

EN BANC

[A.M. OCA IPI NO. 06-97-CA-J, May 02, 2006]

**NORMANDY R. BAUTISTA, COMPLAINANT, VS. ASSOCIATE
JUSTICE HAKIM S. ABDULWAHID, COURT OF APPEALS,
RESPONDENT.**

RESOLUTION

CALLEJO, SR., J.:

The instant administrative complaint stems from the verified Complaint-Affidavit filed by Normandy R. Bautista charging Court of Appeals (CA) Associate Justice Hakim S. Abdulwahid with gross ignorance of the law and procedure relative to CA-G.R. SP NO. 83601 entitled *Spouses Marietta Pascua and Rufino Pascua, Jr. et al. v. Hon. Apolinario D. Bruselas, Jr., Acting Presiding Judge of the Regional Trial Court (RTC), National Capital Region, Branch 221, Quezon City, Metro Manila and Spouses Ruth Bautista & Normandy R. Bautista*. The complainant is one of the respondents in the case, which originated from the ejectment case filed before the Municipal Trial Court (MTC) of Quezon City, Branch 40. The aggrieved parties appealed the decision to the RTC which affirmed the decision *in toto*. The case was then elevated to the CA, which, on May 31, 2004, issued a Resolution (penned by Justice Abdulwahid) dismissing the petition on the ground that it was defective for (a) not having been signed by the other co-petitioners; and (b) failure to submit copies and documents pertinent to the petition.

According to the complainant:

3. That petitioners through counsel filed an Omnibus Motion and Urgent Motion for the Issuance of Temporary Restraining Order [TRO] and/or Preliminary Injunction filed on June 22, 2004 and August 11, 2004 respectively. However, **without awaiting for our comment or opposition** to the Urgent Motion for Issuance of Temporary Restraining Order and/or Preliminary Injunction considering that it was filed by the petitioners on **August 11, 2004** which at that point in time our counsel have not received it (sic), the Honorable Justice Hakim S. Abdulwahid being the ponente of the petition and now being a member of the 1st Division incredibly issued on **August 16, 2004**, just less than 24 hours before the implementation of the Writ of Execution issued by [Municipal Trial Court] Branch 40 Quezon City against the petitioners, a resolution reinstating the case with a temporary restraining order herein attached as Annex "B".
4. That the Honorable Judge Hakim S. Abdulwahid issued ex-parte the said temporary restraining order effective for sixty (60) days without any requirement of any bond stated therein in violation of Section 4[,] par. [b] Rule 58 of the 1997 Rules of Civil [Procedure]

and that the Honorable Justice Hakim S. Abdulwahid failed to determine within the period of sixty (60) days effectivity of the [TRO] whether to grant or not the preliminary injunction and failed to issue the corresponding order in violation of the mandatory requirement of Section 5 Rule 58 of the 1997 Rules of Civil [Procedure] that "within the said [twenty-day] period (in this case sixty days), the court **must** order said party or person to show cause, at a specified time and place xxx, **determine within the same period** whether or not the preliminary injunction shall be granted xxx" (emphasis ours).

5. That we wrote a letter to the Honorable Justice Hakim S. Abdulwahid attached here as Annex "C" asking for an immediate resolution of the motion of the petitioner for the preliminary injunction on [March] 16, 2005 considering that the lower court MTC Branch 40 of Quezon City held in abeyance the implementation of the writ of execution while waiting for the Court of Appeals to resolve the issue of injunctive relief being sought by the petitioners, however up to this point in time no resolution yet was ever issued practically denying us of the justice we have long been seeking on this ejectment case which the two lower courts have already decided in our favor and more so that this case is of summary in nature which seems to have evaded the thinking of the honorable justice, so that eventually we can bring this case to its next phase.

According to the complainant, Justice Abdulwahid's failure to resolve the issue of injunctive relief within 60 days rendered him guilty of violating Sections 4 and 5 of Rule 58 of the Revised Rules of Civil Procedure and Rules 1.02 and 3.05 of the Code of Judicial Conduct; as such, the CA Justice was guilty of acts prejudicial to the best interest of the service.

Justice Abdulwahid, for his part, denies the allegations against him. He outlines the antecedents that led to the filing of the instant case:

3. On **May 31, 2004**, acting on the petition in CA-G.R. SP No. 83601, the undersigned Justice, with the concurrence of the other members of the Former Special Third Division, issued a Resolution dismissing outright the said petition based on technical grounds.
4. On **August 16, 2004**, acting on the motion for reconsideration of the petitioners in CA-G.R. SP No. 83601 through their *Omnibus Motion* filed on **June 22, 2004**, the undersigned Justice, this time with the concurrence of the other members of the former First Division of the Court of Appeals, issued the Resolution granting the motion for reconsideration and reinstated the dismissed petition.
5. The same *Resolution* of **August 16, 2004** also granted the petitioners' application for a temporary restraining order (TRO) effectively enjoining for a period of sixty (60) days the private respondents from enforcing the judgment in the ejectment case against the petitioners in CA-G.R. SP No. 83601.

6. Herein complainant BAUTISTA was one of the private respondents enjoined by the TRO in CA-G.R. SP No. 83601.
7. In its Resolution promulgated on March 2, 2005, the Court considered the case submitted for decision and ordered that the application for writ of preliminary injunction shall be resolved together with the main case considering that the matter of whether the petitioner has a right in esse to the ancillary remedy prayed for is intricately connected with the merits of the case.
8. **On August 31, 2005**, the undersigned Justice as ponente, together with the other Associate Justices who composed the members of the Former Special Former First Division, rendered the *Decision* in CA-G.R. SP No. 83601 in favor of the private respondents, one of whom is not herein complainant BAUTISTA.
9. The petitioners in CA-G.R. SP No. 83601 moved for reconsideration of the aforesaid *Decision* dated **August 31, 2005**, but the same was denied for lack of merit through the *Resolution* issued by the undersigned *ponente* on January 5, 2006.

Justice Abdulwahid contends that there are three instances when a TRO may be issued *ex parte*: (a) if the matter is of extreme urgency and the applicant will suffer grave or irreparable injury; (b) where the summons could not be served personally or by substituted service despite diligent efforts; and (c) where the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident defendant. In this case, the Urgent Motion For Issuance of Temporary Restraining Order and/or Preliminary Injunction alleged that "a copy of the sheriff's final notice to vacate directing them to vacate the premises subject of the ejectment case was served on them on August 10, 2004, but no copy of the order issued by the court of origin on August 3, 2004 affirming the writ of execution issued on June 22, 2004, as well as the same final notice to vacate, was served on petitioners' counsel." Given the proximity of the dates pertinent to the ejectment case, there could not have been any other sound, reasonable and timely way to enjoin the private respondents from enforcing the aforesaid final notice to vacate against the petitioners without rendering the action sought to be enjoined moot and academic.

Justice Abdulwahid further points out that contrary to the allegation of complainant, the issuance of a TRO without a bond is not *ipso facto* a violation of Section 4 (b), Rule 158 of the Rules of Civil Procedure, as under the said rule, the issuing court in its discretion is empowered to determine whether to exempt the applicant from posting the requisite bond, considering the extreme urgency of the issue. Moreover, complainant's allegation that no resolution was issued relative to the injunctive relief prayed for by petitioners in the said case is belied by the records. According to Justice Abdulwahid, the complainant has no one but himself to blame, as he should have taken the necessary steps to enforce the writ of execution before the court of origin after the lapse of the 60-day period of the TRO thus:

While the aforesaid Order [of the MTC] is clearly in deference to the hierarchy of courts, the penultimate paragraph of Section 5 of Rule 58 provides that in the event that the application for a writ of preliminary injunction is denied or not resolved within the period as provided, the