

SECOND DIVISION

[A.M. No. RTJ-18-2525 (Formerly OCA IPI No. 15-4435-RTJ), June 25, 2018]

SAMUEL N. RODRIGUEZ, COMPLAINANT, VS. HON. OSCAR P. NOEL, JR., EXECUTIVE JUDGE/PRESIDING JUDGE, REGIONAL TRIAL COURT OF GENERAL SANTOS CITY, BRANCH 35, RESPONDENT.

R E S O L U T I O N

PERLAS-BERNABE, J.:

For the Court's resolution is the complaint-affidavit^[1] filed by complainant Samuel N. Rodriguez (Rodriguez) against respondent Judge Oscar P. Noel, Jr. (respondent) of the Regional Trial Court of General Santos City, Branch 35 (RTC), for violation of the Rules of Court and the Code of Judicial Conduct, Gross Ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality, relative to **Misc. Case No. 3957**, entitled "*In the Matter of Determination of Bail, Charles Emmanuel A. Gabato II, Cyrex Basalo, Arjay Balansag, and Exequiel A. Labrador, Jr., Petitioner,*" and **Civil Case No. 8588**, entitled "*Golden Dragon International Terminals, Inc. (GDITI), represented by its president, Virgilio S. Ramos, v. Samuel N. Rodriguez.*"

The Facts

In the complaint-affidavit, Rodriguez stated that he took over the operations of Golden Dragon International Terminals, Inc. (GDITI) at MAKAR Wharf, General Santos City, after the Writ of Preliminary Mandatory Injunction (As Amended)^[2] dated January 8, 2014 issued in relation to Civil Case No. 1043^[3] was implemented. GDITI is in the business of receiving and disposing the liquid and solid wastes generated by docking vessels.^[4] The previous management, headed by a certain Cirilo Basalo^[5] (Basalo), was supposed to cease from handling the operations of GDITI, but when the latter defied the injunctive writ, Rodriguez filed a motion for its reimplementation, which was granted.^[6] Consequently, on June 26, 2015, Rodriguez and the court sheriff went to the port to inspect the operations and saw a truck reportedly owned by Basalo transporting solid wastes from the docking vessel. While he was taking pictures of the truck, another vehicle driven by Basalo suddenly came from behind with the intent to sideswipe him. He initially dodged the vehicle but was nonetheless hit when he tried to chase it. While he was on the ground, another vehicle stopped in front of him and a number of armed men stepped out and pointed their guns at him. Fortunately, he was able to run away and hide.^[7]

As a result of the incident, Rodriguez filed a complaint^[8] for Frustrated Murder on June 29, 2015 against Basalo and his companions.^[9] However, on June 28, 2015, a Sunday, respondent issued a Temporary Release Order^[10] in favor of Basalo and

one of his companions, Arjay J. Balansag (Balansag). Rodriguez argued that while executive judges can act on petitions for bail on Sundays and holidays, a petition for bail must be filed before the court can act on it; here, it was only on June 29, 2015, or the following Monday, that Basalo and his companions actually filed the Petition (Determination of Bail), docketed as Misc. Case No. 3957.^[11]

Another, Rodriguez claimed that in Civil Case No. 8588, respondent issued, on July 10, 2015,^[12] a 72-hour temporary restraining order (TRO) enjoining him from causing any act that might cause violence and to maintain the *status quo* in GDITI. A Notice^[13] of special raffle was also issued by respondent and was received by Rodriguez's aunt on the same date.^[14] To his surprise, however, on July 14, 2015,^[15] the 72-hour TRO was extended for another twenty (20) days, or way beyond the 72-hour period. Rodriguez claimed that he was also not furnished a copy of the notice of hearing relative to the extension of the TRO.^[16]

Pursuant to the 1st Indorsement^[17] dated August 26, 2015 of the Office of the Court Administrator (OCA), respondent filed his comment^[18] on December 21, 2015. On the issue of the propriety of the issuance of the June 28, 2015 Temporary Release Order, respondent averred that the accused were, in fact, arrested and detained by the police on June 26, 2015. On the evening of June 28, 2015, which fell on a Sunday, a representative of the accused, together with their lawyer,^[19] went to his house bringing with them a petition for bail. After a review of the pleading, he issued an Order^[20] dated June 28, 2015 directing the City Prosecutor to file a comment^[21] which the latter did^[22] on the same day with the recommended amount of bail. The accused accordingly posted bail. Thus, he issued the June 28, 2015 Order at 10:00 p.m., directing the temporary release of the accused, and stating that the required bond had been deposited with him and will be turned over for proper issuance of receipt to the Office of the Clerk of Court (OCC) at the soonest practicable time.^[23] This explains why the stamp of the OCC in all the documents was dated June 29, 2015, the following working day.^[24]

On the issue of the propriety of the issuance of the 72-hour TRO, respondent claimed that he issued the same on July 10, 2015, a Friday, in his capacity as an Executive Judge. As no raffle could be conducted within that 72-hour period as required by the Rules of Court because it was a weekend, the special raffling was set the following Monday, or on July 13, 2015 with the case eventually being raffled to him. Unfortunately, he could not immediately act on it because he and his staff had to take a 70-minute drive from General Santos City using the Enhanced Justice on Wheels (EJOW) bus to conduct hearings in Malungon, Sarangani Province.^[25] Neither could he determine and provide the exact time of their return to the city given the number of hearings scheduled in the EJOW program. Thus, the hearing for the extension of the TRO - for the parties to maintain the *status quo* and refrain from causing any act that might trigger violence - was set the day after, or on July 14, 2015; Rodriguez, however, was not directed to cease and desist from his business operations.^[26]

The OCA's Report and Recommendation

In a Memorandum^[27] dated January 15, 2018, the OCA recommended that

respondent be reprimanded for gross ignorance of the law or procedure and be reminded to be more circumspect in the performance of his duties.

The OCA found respondent guilty of gross ignorance of the law when he issued the assailed orders relative to the TRO. According to the OCA, the TRO was issued on July 10, 2015, Friday, at 8:00 a.m., and expired after 72 hours on July 13, 2015, Monday, at 8:01 a.m.^[28] Based on this timeline, the OCA held that respondent, on July 14, 2015, extended the TRO for another twenty (20) days, beyond the period allowed by the Rules. In this regard, the OCA pointed out that under Item No. 9, Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,^[29] gross ignorance of the law or procedure is classified as a serious charge, which, under Section 11 (A) of the same Rules, merits the penalty of either dismissal from service, suspension from office, or a fine. However, considering that this is respondent's first infraction of this nature after his sixteen (16) years of service in the Judiciary and his justifiable explanation for failing to schedule the required summary hearing due to the hectic schedule of the EJOW, the OCA, instead, recommended the penalty of reprimand.^[30]

The OCA, however, was silent on the matter of the issuance of the Temporary Release Order in Misc. Case No. 3957.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent should be held administratively liable for violation of the Rules of Court and the Code of Judicial Conduct, Gross Ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality.

The Court's Ruling

Preliminarily, the Court notes that the OCA did not make any explicit finding/recommendation on the administrative charge against respondent in connection with the issuance of the Temporary Release Order in Misc. Case No. 3957. This notwithstanding, the Court is not without power and authority to directly act on the matter. Section 6, Article VIII of the 1987 Constitution vests in the Court administrative supervision over all courts and the personnel thereof. Consistent with this authority, the Court has the discretion to directly rule on the administrative charge against respondent relative to Misc. Case No. 3957, even in the absence of prior action from the OCA.

To recount, Rodriguez charges respondent with administrative liability because he issued the June 28, 2015 Temporary Release Order before the petition for bail was filed with the OCC on June 29, 2015.

The argument is untenable. Records show that the accused in Misc. Case No. 3957 were arrested and detained at the Criminal Investigation and Detention Unit of General Santos City - within respondent's territorial jurisdiction-on June 26, 2015, a Friday. Among those detained were Basalo and Balansag who were accused of Frustrated Murder. Frustrated Murder is punishable by *reclusion temporal*, the penalty lower by one degree than that provided for consummated murder.^[31] Considering that they are not charged with an offense punishable by death,

reclusion perpetua, or life imprisonment, Basalo and Balansag were entitled to bail as a matter of right as guaranteed by the Constitution^[32] and pursuant to Section 4,^[33] Rule 114 of the Rules of Court. Cognizant of the same, and intending to secure their immediate release from detention before they are charged in court,^[34] Basalo and Balansag's representative, Atty. V. Emmanuel C. Fontanilla, went to respondent's house on June 28, 2015, a Sunday, with the petition for bail.^[35] After reviewing the same, respondent then ordered the City Prosecutor to comment thereon, with which the latter immediately complied and stated the recommended amount of bail. Since Basalo and Balansag immediately posted the required bail, respondent issued the Order on the same date, directing the temporary release of the accused. Considering that all these incidents occurred on a Sunday (June 28, 2015), when government offices, including the OCC, were expectedly closed and where no pleadings could be filed, the amount paid by the accused as bail, as well as their petition for bail, the City Prosecutor's Comment, and respondent's Temporary Release Order were all turned over for proper filing to and stamp-dated by the OCC on June 29, 2015 - the next working day.

In short, while the petition for bail was filed with the OCC only on June 29, 2015, the application for bail and comment thereon by the City Prosecutor had been submitted to and considered by respondent on June 28, 2015 before he issued the order for the temporary release of the accused. There is nothing in the law or the rules that prevented respondent from acting on the bail application submitted to him on a weekend. Accordingly, respondent acted in accordance with the rules in granting the application for bail.

As regards the 72-hour TRO, the Court agrees with the findings and recommendations of the OCA.

Section 5, Rule 58 of the Rules of Court pertinently states:

Section 5. Preliminary injunction not granted without notice; exception.

- x x x.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-*sala* court or the presiding judge of a single-*sala* court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, **within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.**

x x x (Emphases supplied)