



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LUCIA O. MAGTIBAY,
Complainant,

A.M. No. RTJ-11-2271
(Formerly OCA I.P.I. No. 09-3239-RTJ)

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
BERSAMIN,*
MENDOZA, and
PERLAS-BERNABE,** JJ.

JUDGE CADER P. INDAR, Al
Haj., Regional Trial Court,
Branch 14, Cotabato City.

Promulgated:

Respondent.

24 September 2012

X-----

Macaraan

DECISION

PERALTA, J.:

Before this Court is an Administrative Complaint¹ filed by Lucia O. Magtibay (complainant), through counsel, Atty. Frumencio E. Pulgar, against Judge Cader P. Indar, Al Haj (respondent judge) of the Regional Trial Court of Cotabato City, Branch 14, for Gross Ignorance of the Law and deplorable conduct, relative to Special Proceedings No. 2004-074 entitled *In Re: Matter of Insolvencia Voluntaria De Olarte Hermanos y Cia, Heirs of the Late Jose P. Olarte, et al.*

* Designated Acting Member, in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1320-A dated. September 21, 2012.

** Designated Acting Member, per Special Order No. 1299-D dated August 28, 2012.

¹ Rollo, pp. 2-9.

The facts are as follows:

Complainant is one of the heirs of the late Jose Olarte, who was one of the original stockholders of *Olarte Hermanos y Cia*. Upon the death of the stockholders/owners, the surviving heirs, including herein complainant, filed a Petition for Involuntary Dissolution of the company before the Regional Trial Court, Branch 14, Cotabato City, docketed as Special Proceedings No. 2004-074. During the course of the proceedings, an Intervention was filed by Mercedita Taguba-Dumlao (Dumlao), acting as attorney-in-fact of one Vicente Olarte, who was allegedly an heir of the late Jose Olarte.

Thereafter, the Department of Public Works and Highways (DPWH) constructed a national highway that traversed about four kilometers of its distance within the property of *Olarte Hermanos y Cia*. Subsequently, the Regional Trial Court, Branch 14, Cotabato City granted petitioner's motion to direct the Regional Director (Region XII) of the DPWH to cause the payment of the partial consideration of the road right-of-way of the petitioners.

Complainant claimed that Dumlao collected a huge amount of money from the DPWH as compensation for the road right-of-way claims of the heirs of *Olarte Hermanos y Cia* by forging, manufacturing, falsifying documents and even fraudulently misrepresenting a non-existent person. Thus, complainant filed several criminal cases against Mercedita Taguba-Dumlao before the Department of Justice.

Complainant and other petitioners then filed an Application for Writ of Preliminary Injunction and/or Temporary Restraining Order, praying that an Order be issued enjoining the DPWH from entertaining any claims

submitted by Dumlao as well as prohibiting the latter from representing the petitioners before the DPWH or any other government agency where the *Olarte Hermanos y Cia* have legal and subsisting claims. Complainant also filed a Manifestation with Motion for Correction or Amendment of Caption, accusing Dumlao of employing machination by making it appear in the pleadings that complainant's name was “Lucia Olarte-Ong,” and praying that the caption in Special Proceedings No. 2004-074 be amended to reflect her legal and true name “Lucia Olarte-Magtibay.”

On March 17, 2009, respondent judge issued an Order² noting the Motion for Amendment of Caption. However, anent the motion for the issuance of TRO, respondent judge required the intervenors to submit a Comment within ten days from receipt of the Order and further ordered that upon submission of said Comment, the case be set for hearing for reception of additional evidence and/or arguments from both parties. Complainant claimed that Intervenors only took one week from March 17, 2009 to submit their Comment but failed to furnish them a copy thereof.

In the disputed Order³ dated March 26, 2009, respondent judge denied the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order for utter lack of merit and berated complainant for having allegedly filed libelous pleadings and threatened her with imposition of fine if the same allegations are repeated.

However, complainant argued that there was no hearing on the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order that would determine the veracity of their allegations. Complainant, hence, suspected that respondent judge was denying complainant's motions and request in order to favor the intervenors. Complainant likewise pointed

² *Id.* at 216.

³ *Id.* at 81-82.

out that the context of respondent judge's March 26, 2009 Order appeared as if he was “lawyering” for Dumlao and Vicente L. Olarte.

Complainant further claimed that they filed a Motion for Reconsideration with Motion for Inhibition of respondent judge, but the said motion was left unresolved by respondent judge. It likewise did not help that respondent judge exhibited rude behavior against complainant's counsel and authorized representative, Victoria S. Tolentino and Jommel L. Valles (Valles). Complainant claimed that said representatives, particularly Valles, experienced unwarranted boorish and scurrilous treatment from respondent judge.

In his *Sinumpaang Salaysay*,⁴ Valles deposed that on May 18, 2009, he, together with complainant's daughter, Leonida M. Delos Santos, tried to secure some documents relative to Special Proceedings No. 2004-074. However, after waiting for several hours, Valles claimed that respondent judge confronted them and argued that they have no legal personality to acquire said documents, thus, denied their request. He further narrated that while they were explaining that they were the same people who filed for certain motions, respondent judge said, “*Denied na ung motion nyo.*” Valles added that when Delos Santos insisted on their request, respondent judge retorted “*Huwag mo ng ituloy ang sasabihin mo kumukulo ang dugo sa inyo lumayas na kayo marami akong problema.*” He claimed that respondent judge even stated: “*Ireklamo ninyo na ako ng administratibo sa Supreme Court at sila ang magsabi kung pwede ko kayong bigyan ng kopya ng records.*”

Thus, the instant complaint against respondent judge.

⁴ *Id.* at 39.

On August 10, 2009, the Office of the Court Administrator (OCA) directed respondent judge to comment on the complaint against him.⁵

In his Comment⁶ dated October 6, 2009, respondent judge argued that the Application for Preliminary Injunction and/or TRO, Manifestation with Motion for Correction or Amendment of Caption, and the Comment and Opposition thereto, presented no genuine issues that would warrant hearing of the same, thus, the denial for lack of merit. Respondent judge further added that in fact complainant was already estopped from asserting her claims and allegations as she had already received her share from the estate and the DPWH.

Anent the unresolved Motion for Reconsideration with Motion for Inhibition, respondent judge explained that it was filed out of time, or twenty-seven (27) days after the issuance of the Order dated March 26, 2009 and presented no new issues. As to the matter of his inhibition, respondent judge claimed that the same was merely based on suppositions and speculations without proof of his alleged bias. Thus, respondent judge pointed out that his silence in resolving the aforesaid motions meant that he has adopted the “Order of Denial” issued on March 26, 2009. Respondent judge further argued that “ *Pro forma pleading, like the Motion for Reconsideration filed by complainant, is at the court's discretion which may be disregarded, especially if the main case are grounded on falsities and malicious imputations of unfounded accusation, hence, to the mind of the court, there is nothing more to reconsider.*”⁷

As to the allegation of respondent judge's denial of complainant's request to secure photocopies of certain documents, respondent judge

⁵ *Id.* at 52.

⁶ *Id.* at 61-73.

⁷ *Id.* at 71. (Emphasis ours.)

insisted that the denial was proper considering the following circumstances, to wit: (a) complainant's counsel was already furnished with a copy of the Comment/Opposition, hence, there was no need to provide them with a new copy; (b) the authorization letter to request for copies of “other pertinent pleadings” failed to specify what documents were to be reproduced; (c) complainant has no personality in Special Proceedings No. 2004-074, since she is neither a petitioner nor an intervenor thereat; (d) the requested pleadings or documents would be used by complainant's counsel to support the criminal complaint they filed against the intervenors with the DOJ; (e) the request came at a later date after the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order was denied on March 26, 2009; and (f) the two *Sinumpaang Salaysay* separately executed by Jommel Valles and Victoria Tolentino were self-serving documents containing allegations from “*demented persons like affiants.*”⁸

In a Memorandum⁹ dated December 15, 2010, the OCA found respondent judge guilty of Undue Delay in Rendering an Order and Conduct Unbecoming a Judge, and recommended that respondent judge be sternly warned and be fined in the amount of ₱20,000.00. It further recommended that the administrative complaint against respondent judge be redocketed as a regular administrative matter.

On February 9, 2011, the Court resolved to re-docket the complaint as a regular administrative matter against respondent judge.¹⁰

RULING

The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case,

⁸ *Id.* at 70-71. (Emphasis supplied.)

⁹ *Id.* at 218-226.

¹⁰ *Id.* at 227.

since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with.¹¹ In the absence of fraud, dishonesty, or corruption, as in this case, the acts of a judge in his judicial capacity are not subject to disciplinary action.

However, in so far as the requirement of hearing in cases of denial of the application for the issuance of a TRO, it must be emphasized that while it is true that the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense, the Court has time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due process. What the law proscribes is the lack of opportunity to be heard.¹² Indeed, respondent judge's order for intervenors to submit their comments on the application for the issuance of TRO constitutes substantial compliance in so far as the parties' right to due process since the latter do not strictly call for a formal or trial-type hearing.

However, on the charge of undue delay in resolving the Motion to Dismiss and Motion for Inhibition, we agree that respondent judge should be liable thereto. Respondent judge admitted that he did not act on the motion pending before his court, albeit, he justified this by saying that his silence or inaction should be construed as denial. We do not agree. Even assuming that respondent judge did not find the motion to be meritorious, he could have simply acted on the said motions and indicated the supposed defects in his resolutions instead of just leaving them unresolved.¹³

¹¹ *Barbieto v. Court of Appeals*, G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840.

¹² *Id.* at 843-844.

¹³ *Heirs of Simeon Piedad v. Judge Estrera*, A.M. No. RTJ-09-2170, December 16, 2009, 608 SCRA 268, 278.

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.¹⁴

There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable, especially now when our all-out effort is directed towards minimizing, if not totally eradicating, the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.¹⁵

We likewise agree with the OCA's finding that respondent exhibited rude behavior in dealing with the public. Whether complainant and her counsel were entitled to the requested documents is not the issue, but the manner of how he declined the request. Certainly, his statement which he did not deny: “*Huwag mo ng ituloy ang sasabihin mo kumukulo ang dugo sa inyo lumayas na kayo marami akong problema*” does not speak well of his position as member of the bench. Noticeably, even in his Comment,

¹⁴ *Id.*, citing *Biggel v. Pamintuan*, A.M. No. RTJ-08-2101, July 23, 2008, 559 SCRA 344.

¹⁵ *Id.*

respondent's choice of words was likewise inappropriate.¹⁶ This we will not tolerate.

However, during the pendency of this case, we note that in *A.M. No. RTJ-10-2232*,¹⁷ respondent has already been dismissed from the service that already attained finality considering that respondent did not file any motion for reconsideration. Nevertheless, it should be emphasized that the same does not render the instant case moot and academic because accessory penalties may still be imposed.

In *Pagano v. Nazarro, Jr.*,¹⁸ indeed, we held:

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there are **other penalties which may be imposed on her if she is later found guilty of administrative offenses** charged against her, namely, the **disqualification to hold any government office and the forfeiture of benefits**.¹⁹

Under Section 9 (1), Rule 140 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, respondent's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In view of respondent's dismissal from service, the OCA's recommendation of a fine in the amount of ₱20,000.00 is, therefore, in order considering that respondent was found guilty for both undue delay in rendering an order and conduct unbecoming of a judge.

¹⁶ 5. x x x hence, do not deserve any weight in law" but utmost an allegations of harassment **from demented persons like the affiants.**

6. x x x (*Rollo*, p. 71) (Emphasis supplied.)

¹⁷ *Office of the Court Administrator v. Judge Cader P. Indar*, April 10, 2012.

¹⁸ G.R. No. 149072, September 21, 2007, 533 SCRA 622.

¹⁹ *Id.* (Emphasis ours; citation omitted.)

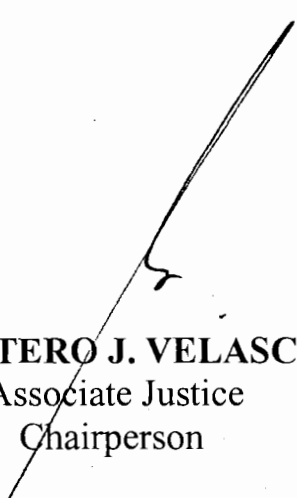
WHEREFORE, this Court finds respondent **CADER P. INDAR, Al Haj. GUILTY** of Undue Delay in Rendering an Order and Conduct Unbecoming of a Judge, and he is accordingly **FINED** in the amount of Twenty Thousand Pesos (₱20,000.00), to be deducted from his leave credits, if there is any.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



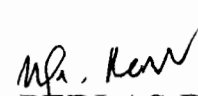
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice