

EN BANC

[A.M. No. RTJ-04-1826, February 06, 2008]

GREENSTAR BOCAI MANGANDINGAN, Complainant, vs. JUDGE SANTOS B. ADIONG, Regional Trial Court (RTC), Branch 8, Marawi City; ATTY. CAIRODING P. MARUHOM, Clerk of Court VI and MR. MASBOD M. SYBIL, Cash Clerk II, both of the RTC, Office of the Clerk of Court, Marawi City, Respondents.

RESOLUTION

PER CURIAM

In his Affidavit-Complaint^[1] dated April 15, 2003, complainant Greenstar Bocay Mangandingan charges respondent Judge Santos B. Adiong, presiding judge of the Regional Trial Court (RTC) of Lanao del Sur, Marawi City, Branch 8, with gross ignorance of the law or procedure; manifest unfaithfulness to a basic legal rule as well as injudicious conduct; grave abuse of authority; grave misconduct; conduct prejudicial to the administration of justice; violation of Rules 3.01^[2] and 3.02^[3] of the Code of Judicial Conduct; knowingly rendering an unjust interlocutory order; and bias and partiality.

Complainant was proclaimed the *Punong Barangay* of Basak-Bangco, Madalum, Lanao del Sur during the special election on August 13, 2002 by virtue of Commission on Elections (COMELEC) En Banc Resolution No. 03-0062.

On March 3, 2003, the losing candidate, Alizaman S. Sangcopan, filed with the RTC of Lanao del Sur an action for damages with prayer for preliminary injunction and/or preliminary mandatory injunction and temporary restraining order (TRO) against the seven commissioners of the COMELEC; the winning and duly proclaimed barangay officials of Barangay Basak-Bangco including herein complainant; the Acting Election Officer; the Board of Election Tellers of Precinct No. 68A; the Land Bank of the Philippines (LBP); and the Chief of Barangay Affairs-Department of Interior and Local Government (DILG), Province of Lanao del Sur. Said case was docketed as Civil Case No. 1912-03.^[4]

On March 5, 2003, the respondent Clerk of Court Atty. Cairoding P. Maruhom issued the summons.^[5] Before these could be served on any of the defendants, however, Judge Adiong issued a TRO without conducting a hearing. He also set the hearing on the application for the issuance of a preliminary injunction on March 20, 2003.^[6] Complainant claims that there is no showing in the records that the case was raffled to Branch 8 of the RTC presided by Judge Adiong when said TRO was issued.^[7]

On March 7, 2003, the sheriff made a return of service which partly provides that the defendants were served with summons through Datu Hassan Mangondaya at his residence in Madalum, Lanao del Sur.^[8]

Complainant claims that there was no valid service of summons on the defendants in accordance with Sections 6 and 7 of Rule 14 of the Rules of Court since the same was given to a certain Datu Hassan Mangondaya of Madalum, Lanao del Sur who had absolutely nothing to do with the case and was not even authorized by the court to receive summons for the defendants.

Complainant also alleges that on March 11, 2003, or barely six days after issuing the TRO, Judge Adiong, without notice or hearing, issued another order extending the effectivity of the illegally issued TRO for another twenty (20) days, prior to the expiration of the TRO's effectivity and in blatant and open violation of Section 5 of Rule 58 of the Rules of Court and *Batas Pambansa Blg. 224*.^[9]

On March 20, 2003, Judge Adiong considered the application for a writ of preliminary injunction submitted for resolution. The following day, he granted plaintiff's application for a writ of preliminary injunction then issued the writ on March 25, 2003.^[10]

Complainant avers that it was only on March 28, 2003 when he received a copy of the summons at the Municipal Hall of Madalum, Lanao del Sur.

In his Supplemental Affidavit-Complaint^[11] dated May 7, 2003, complainant charges respondents Atty. Cairoding P. Maruhom and Masbod Sybil with dishonesty, grave misconduct in office, conduct prejudicial to the orderly administration of justice, and violation of Section 3, paragraph (e) of Republic Act No. 3019.^[12]

Complainant claims that Maruhom and Sybil conspired with Judge Adiong and Atty. Edgar Masorong, counsel for the plaintiff, to manipulate the raffling of the case. Based on the record of the raffling proceedings conducted at the Office of the Executive Clerk of Court of Marawi City on April 1, 2003, Civil Case No. 1912-03 was raffled only on said date and to Branch 10, not to Branch 8.^[13] Complainant also alleges that instead of immediately notifying and/or summoning the parties pursuant to Supreme Court Administrative Circular No. 20-95,^[14] Maruhom delivered the record of the case to Judge Adiong on March 5, 2003. After the Writ of Preliminary Injunction was issued on March 25, 2003, the record of the case was returned to the Office of the Executive Clerk of Court where it was finally raffled to Branch 10 on April 1, 2003.

Complainant avers that he filed his Answer with Special and Affirmative Defenses^[15] with Branch 10, on April 3, 2003, but his Most Urgent Motion to Dissolve Writ of Preliminary Injunction,^[16] which he scheduled for hearing on April 29, 2003, was not heard on that date because it was not included in the court calendar of Branch 10. Upon inquiry, it was discovered that Sybil had taken the records of the case from Branch 10 without the knowledge and authority of the branch clerk of court and the presiding judge, and replaced the case with Civil Case No. 1916-03 entitled "*Amer D. Bantuas, Jr. v. Felix Taranao, Jr.*" Complainant also alleges that Sybil manipulated which branch of the RTC the case would be assigned for hearing, in conspiracy with Maruhom, Judge Adiong and Atty. Masorong.

The complaint and supplemental complaint having been filed directly with the Office

of the Court Administrator (OCA), then Court Administrator^[17] Presbitero J. Velasco, Jr. directed respondents, Judge Adiong, Atty. Maruhom and Mr. Sybil, to submit their respective comments.

In his Comment^[18] dated June 25, 2003, Judge Adiong claims that there was valid service of summons or if there was any defect the same had been cured when the defendant filed his answer. According to Judge Adiong, the summons were served through Datu Hassan Mangondaya, the former Municipal Vice Mayor of Madalum, Lanao del Sur. As such, he is certainly a man of suitable age and discretion as well as a prominent citizen who literally knows everybody in the community. Judge Adiong claims that he relied upon the belief that the court sheriff had regularly done his job.

Judge Adiong argues that the issuance of the TRO on March 5, 2003 without prior notice and hearing was valid pursuant to Supreme Court Administrative Circular No. 20-95, which authorizes the *ex parte* issuance of a TRO by an executive judge in matters of extreme urgency, in order to prevent grave injustice and irreparable injury. He claims that such circumstance was clearly obtaining at the time he issued the TRO.

He also claims that when he extended the TRO to its maximum duration of twenty (20) days from its issuance, no violation of Section 5 of Rule 58 of the Rules of Court or *B.P. Blg. 224* was committed. He adds that if indeed notice of the preliminary hearing was not received by complainant before March 11, 2003, that matter should have been brought to the attention of the court by the defendants in Civil Case No. 1912-03 when the latter's counsel appeared at the Office of the Clerk of Court on March 20, 2003 to complain about the improper service of summons. But they did not; hence, the same is considered waived.

Judge Adiong maintains that the grant and issuance of the writ of preliminary injunction were perfectly valid. Complainant's claim that he was not properly served a summons is belied by the appearance of his counsel at the Office of the Clerk of Court in the morning of March 20, 2003, shortly before the hearing of the application for issuance of a writ of preliminary injunction was called.

Sybil in his Comment^[19] dated August 5, 2003 admits that sometime in April 2003, plaintiff Sangcopan came to see him and asked if it was possible to have his complaint heard by RTC Branch 8, since the case was already started there. Sangcopan was concerned he might not have an impartial trial at RTC Branch 10 because the presiding judge therein was involved in the political career of his son, Yusoph Pangadapun, Jr., the incumbent Vice Mayor of Marawi City, and especially considering that the principal defendants in the case are the members of the COMELEC.

Because the case had just been raffled and there was no other sala to which it can be re-raffed, Sybil told Sangcopan that they will have to ask RTC Branch 10 if said branch is willing to exchange Civil Case No. 1912-03 with a Branch 8 case. He also said that they will have to ask Judge Adiong's permission for the case to be reassigned to his *sala*.

Candidato Dayondong, a court personnel of Branch 10 in charge of civil cases,

allegedly agreed subject to the conformity of the parties. Upon request, Judge Adiong also agreed to the exchange.

Shortly after the exchange, Dayondong informed Sybil that complainant's counsel had objected to the transfer prompting Sybil to immediately retrieve the complete case file from Branch 8 and return it to Branch 10.

In his Comment^[20] dated July 31, 2003, Clerk of Court Maruhom avers that he had no participation or knowledge of what transpired during the court proceedings from the time Civil Case No. 1912-03 was filed, much less did he conspire with the other respondents in the performance of all acts complained of. The alleged switching of cases by Sybil was done without his knowledge, consent or instruction.

Judge Adiong in his Supplemental Comment^[21] dated August 4, 2003 admits acquiescing to Sybil and Sangcopan's request because he was satisfied "that no malice could be entertained from the Sangcopan's request" and no prejudice can be inflicted upon the rights of any of the parties since the case would have to be totally heard on its merits. Thereafter, the urgent motion to dissolve the issued injunctive writ was set for hearing. But before that could take place, the case was returned to Branch 10 because the complainant's counsel had allegedly objected to the reassignment of the case to respondent Judge's *sala*.

Upon evaluation of the case, the OCA found the complaint partly meritorious. It found that the summons served through the former vice mayor of Madalum, Lanao del Sur was not the valid substituted service contemplated by law. It also found that "[t]here could be no way to avoid the impression of irregularity when the raffling procedure is circumvented. For which reason, Judge Adiong and Sybil should be held administratively liable."^[22] It recommended that the complaint against Maruhom be dismissed for lack of merit and that both Judge Adiong and Sybil be held liable for violation of Supreme Court rules, directives and circulars and each be fined in the amount of twenty thousand pesos (P20,000).

We agree with the findings of the OCA that respondents Judge Adiong and Sybil should be held administratively liable. However, we find the recommended penalties too light under the circumstances of this case and find it more appropriate to impose heavier penalties. We likewise find that the complaint against respondent Maruhom should not be dismissed because he is also administratively liable.

We start with the determination of the extent of liability of Judge Adiong. We find Judge Adiong's justifications for his acts unconvincing. No matter how urgent a case may be, this fact cannot justify the procedural shortcuts employed by respondent judge, i.e. dispensing with the proper service of summons,^[23] and the violation of Section 5 of Rule 58 of the Rules of Court.

Rule 14 of the Rules of Court provides:

RULE 14

SUMMONS

SEC. 6. *Service in person on defendant.*—Whenever practicable, the summons shall be served handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

SEC. 7. *Substituted service.*—If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

It is glaringly obvious from the service return^[24] of the sheriff that the proper service as provided for in the rules was not followed. No copy of the summons was handed to any of the defendants who were natural persons. Neither was a copy left at any of their residences or offices. What the sheriff did was to leave a copy of the summons at the *residence* of Datu Hassan Mangondaya, a total stranger to the case. The sheriff also left a copy of the summons for defendant LBP with the manager of the LBP Marawi City Branch, although the latter is not one of those enumerated in Section 11^[25] of Rule 14 of the Rules of Court upon whom service may be made when the defendant is a corporation. In the face of contrary evidence clearly showing that there was defective service of summons, Judge Adiong could not be justified in assuming that the sheriff regularly performed his duties.

Worth stressing, Section 5, Rule 58 of the Rules of Court states that:

SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and 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 he 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