

THIRD DIVISION

[A.M. No. P-09-2665, August 04, 2009]

JUDGE ALMA CRISPINA B. COLLADO-LACORTE, METROPOLITAN TRIAL COURT, BRANCH 51, CALOOCAN CITY, COMPLAINANT, VS. EDUARDO RABENA, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, VIGAN CITY, RESPONDENT.

D E C I S I O N

NACHURA, J.:

The instant case arose from a letter^[1] complaint sent to the Office of the Court Administrator dated 13 February 2008 by Presiding Judge Francisco A. Ante, Jr., Municipal Trial Court in Cities, First Judicial Region, Vigan City, on the improper service of summons made by Ernesto R. Rabena, Process Server of the said court, relative to Civil Case No. 07-29131, entitled *Moneyline Lending Investors Inc., v. Rowell Mark D. Abero & Ernesto R. Rabena*, which was raffled off to Branch 51, Metropolitan Trial Court of Caloocan City, presided by Judge Alma Crispina B. Collado-Lacorte.

As stated by the Office of the Court Administrator, the facts of the case are as follows:

According to Judge Collado-Lacorte, the Officer's Return dated 18 February 2008 revealed that summons upon defendants Rowell Mark D. Abero and Ernesto R. Rabena were served, through substituted service, upon Elvira Abero and Anita Rabena, respectively. The service was made without stating in the Return the facts and circumstances surrounding the failed personal service; the date and time of the attempts on personal service; the inquiries made to locate the defendants; the names of the occupants of the defendants' alleged residence, and all other acts done, though futile, to serve the summons on defendants. Hence, the substituted service on the defendants was improper, as it failed to comply with the requirements prescribed by the Rules of Court, and deviated from the ruling of the Supreme Court in *Ma. Imelda M. Manotoc v. Court of Appeals*.^[2] Accordingly, the court did not acquire jurisdiction over their persons.

On 16 September 2008, an Order was issued by Judge Collado-Lacorte that since the substituted service on the defendants were improperly made, an Alias Summons be issued to them.

In his Letter dated 4 February 2009, Eduardo Rabena explained: 1) the defendant Ernesto R. Rabena was not related to him; 2) after showing to Ernesto R. Rabena the summons with the complaint attached, Ernesto R. Rabena ran away, thus, although he was duly notified, the said defendant wantonly refused to receive and sign the same; 3) the other defendant Rowell Mark A. Abero could not be located, as he failed to appear for six (6) months at his residence; and when he tendered the

summons to Rowell's mother Elvira Abero, she said that her son told her, "*HUWAG TATANGGAP NG ANO MANG DUMATING NA PAPELES O DOKUMENTO LALO NA KONG GALING SA KORTE*," such that he no longer insisted lest he be charged with Grave Coercion; and 4) he had performed his duty with utmost good faith. Hence, he should not be faulted for the refusal of the concerned persons to receive the summons.

After evaluation of the case, the Office of the Court Administrator recommended that the case be re-docketed as a regular administrative matter and that Eduardo R. Rabena be found guilty of simple neglect of duty and be fined the amount of P5,000.00, and be sternly warned that a repetition of the same or similar act shall be dealt with more severely.

The Court agrees with the findings and recommendations of the Office of the Court Administrator.

In the 16 September 2008 Order, the Return of Service of Summons of Process Server Eduardo R. Rabena states:

The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, First Judicial Region, Branch 51, Caloocan City the herein summons on the person of MR. ERNESTO RABENA was duly notified and received by his sister Anita Rabena, as evidenced by her signature appearing on the face of the herein summons.

The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, Branch 51, Caloocan City the herein summons on the person of ROWELL MARK D. ABERO was duly notified and received by his mother Mrs. Elvira Abero, as evidenced by her signature appearing on the face of the herein summons.

It is clear that Eduardo R. Rabena failed to fulfill his duty with utmost diligence as a process server. As emphasized in *Ma. Imelda M. Manotoc v. Hon. Court of Appeals*, **[3]** which is also applicable to process servers:

In an action strictly *in personam*, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. **If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." Hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Indeed, "compliance with the rules regarding the service of summons is as much important as the issue of due process of jurisdiction.**

Requirements for Substituted Service