

## SECOND DIVISION

[ A.M. No. RTJ-03-1768, May 24, 2004 ]

**CHITO M. CRUZ, COMPLAINANT, VS. THE HONORABLE ELIODORO G. UBIADAS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 72, OLONGAPO CITY, RESPONDENT.**

### R E S O L U T I O N

**QUISUMBING, J.:**

This administrative matter stems from a complaint<sup>[1]</sup> filed by Chito M. Cruz, Senior Deputy Administrator for Support Services of the Subic Bay Metropolitan Authority (SBMA), charging Honorable Eliodoro G. Ubiadas, Presiding Judge of the Regional Trial Court, Olongapo City, Branch 72, with violation of Supreme Court Circular No. 20-95 tantamount to gross ignorance of the law.

The facts are as follows:

Pursuant to Administrative Order No. 1 recalling Richard Gordon's re-appointment as Chairman of the Subic Bay Metropolitan Authority (SBMA),<sup>[2]</sup> Felicito Payumo assumed the said position. His legal staff reviewed contracts entered into by the previous administration and allegedly found certain residential lease contracts<sup>[3]</sup> disadvantageous to the government.

Thus, SBMA issued termination letters nullifying the contracts pursuant to Republic Act No. 3019;<sup>[4]</sup> demanding that certain occupants vacate residential units, and refusing to accept payment on said residential contracts. When the occupants of particular residential units refused to vacate them, SBMA filed ejectment cases before the Municipal Trial Court of Dinalupihan, Bataan.

Consequently, suits were filed by occupants of SBMA's residential housing units, a number of which are now the subject of this administrative complaint. Five (5) Civil Cases for Specific Performance with Consignation and Damages with Prayer for Temporary Restraining Order, were filed by various individual lessees of housing units within the zone, against SBMA whose lease contracts were not honored by the new administration of Chairman Payumo. Among them: *Paglinawan v. SBMA* (Civil Case No. 58-0-99), *Doropan v. SBMA* (Civil Case No. 85-0-99), *Nathaniel C. Santos v. SBMA* (Civil Case No. 118-0-99), *Elizabeth Daduya v. SBMA* (Civil Case No. 129-0-99), and *Richard J. Gordon v. SBMA* (Civil Case No. 149-0-99).

Freeport Properties, Inc. also filed a civil case for Specific Performance seeking to prevent SBMA from canceling the lease of 96 housing units within the *Freeport zone*. It was entitled *Freeport Properties, Inc. v. SBMA*, Civil Case No. 292-0-99.

The City of Olongapo, *Liga ng mga Barangay*, and *Liga ng Lumalabang Olongapeño* filed a complaint against the SBMA and Chairman Payumo, et al., for Injunction and

Consignation with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction, entitled *Olongapo City, Liga ng mga Barangay, and Liga ng Lumalabang Olongapeño v. Subicwater, Inc.*, Civil Case No. 317-0-99.

The Office of the Ombudsman filed a criminal case against Atty. Hedy Esmene-Diaz, former Corporate Secretary, for Falsification of Public documents docketed as *People v. Esmene- Diaz*, Criminal Case No. 634-99. [5]

All these cases were allegedly raffled to herein respondent without notice to SBMA, the adverse party.

Civil Case No. 58-0-99, *Paglinawan v. SBMA*, [6] was filed on February 10, 1999 for SBMA's refusal to receive rental payments. SBMA filed a Motion to Dismiss followed by a Supplemental Motion to Dismiss [7] in view of a directive issued by SBMA authorizing acceptance of all payments remitted by Paglinawan. However, the motion was denied by respondent judge for lack of merit. [8]

Civil Case No. 85-0-99, *Doropan v. SBMA*, filed on March 2, 1999, was immediately acted upon without hearing. A twenty (20)-day TRO, dated March 3, 1999 [9] was subsequently issued. SBMA filed a Motion to Dismiss with Motion to Dissolve TRO [10] assailing the complaint's lack of verification. A hearing was initially set, then reset on July 1, 1999 only to finally be cancelled. Thus, the motion was not acted upon by respondent.

The other cases: *Nathaniel Santos v. SBMA*, Civil Case No. 118-0-99; *Elizabeth Daduya v. SBMA*, Civil Case No. 129-0-99; and *Richard Gordon v. SBMA*, Civil Case No. 149-0-99, which were filed on March 17, 1999, March 24, 1999 and April 12, 1999, respectively, were filed during the two-month official leave of absence [11] of respondent judge. Except for *Daduya*, the complaints were likewise unverified. Motions to Dismiss were filed by SBMA on the ground of lack of verification. However, the movants failed to indicate a hearing date as the motions merely indicated that they were to be submitted for consideration by respondent judge immediately upon receipt thereof.

On June 1, 1999, upon return of respondent from his leave, the plaintiffs in *Doropan*, *Santos* and *Gordon* filed a consolidated Urgent Motion to Set for Hearing and Resolve Motion for Preliminary Injunction. [12] On the same day, SBMA was served a copy of the Notice of Resetting Hearing [13] for Complainant's Motion to Dismiss in the *Doropan* case for July 1, 1999. The *Santos*, *Daduya* and *Gordon* cases were set for hearing on June 17, 1999. [14]

On June 17, 1999 respondent judge issued an Order [15] in open court denying SBMA's Motions to Dismiss in the four (4) cases - *Doropan*, *Santos*, *Daduya* and *Gordon* - on the ground that the motions were allegedly defective for lack of "notice of hearing" prescribed under Rule 15, Section 4 [16] of the Rules of Court. The said order included the *Daduya* case albeit the motion to dismiss, said case clearly indicated a hearing date on July 1, 1999. A written order dated June 23, 1999, was issued formalizing the order made in open court.

Subsequently, respondent issued four (4) separate but completely identical Orders<sup>[17]</sup> granting the prayers for writ of preliminary injunction, again in the four (4) cases, all dated July 13, 1999. As expected, SBMA filed an Urgent Motion for Reconsideration dated July 23, 1999 of the four Orders.

Acting on the Urgent Motion for Reconsideration, respondent judge issued an Order dated July 27, 1999, giving the parties in the housing cases, five days within which to submit their Comment/Opposition to the said Urgent Motion for Reconsideration. The parties filed seven Motions for Extension of Time to submit the said Comment/Opposition. To date, after over three years, respondent judge has not resolved the said Urgent Motion for Reconsideration.

On February 2, 2000, SBMA filed a consolidated Motion for Inhibition<sup>[18]</sup> of respondent judge in the *Paglinawan, Doropan, Santos, Daduya, Gordon, Freeport Properties, Inc., and People v. Esmame-Diaz* cases. But the same was denied by respondent judge in his Order dated February 24, 2000.<sup>[19]</sup>

On September 24, 2001, SBMA filed a Motion to Dismiss the four housing cases after more than two years from its filing, for failure to prosecute under Rule 17, Section 3<sup>[20]</sup> of the New Rules of Civil Procedure. On December 18, 2001, SBMA filed a Reply with Motion to Strike Out and for Early Resolution in the cases of *Doropan, Santos, Daduya* and *Gordon*.

In *Freeport Properties, Inc. v. SBMA*, and *Olongapo City, et al. v. Subicwater*, filed on July 26, 1999 and August 17, 1999 respectively, a twenty (20)-day TRO was allegedly issued without a hearing.

Finally, in *People v. Esmame-Diaz*, SBMA alleges that it was irregular for respondent judge to disqualify the provincial fiscal of Zambales, Dorentino Z. Floresta, who was duly designated<sup>[21]</sup> by the Ombudsman to file and prosecute the criminal case of falsification against Atty. Hedy Esmame-Diaz.

For his defense, respondent judge testified that the questioned orders, being interlocutory in nature, were never challenged by the complainant before the higher courts. The said seven cases are still in their preliminary injunction stage, and no final decision on the merits has yet been rendered. Respondent adds that complainant's failure to elevate the matter to the Court of Appeals cannot now be remedied through the mere expediency of asking for his inhibition.

The respondent judge argues that the impugned orders do not mean he is biased or prejudiced against the present SBMA administration, as he has sound legal basis for his actions. Far from violating Canons 1 and 2 of the Canons of Judicial Ethics, respondent judge insists he was in fact seeking to uphold the integrity and independence of the judiciary by resisting every form of intimidation from the present SBMA administration.

Respondent judge warns that should he be enjoined from continuing to handle the subject cases, the same would have a "chilling effect" on the judges presiding over the three other branches of the RTC in Olongapo City-sending them a warning that they should always rule in favor of SBMA.

On March 7, 2003, the Court of Appeals found respondent judge liable for evident partiality and violation of Supreme Court Circular No. 20-95, tantamount to gross ignorance of the law and recommended the penalty of one year suspension or fine equivalent to a judge's salary for the same period.<sup>[22]</sup>

Except for the penalty recommended, we are in agreement with the conclusion reached by the Court of Appeals that respondent violated S.C. Circular No. 20-95.

Moreover, although we need not belabor the factual or legal basis for respondent judge's issuance of the TRO and preliminary injunction, we cannot turn a blind eye on the apparent irregularity which surrounded the two issuances. We do not approve of the unjustified haste within which Judge Ubiadas granted the injunctive relief despite patent defects in the petitions.

Every member of the judiciary is required to observe due care, diligence, prudence, and circumspection which the law requires in rendering public service<sup>[23]</sup> as much as they are charged with the knowledge of internal rules and procedures.<sup>[24]</sup> A judge's conduct should be beyond reproach and free from any appearance of impropriety.<sup>[25]</sup> He should administer his office with due regard to the integrity of the law, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law. Never for a moment must he provide any opportunity to be perceived as abusing or misusing his authority. Otherwise the faith of the people in the courts could be irreparably eroded.<sup>[26]</sup> These, we regret, the respondent has failed to maintain.

*First*, the records clearly show respondent judge violated Supreme Court Circular No. 20-95<sup>[27]</sup> now incorporated in paragraph 2, section 5, Rule 58 of the Revised Rules of Court in granting the injunctive relief. The Circular requires that raffling be conducted only after notice to the adverse party and in the presence of such party or counsel. He could not deny responsibility on the matter by contending that it was not incumbent upon him as vice-executive judge to ensure such requirements were complied with, considering that this duty pertained to the executive judge.<sup>[28]</sup> Such reasoning is disingenuous, to say the least. Except for the raffle of the *Doropan, Santos* and *Freeport* cases held on March 2, 1999, March 23, 1999 and March 27, 1999 respectively, respondent failed to refute SBMA's claims of irregularities in the raffle of the remaining cases. This matter could have clearly been threshed out had all the minutes of the raffle of the subject cases been presented. Instead, what he presented were minutes of the raffle of cases in which he was not the presiding or acting executive judge.

*Second*, respondent judge granted outright 20-day TROs and preliminary injunctions despite glaring formal defects, i.e., absence of proper verification and certification of non- forum shopping in the applications. These flaws are apparent in the pleadings on record of the subject cases where the verification(s) and certification(s) were not signed by the proper parties:

1. CC 58-0-99 (*Paglinawan vs. SBMA*), the **unverified** Complaint was filed on [February] 12, 1999. As there was no application for TRO, only for a writ of preliminary injunction, a hearing on the application for such injunctive relief was immediately set for February 25, 1999.

2. In CC 85-0-99 (*Doropan, et al. vs. SBMA, et al.*), the **unverified** Complaint was filed on March 2, 1999. The Respondent Judge issued on March 3, 1999 a TRO good for twenty days. The same expired on March 23, 1999 at a time when the Respondent Judge was on official leave of absence.

Upon his return to office on June 1, 1999, the plaintiffs therein filed, together with the plaintiffs in [Santos and Gordon Cases], an Urgent Motion to Set for Hearing and Resolve Motion for Preliminary Injunction, which was granted by the Respondent Judge through identical but separate orders all dated July 13, 1999.

3. In CC 118-0-99 (*Santos, et al. vs. SBMA, et al.*), the **unverified** Complaint was filed on March 17, 1999. No record of the issuance of a TRO appears on the record.
4. In CC 129-0-99 (*Daduya, et al. vs. SBMA, et al.*), the verified complaint was filed on March 24, 1999. Likewise, no proof of the issuance of a TRO was submitted by either party.
5. In CC 149-0-99 (*Gordon vs. SBMA, et al.*), the Complaint wherein the Verification and Certification against Forum Shopping was **signed by the counsel**, was filed on April 12, 1999. There is likewise no proof of the issuance of any TRO.
6. In CC 292-0-99 (*Freeport Properties, Inc. vs. SBMA*), the verified Complaint was filed on July 26, 1999. The Respondent Judge issued a TRO good for twenty (20) days on August 4, 1999, and set the hearing on the injunction on August 19, 1999 at 8:30 A.M.
7. In CC 317-0-99 (*City of Olongapo, et al. vs. SBMA, et al.*), wherein the Complaint and Verification against Forum Shopping **was executed by the counsel**, the same was filed on August 17, 1999. On the same day, a TRO good for twenty (20) days was issued by the Respondent Judge, setting the hearing on the injunction on August 25, 1999.<sup>[29]</sup>

Respondent contends that the omission of signatures of the plaintiffs on the verification and the certification against forum shopping was cured by their intention to verify the truth and correctness of their allegation as shown by their swearing before the notary public. This contention lacks merit. In all but exceptional cases, <sup>[30]</sup> counsel is not allowed to sign for the plaintiffs.<sup>[31]</sup> Time and again, the Court has held that although the rules<sup>[32]</sup> allow the issuance of *ex-parte* TROs in exceptional cases, the absence of proper verification by the parties themselves makes the application for preliminary injunction patently insufficient both in form and substance.<sup>[33]</sup> This is explicit in Section 5 of Rule 58<sup>[34]</sup> of the Rules of Court. The formal requirement of proper verification is indispensable.

In our view, the alleged urgency that necessitated the issuance of a writ of preliminary injunction in the four cases of *Paglinawan, Doropan, Santos and Gordon* was belied by the fact that there was a period of not less than three months when the application therefore could have been made earlier. Such inaction for at least three months raises suspicion that the plaintiffs purposely waited for respondent