

## THIRD DIVISION

[ A.M. No. RTJ-99-1506, August 09, 2001 ]

**JOSEFINA MERONTOS VDA. DE SAYSON, COMPLAINANT, VS.  
JUDGE OSCAR E. ZERNA, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

A temporary restraining order (TRO) may be issued *ex parte* by an executive judge in matters of extreme emergency, in order to prevent grave injustice and irreparable injury. Because such issuance of a TRO shall be effective only for seventy-two hours therefrom, as provided under Administrative Circular No. 20-95, the *ex parte* issuance of a 20-day TRO is unauthorized and may make the judge administratively liable.

#### The Case

Before us is an administrative case arising from a verified Letter-Complaint<sup>[1]</sup> dated February 25, 1997, filed by Josefina Merontos *vda. de* Sayson against Judge Oscar E. Zerna of the Regional Trial Court of Lanao del Norte, Branch 7. In a letter<sup>[2]</sup> dated March 3, 1997, Public Attorney II Vermin M. Quimco of the Public Attorney's Office, Iligan City, endorsed the Complaint to then Court Administrator Alfredo L. Benipayo. Attorney Quimco requested an investigation of the charges leveled against respondent; namely, gross ignorance of the law, gross misconduct and grave abuse of authority.

#### The Facts

The facts of this case are as follows.

On June 7, 1996, respondent issued a Temporary Restraining Order<sup>[3]</sup> in Civil Case No. 07-373 in favor of the plaintiff, Napoleon Lee Sr.; and against the defendants -- Francisco Lumayag, Jose Bravo and Ricardo Sayson -- as well as their agents, heirs and representatives. The Order directed defendants to refrain from entering the parcel of land covered by OCT No. P-11750, registered under the plaintiff's name in the Registry of Deeds of Lanao del Norte. The disputed lot, which is situated in Barangay Gumagamot, Lala, Lanao del Norte, has an area of 10,741 sq m. It is bounded southeast, southwest, and northwest by the Gumagamot River; and northeast by the property claimed by herein complainant.

On June 9, 1996, the TRO was served upon complainant by Deputy Sheriff Conrado Hingco Jr., who thereafter entered her two-hectare fishpond and harvested prawn and fish products from it.

In her verified Letter-Complaint, complainant sought injunction and damages from

respondent, whom she charged with bad faith in the issuance of the TRO without notice and hearing. She claims that the TRO was issued "with patent violation and disregard of the constitutional right of due process of the undersigned who is not even a party to the case," and that it was a "clear disregard and disobedience to Supreme Court Circular No. 20-95 prohibiting judges from issuing Temporary Restraining Orders (TROs) without the observance of the mandatory requirement of notice and summary hearing of the parties concerned." In her words:

"That on or about the second week of June 1996, while he was actually acting and performing his functions and duties as [p]residing [j]udge of RTC Branch 07, Tubod, Lanao del Norte, with apparent and manifest bias in favor of the plaintiff in Civil Case No. 07-373, in the person of Napoleon Lee Sr., and with patent violation and disregard of the constitutional right of due process of the undersigned who is not even a party to the case, said Judge Oscar Zerna, wilfully, wrongfully, and if not with gross ignorance of the constitution and pertinent law, and clear disregard and disobedience to Supreme Court Circular No: 20-95 prohibiting judges from issuing Temporary Restraining Orders (TROs) without the observance of the mandatory requirement of notice and summary hearing of the parties concerned, did actual[ly] issue and promulgate a temporary restraining order. A certified copy of said restraining order which would speak for itself is hereto attached as Annex A of this verified complaint.

"That is the very same temporary restraining order utilized by Sheriff Conrado Hingco Jr. the [p]rovincial [s]heriff of Judge Oscar Zerna, in entering x x x the land that I possessed and titled to my name, right after the issuance of said TRO, and capitalizing on my ignorance/innocence about legal process, he deceived me and my family to believe that such order authorize[d] him to harvest the prawn and fishpond products we introduced in my said fishpond. x x x.

"That as the restraining order speaks for itself, neither [complainant] nor any of the defendants were afforded by Judge Zerna x x x due process which includes the opportunity to be notified and heard in a summary hearing as required by the cited Supreme Court circular before issuance of the same."<sup>[4]</sup>

In his Comment dated July 15, 1997, respondent denied that the TRO was issued with ignorance of the law and abuse of authority. He contended:

"On June 7, 1996, a complaint was filed by plaintiff Napoleon T. Lee, Sr. versus Francisco Lumayag, Jose Bravo alias `Joe' and Ricardo Sayson for Injunction and Damages. The plaintiff alleged that he [was] an owner of a certain parcel of land at Barangay Gumagamot with an area of 10,741 sq. m., which is bounded on the S.E., S.W., and N.W., along lines 1-2-3-4-5-6-7-8-9 by Gumagamot River and on the N.E., along lines 9-10-11-12-13-14-1, a] property claimed by Josefina Sayson. - Plaintiff further alleged that he ha[d] title of ownership over the land as evidenced by