

## SECOND DIVISION

**[ A. M. No. RTJ-00-1536, November 28, 2000 ]**

**ATTY. REDENTOR S. VIAJE, COMPLAINANT, VS. JUDGE JOSE V. HERNANDEZ, REGIONAL TRIAL COURT, BRANCH 64, MAUBAN, QUEZON, RESPONDENT.**

### DECISION

**DE LEON, JR., J.:**

Before us is a verified complaint filed by Atty. Redentor S. Viaje with the Office of the Court Administrator on April 12, 1999, charging Judge Jose V. Hernandez of Regional Trial Court (RTC), Branch 64, Mauban, Quezon with ignorance of the law and grave misconduct.

The charges stemmed from Civil Case No. 0547-M entitled "Gavino de Asis vs. Municipality of Mauban, Quezon, represented by Mayor Fernando Llamas" for Damages with Prayer for Issuance of Preliminary Injunction,<sup>[1]</sup> pending before the court of the respondent Judge Hernandez.

According to Atty. Viaje, his client filed a civil case on October 6, 1998 against the municipality because the mayor was arbitrarily converting plaintiff's farmland into a Core Housing Project. Despite service of a copy of the complaint to the defendant and receipt by the court of the sheriff's return of service, Judge Hernandez refused to act on plaintiff's prayer to set for hearing his application for preliminary injunction.

On December 7, 1998, defendant Mayor Llamas filed a Motion to Dismiss.<sup>[2]</sup> Instead of giving due course to the plaintiff's prayer for injunctive relief, respondent judge issued an Order dated December 10, 1998 setting the hearing for defendant's Motion to Dismiss on January 14, 1999. On the date of the hearing, plaintiff filed an Opposition to Motion to Dismiss<sup>[3]</sup> requesting that his prayer for injunction be set for hearing. Plaintiff alleged that his prayer was virtually ignored by respondent judge and to aggravate matters, he reset the hearing for the Motion to Dismiss to February 26, 1999, which was further reset to March 26, 1999. Plaintiff also alleged that respondent judge's acts are clear manifestations of his ignorance of Rule 58 of the 1997 Rules of Civil Procedure and his partiality amounting to grave misconduct.

In his Comment, Judge Hernandez contended that none of the actions taken by him in Civil Case No. 0547-M may be considered arbitrary or biased as he had done nothing amounting to grave misconduct or ignorance of the law. According to him, his only intention was to prevent the improvident issuance of a writ of preliminary injunction and/or to avert the improper denial of the same. Judge Hernandez clarified that in order to be entitled to an injunctive writ, one must show an unquestionable right over the premises and that such right has been violated. He said that plaintiff was not able to show a right over the subject property since he