

SECOND DIVISION

[A.M. NO. RTJ-05-1942 (FORMERLY OCA IPI NO. 04-1936-RTJ), June 28, 2005]

RESTITUTO L. OPIS, COMPLAINANT, VS. JUDGE RODOLFO B. DIMAANO, REGIONAL TRIAL COURT, BOAC, MARINDUQUE, BRANCH 94, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Judge Rodolfo B. Dimaano, Regional Trial Court (RTC), Boac, Marinduque, Branch 94, stands charged with gross inefficiency, serious misconduct and grave abuse of discretion. The complainant, Atty. Restituto L. Opis, filed the charges relative to Civil Case No. 00-5 entitled "*Romulo del Mundo v. Municipality of Torrijos, Marinduque and Gregorio Red*" for annulment of ordinance and/or declaration of its invalidity and revocation/cancellation of license with prayer for issuance of restraining order and/or writ of preliminary injunction.

In a verified Letter-Complaint^[1] dated January 19, 2004, the complainant alleged that he was the counsel of Gregorio Red, the private respondent in the said case. His client had been granted a franchise for the establishment, maintenance and operation of a cockpit in the Municipality of Torrijos *via* Municipal Ordinance No. 87-2000 enacted on March 26, 2000. On June 20, 2000, Romulo del Mundo, one of the applicants and bidders for the said franchise, filed Civil Case No. 00-5, claiming that the franchise should be awarded to him. On July 19, 2000, the respondent Judge issued a temporary restraining order (TRO) enjoining the Municipality of Torrijos from implementing the award of the said franchise to his client. According to the complainant, the issuance of the TRO was intentionally timed to coincide with the cockpit derby (sponsored by his client) scheduled on July 20, 2000 in connection with the celebration of the town fiesta of Torrijos. His client then filed a motion for the voluntary inhibition of the respondent in Civil Case No. 00-5. The respondent judge, thereafter, issued an order inhibiting himself from hearing and deciding the said case, which was later recalled by the Supreme Court in a Resolution dated December 6, 2000.

It appears that the respondent Judge indeed issued an Order dated August 15, 2000 voluntarily inhibiting himself from hearing and deciding Civil Case No. 00-5, together with all the other cases handled by the complainant and pending before his (judge's) sala. According to the complainant, this was the respondent's way of retaliating against him, but since none of the parties in the said cases had moved for his inhibition, the issuance of such orders was improper. The complainant further alleged that were it not for the appointment of Judge Alejandro Arenas as presiding judge of Branch 38 in January 4, 2001, the said cases would not have been included in the court calendar. He pointed out that these cases were not set for hearing since August 15, 2000 to January 3, 2001.

The complainant also alleged that Judge Arenas died last January 5, 2002, and that the respondent judge failed to duly inform the court thereof. The complainant also pointed out that it was only last March 26, 2003 that the Court designated Judge Rafael Lagos of the RTC of Lucena City, Branch 57, to hear and decide the cases in which the respondent inhibited himself.

The complainant further manifested that the respondent Judge failed to issue an inhibition order and did not set for hearing a personal case of his, Civil Case No. 92-9, entitled "*Restituto Opis v. Antonio Manlisis*." He claimed that the respondent Judge was "selective" in issuing inhibition orders.

Finally, the complainant further alleged that the respondent Judge is a habitual absentee and comes to Marinduque on Monday afternoon or Tuesday morning, and goes to Batangas or Manila every Thursday.

The order of inhibition issued by the respondent Judge was set aside by the Court on December 6, 2000 in A.M. No. 00-11-531-RTC. The respondent filed a motion for reconsideration thereof, and on August 22, 2001, the Court granted the motion, considering that Judge Alejandro Arenas had already been appointed presiding judge of the RTC of Boac, Marinduque, Branch 38.

In his Comment^[2] dated March 15, 2004, the respondent Judge claimed that he faithfully followed the rules laid down in Section 4, Rule 58 of the Rules of Court, in granting the assailed temporary restraining order, and that the issuance thereof was not done in haste or with sinister motives. Contrary to the complainant's allegations, it was not issued intentionally to coincide with the scheduled cockpit derby. The respondent Judge admitted, however, that the requisite raffle of Civil Case No. 00-5 was dispensed with, since he was handling both Branches 38 and 94. He further clarified that the alleged scheduled cockpit derby was never raised, much less mentioned, during the summary hearing conducted prior to the issuance of the temporary restraining order. The complainant, being a lawyer, should have anticipated all possible eventualities which the said case might bring upon the derby, since the complaint was served to him and his client barely a month before the scheduled event, or on June 21, 2000.

The respondent Judge further asserted that the petitioner in Civil Case No. 00-5 was able to establish the veracity and truthfulness of the allegations in his verified petition praying for the issuance of injunctive relief. Contrary to the complainant's accusation, there was nothing whimsical or arbitrary in the issuance of the subject TRO. On the issue of his inhibition orders, the respondent Judge pointed out that the merits thereof had already been considered and passed upon in the various resolutions issued by the Court. Moreover, contrary to the complainant's claim, he did notify the Office of the Court Administrator (OCA) of Judge Arenas' demise in a Letter dated January 15, 2002.

With regard to Civil Case No. 92-9 which the complainant alleged to have been pending since 1992, the respondent Judge explained that he assumed his post in Branch 94 (not Branch 38) only in 1996, and that the case was filed before Branch 38. He admitted, however, that he inadvertently failed to issue an order of inhibition thereto, but averred that he had already made the appropriate rectification and accordingly issued such an Order dated February 3, 2004.

The respondent claimed that the complainant's charge of habitual absenteeism is a bare allegation, designed to malign his name and reputation and derail his judicial career, being aware that he had a pending application for promotion. He added that the complainant even went to the extent of cajoling court personnel to issue a certification that he does not hold hearings on Mondays and Fridays to create a picture of blatant abuse of office.

In his Rejoinder dated May 4, 2004, the complainant claimed that since Marinduque has two branches, namely Branch 38 and Branch 94, the respondent Judge, the presiding judge of the latter court, violated the rule on raffling of cases when he unilaterally assumed control over Civil Case No. 00-5. The complainant also claimed that the respondent Judge misrepresented that the petitioner in the said civil case was the party entitled to the said franchise, asserting that the regional trial courts have no jurisdiction to declare a law unconstitutional.

In its Report dated February 3, 2005, the OCA recommended that the instant administrative complaint be dismissed for lack of merit.

In a Resolution^[3] dated March 16, 2005, the Court resolved to refer the instant administrative matter to Court of Appeals Associate Justice Remedios A. Salazar-Fernando for investigation, report and recommendation.

During the hearing of April 25, 2005, the complainant failed to appear; his counsel, Atty. Antonio R. Malasig, manifested that his client was still recuperating from an operation, and that he recently suffered a mild stroke. The complainant was, thus, submitting the case for resolution based on the pleadings submitted. The parties, thereafter, agreed to submit their respective memoranda, attaching thereto their documentary evidence, after which the case would be submitted for resolution.

In her Final Report and Recommendation dated June 6, 2005, the Investigating Justice made the following findings:

Respondent's culpability hinges on the propriety of his actuations in granting the prayer for the issuance of a temporary restraining order in Civil Case No. 00-5 and in issuing inhibition orders in thirty-one (31) other cases being handled by the complainant before Branches 38 and 94 of the RTC, Marinduque. Likewise, respondent is charged [with] habitual absenteeism for being regularly absent from his sala during Mondays and Fridays.

...

The undersigned finds no evidence of fraud, dishonesty, corruption or bad faith on the part of the respondent in issuing the assailed TRO in Civil Case No. 00-5, nor is there anything which indicates that the issuance thereof was attended with arbitrariness or deliberate intent to do an injustice. The procedure prescribed by law and the Rules was accordingly observed and followed by the respondent. The requisite notice and summary hearing on the TRO, which, as can be culled from the records, which were more than summary, were accorded the parties, sufficiently giving them opportunity to present their respective evidence. Whether or