRO, also makes him guilty of interference and total disrespect of what the Court of Appeals (CA) has decided in *CA-G.R. SP No. 74053*. The CA in this cited case upheld the validity of Ordinance No. 1837. In that CA decision, it was acknowledged that the city of Cebu is authorized to sort out a re-routing of the traffic flow in the spirit of the orderly implementation of the subject ordinance. Said city ordinance was the very basis of the city's re-routing scheme.

x x x x

2.d) *Civil Case No. CEB-30684: Cebu 3rd District V-Hire Operators & Drivers Multi-Purpose Cooperative, represented by Gina Virgilia A. Sanchez, vs. City of Cebu, et al.* (For Declaration of Unconstitutionality of City Ordinance No. 1958, Mandamus with Injunction, and Prayer for Temporary Restraining Order).

This is the fourth count, of Cebu City's charge against judge Gako, for willful violation of laws and rules, at the same time, a second count of violation for judicial interference.

Relevant to this case is *Civil Case No. CEB-27643: Cebu 3rd District V-Hire Operators & Drivers Multi-Purpose Cooperative, represented by Msgr. Jose Diapen, vs. City Counsel of Cebu City, et al.* (For Injunction with Prayer for the Issuance of TRO and Writ of Preliminary Injunction), which was raffled to Branch 58, Regional Trial Court of Cebu City, where plaintiff's applications for TRO and Writ of Preliminary Injunction were denied by the presiding judge therein, in the Orders dated 3 July 2002 and 21 October 2002. The main case being one for Injunction, the mentioned orders of denial had the effect of disposing the same, and plaintiff neither having appealed therefrom nor questioned said orders, the same already became final and executory.

Here, it is contended by Cebu City that despite its effort to bring this fact

to the attention of respondent judge, the latter, in open display of judicial arrogance, interfered with these orders of a coordinate and co-equal court by giving due course to *Civil Case No. CEB-30684*, a case filed in 2004 subsequent to *CEB-27643*. Respondent's act herein likewise constitutes disrespect of a final ruling of the Court of Appeals (*CA-G.R. SP No. 74053*). Worse, said complainant, Judge Gako granted plaintiff's application of a Writ of Preliminary Injunction.

(3) Other Violations.

Complainant is referring to the alleged practice of respondent judge of resorting to "injunction-for-sale" with the active meddling of a family member; allowing parties to write decisions for him; and failure to rule on Cebu City's motions for Consolidation and Summary Judgment in the transport cases above-mentioned while allowing the other party to present evidence to prove damages, in effect, proceeding to trial proper without pre-trial.

x x x x

(4) Violation of the Code of Judicial Ethics.

Complainant claims that the foregoing acts of respondent also infringe various canons in the Code of Judicial Conduct, *viz.*:

In the ***Ting case*** above, *Civil Case No. CEB-26607*, in addition to being constitutive of willful misconduct and gross ignorance of the law, the act of respondent judge in acting as litigant's lawyer, by obtaining the testimony of a person despite the fact that both counsels were not interested in introducing said person as their witness; and the judge's act of conducting, by himself, the direct examination thereof, violate Canon 2, Rule 2.01. of the Code of Judicial Conduct: "*A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.*"; and Canon 3 of the Canons of Judicial Ethics: "*A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.*"

Likewise, in the ***CPA case***, *Civil Case No. CEB-29570*, respondent judge's actuation of renegeing to his declaration to resolve the case within a specified period infringes Canon 1, Rule 1.02 of the same Code: "*A judge should administer justice impartially and without delay.*"

Finally, to complainant, all of the foregoing charges relative to the comportment of respondent judge during the proceedings in the cited cases, which earn him the charges of Serious Misconduct and Gross Ignorance of the Law, Willful Violation of Rules and Laws, Judicial Interference on several counts, demonstrate grave incompetence; running afoul to Rule 1.01, Canon 1 of the cited Code: "*A judge should be the embodiment of competence, integrity and independence.*"