

## **FIRST DIVISION**

**[ A.M. No. MTJ-19-1925 (Formerly OCA IPI No. 17-2937-MTJ), June 03, 2019 ]**

**MADELINE TAN-YAP, COMPLAINANT, V. HON. HANNIBAL R. PATRICIO), PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), PRESIDENT ROXAS-PILAR, CAPIZ, RESPONDENT.**

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

**DEL CASTILLO, J.:**

This administrative complaint stemmed from a Complaint for Recovery of Possession and Damages filed by Nemesio Tan (Tan), father of complainant Madeline Tan-Yap (complainant), against Robenson Benigla (Benigla), father-in-law of respondent Judge Hannibal R. Patricio, docketed as Civil Case No. V-09-11 of the Regional Trial Court (RTC) of Capiz. In the said case, the parties entered into a Compromise Agreement which was approved by the RTC. The pertinent portions thereof read:

x x x x

2) That [Benigla] admits [Tan's ownership of] Lots 703 and 706, both of Pilar Cadastre, the properties subject of the above-entitled case;

3) That, the parties agreed to cause the relocation of the properties involved to determine the exact location of the cockpit and other structures subject matter of the complaint;

4) That, the (costs or expenses for the) relocation shall be borne by the parties pro[-]rata;

x x x x

6) That, the parties shall peacefully cooperate in the conduct of the relocation survey;

7) That, in case the relocation survey will show that the cockpit and the other structures constructed are inside the properties owned by [Tan], [Benigla] shall voluntarily remove the same immediately and return possession thereof to [Tan], however, if said cockpit and structures are outside of Lots 703 and 706, [Tan] shall seek the dismissal of the above-entitled case;

8) That, failure of any of the parties to comply with the terms and conditions of this compromise agreement shall entitle the aggrieved party to file an ex-parte motion for execution;

x x x<sup>[1]</sup>

Complainant alleged that, pursuant to the said court-approved compromise agreement, the trial court issued an order directing a private surveying company to conduct a relocation survey on Lot Nos. 703 and 706. After the survey was done, it was found that the cockpit lay inside Lot No. 706. Benigla, however, questioned this finding claiming that the private surveyor who conducted the survey was not a licensed geodetic engineer. He, thus, asked the trial court to designate a surveyor from the Department of Environment and Natural Resources. This motion was, however, denied, as well as the motion for reconsideration. Aggrieved, Benigla filed a *certiorari* petition before the Court of Appeals (CA). However, the CA did not grant Benigla's prayer for the issuance of a temporary restraining order; thus, complainant filed a Motion for Execution of the Judgment which was granted by the trial court. Accordingly, a Writ of Execution was issued on February 6, 2015 and, together with a Demand for Compliance/Delivery of Possession, the same was served upon Benigla on February 26, 2015.

In the morning of March 10, 2015, Sheriff IV Romeo C. Alvarez, Jr. (Sheriff Alvarez) and Process Server Edgar Dellava (Process Server Dellava), both of the RTC of Capiz, Branch 19, went to the premises of Lot Nos. 703 and 706 for the final implementation of the writ of execution. However, they were met by respondent judge who told them that he would not allow the fencing of Lot Nos. 703 and 706. Respondent judge claimed that he and his wife, Ruby Benigla Patricio (Ruby), actually own the adjoining Lot No. 707, and not his father-in-law, Benigla. Respondent judge allegedly lamented that he and Ruby were not impleaded as defendants in Civil Case No. V-09-11 notwithstanding the fact that they owned the adjoining Lot No. 707, consequently, they were not notified of the relocation survey that was conducted on Lot Nos. 703 and 706. Respondent judge thus suggested that, if Sheriff Alvarez and his men were to push thru with the implementation of the writ of execution, "something untoward might happen". Respondent judge then declared that he would file a manifestation before the trial court as regards the situation at hand. Because of these, Sheriff Alvarez and Process Server Dellava, along with the men who were supposed to fence Lot Nos. 703 and 706, left the premises.

In his Report of March 13, 2015,<sup>[2]</sup> Sheriff Alvarez mentioned that during the confrontation with respondent judge, a host of motorcycle-riding men started going back and forth in the premises. This fact, coupled by respondent judge's statement that "*kung padayonan nyo, basi maghinagamo*" (if you continue with the implementation, something untoward might happen), impressed upon Sheriff Alvarez and his companions that their security was at risk; hence, they decided to just leave the place.

After this, respondent judge's wife, Ruby, filed with the RTC a Motion to Intervene and Opposition to the Implementation of the Writ of Execution and Issuance of Writ of Demolition<sup>[3]</sup> dated March 16, 2015. In the filing of this motion, Ruby was assisted by respondent judge himself, who affixed his signature above the printed name "JUDGE HANNIBAL R. PATRICIO" on page three of the said motion.

Nevertheless, the RTC denied this motion for lack of merit in an Order<sup>[4]</sup> dated March 24, 2015.

Given these facts, complainant contended that respondent judge violated the New Code of Judicial Conduct: (1) when he unduly intervened in the implementation of the writ of execution; (2) when he threatened Sheriff Alvarez and the latter's

companions and stopped them from carrying out the writ of execution; (3) when he assisted his wife Ruby in filing a motion to intervene in Civil Case No. V-09-11; and (4) when he abandoned his work station on the day of the supposed implementation of the writ of execution.

In his Comment,<sup>[5]</sup> respondent judge denied the accusations against him. He claimed that the intended fencing of Lot Nos. 703 and 706 pursuant to the writ of execution would have prejudiced him and his wife insofar as their Lot No. 707 was concerned; that the sketch plan on which the relocation and fencing would be based was incorrect and invalid because on its face, it omitted to show that Lot Nos. 706 and 703 were bounded or surrounded by Lot No. 707; that this was the reason why he believed that the implementation of the writ of execution and the intended relocation and fencing of Lot Nos. 703 and 706 would have resulted in the encroachment on their Lot No. 707; that his action was justified under Article 429 of the Civil Code under which the owner of a thing has the right to exclude any person from the enjoyment and disposal thereof, and under which the owner may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

Respondent judge denied that he threatened to stop Sheriff Alvarez from implementing the writ of execution; that all he did was to engage Sheriff Alvarez in a conversation, that is, by *"telling, arguing, and asking the sheriff to afford him and his wife the time (until Friday or March 13, 2015) for him and his wife to be able to file the proper manifestation in court with respect to their rights over Lot No. 707, Pilar Cadastre, that would be affected or encroached upon by the relocation and fencing of Lot Nos. 706 and 703 x x x"*.<sup>[6]</sup> Respondent judge claimed that Sheriff Alvarez in fact did not mention in his report that he (respondent judge) threatened Sheriff Alvarez or would have inflicted bodily harm upon him; that he even assured Sheriff Alvarez that, should it be confirmed that no encroachment would result from the fencing of Lot Nos. 703 and 706, he himself (respondent judge) would help in putting up said fence; that his statement that *"trouble might ensue should Sheriff Alvarez proceed with the implementation"* was not synonymous with the use of brute force. In fine, respondent judge insisted that he was only trying to protect his and his wife's proprietary rights, and that he never acted beyond the bounds of the law.

Respondent judge added that he and his wife were entitled to their day in court and it was this fact that prompted him to assist his wife in preparing and filing the motion to intervene; that the assistance he provided his wife was anchored on their interest in Lot No. 707, and not on any intention on his part to engage in the private practice of law. Respondent judge denied that he abandoned his post on the day of the supposed implementation of the writ of execution since he was on sick leave that day.

### ***Report and Recommendation of the Office of the Court Administrator (OCA)***

In its Report and Recommendation,<sup>[7]</sup> the OCA found that respondent judge improperly interfered with the implementation of the writ of execution and that this interference constituted conduct unbecoming of a judicial officer, viz.:

In the instant case, there was a valid writ of execution to be implemented. Respondent Judge Patricio committed an unlawful act when he interfered with the final implementation of the writ. Such act was

improper for the esteemed office of a magistrate of the law and is tantamount to x x x conduct unbecoming a judicial officer. He practically took the law into his own hands when he stopped the implementation of the writ invoking his proprietary rights. As a judge, respondent Judge Patricio should be familiar with the laws and the appropriate legal remedies to protect his and his wife's right[s] over Lot No. 707, which was allegedly encroached [upon] by plaintiff Tan. Respondent Judge Patricio's defense that he merely asserted his right to prevent the encroachment, invasion, and usurpation of Lot No. 707 owned by him and his wife cannot justify his assailed action. He should have realized that the public would expect him to act in a manner reflecting the dignity and integrity of a judge. His demeanor as a judge should always be with utmost circumspection.<sup>[8]</sup>

Even then, the OCA recognized respondent judge's intention to protect his and his wife's property rights, thus:

Still, respondent Judge Patricio cannot be completely faulted for protecting his and his wife's proprietary rights. This is but human nature. Such action cannot be considered grossly repugnant. Thus, while he was previously penalized for another infraction, a fine of P20,000.00 is the appropriate penalty after taking into account the attendant circumstances.<sup>[9]</sup>

Thus, the OCA recommended that:

1. the instant administrative complaint be RE-DOCKETED as a regular administrative matter; and
2. Presiding Judge Hannibal R. Patricio, Municipal Circuit Trial Court, President Roxas-Pilar, Capiz, be FINED in the amount of P20,000.00 for violation of Canon 4, Section 1 of the New Code of Judicial Conduct for the Philippine Judiciary, with a WARNING that a repetition of the same or any similar act would be dealt with more severely.<sup>[10]</sup>

### **The Court's Ruling**

The Court agrees with the findings and recommendation of the OCA but modifies its recommended penalty.

To recall, respondent judge was charged with the following: (1) that he unduly intervened in or interfered with the implementation of the writ of execution; (2) that he resorted to threats and intimidation to stop the implementation of the writ of execution; (3) that he assisted his wife in filing a motion to intervene in Civil Case No. V-09-11; and (4) that he abandoned his work station on the day of the supposed implementation of the writ of execution.

At the outset, the Court finds no merit to the charge that respondent judge abandoned his work station on March 10, 2015 since a Certification<sup>[11]</sup> from the Office of Administrative Services of the OCA shows that he was on sick leave that day.

Nevertheless, the Court holds that the other charges have been substantiated. Respondent judge did not deny his presence at the premises of the properties