

## THIRD DIVISION

**[ A.M. No. 08-1982-MTJ, October 17, 2008 ]**

**DANIEL P. ALMADEN, JR., COMPLAINANT, VS. HON. VICTORIO L. GALAPON, JR., PRESIDING JUDGE, MUNICIPAL TRIAL COURT, DULAG, LEYTE, RESPONDENT.**

### RESOLUTION

**NACHURA, J.:**

The present Administrative Case is related to Civil Case No. 66 for ejectment with damages, entitled "Cesario Permejo v. Doring Añales, Bandoy Vivero, Anacorita Rosalia, Miguel Kahano, Acelo Songalia, Reynaldo Legaspi, Natividad Servaña, Lolita Almaden, Jose Camenting, Felimon Cinco and Eufronio Malate." The case was filed before the Municipal Trial Court (MTC) of Tolosa, Leyte, presided over by Judge Eriberto Cuenza. Defendant Lolita Almaden died while the case was pending. She was survived by her minor children. On August 16, 1991, the trial court appointed complainant Daniel P. Almaden, Jr. (Almaden) as guardian ad-litem of the minors.<sup>[1]</sup>

Judge Paulino Cabello (Judge Cabello) took over Civil Case No. 66 after the retirement of Judge Eriberto Cuenza. On August 21, 1992, Judge Cabello rendered a decision in favor of the plaintiff and ordered the defendants to vacate the land subject of the complaint.<sup>[2]</sup>

The aforesaid decision became final and executory. Thereafter, plaintiff filed a motion for execution. Judge Mario Nicolasora, the incumbent presiding Judge of MTC, Tolosa, Leyte, voluntarily inhibited himself from the case. As a result thereof, Executive Judge Leonilo B. Apita of RTC, Tacloban City, designated respondent Judge Victorio L. Galapon, Jr. to act on the case.<sup>[3]</sup>

On July 26, 2002, respondent Judge granted plaintiff's motion for execution. On August 14, 2002, respondent Judge issued a writ of execution. The executing officer, Jose A. Portillo, Sheriff IV, RTC, Branch 8, Tacloban City, returned the writ unsatisfied. Thus, plaintiff filed a motion for issuance of a writ of demolition. On November 25, 2002, respondent Judge issued an Order granting the motion and the writ of demolition was correspondingly issued.<sup>[4]</sup>

On April 23, 2003, Almaden filed an administrative complaint against respondent Judge and Sheriff Jose A. Portillo before the Regional Trial Court (RTC), Branch 8, Tacloban City, claiming, among others, that respondents demolished his house in Brgy. Poblacion, Tolosa, Leyte and took away his building materials worth more than two hundred thousand pesos (P200,000.00). Complainant averred that respondent Judge made it appear that he is one of the defendants in Civil Case No. 66. He maintained that his house stands on a government lot and it was highly irregular for respondent Judge to order the writ of execution to demolish his house since it is not the subject matter of the ejectment suit. The administrative case was docketed as

A.M. OCA IPI No. 03-1402-MTJ, and was dismissed on July 27, 2005 for utter lack of merit.<sup>[5]</sup>

On March 7, 2007, complainant filed the present administrative complaint against respondent Judge for usurpation of authority, serious misconduct, issuing unjust order, ignorance of the law and grave abuse of authority. Upon perusal of the complaint, it can be readily discerned that it is just a rehash of his previous complaint in A.M. OCA IPI No. 03-1402-MTJ.<sup>[6]</sup>

On April 16, 2008, the Court issued a Resolution dismissing the complaint for lack of merit and directed complainant to show cause why he should not be cited in contempt of court for filing a malicious complaint pursuant to A.M. No. 03-10-01-SC, entitled "Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints," the pertinent portion of which reads:

1. If upon an informal preliminary inquiry by the Office of the Court Administrator, an administrative complaint against any Justice of the Court of Appeals or Sandiganbayan or any Judge of the lower courts filed in connection with a case in court is shown to be clearly unfounded and baseless and intended to harass the respondent, such a finding should be included in the report and recommendation of the Office of the Court Administrator. If the recommendation is approved or affirmed by the Court, the complainant may be required to show cause why he should not be held in contempt of court. If the complainant is a lawyer, he may further be required to show cause why he or she should not be administratively sanctioned as a member of the Bar and as an officer of the court.

In a letter dated May 30, 2008, complainant did not explain why he should not be cited for contempt, but merely reiterated his claim that he was not a party to Civil Case No. 66 and it was respondent Judge who ordered the demolition of his house, resulting in the loss of building materials, house utensils and other household things.<sup>[7]</sup>

On September 9, 2008, for failure of complainant to explain why he should not be cited for contempt, the Office of the Administrator (OCA) recommended that complainant be meted the penalty of fine in the amount of two thousand pesos (P2,000.00).<sup>[8]</sup>

We agree with the recommendation of the OCA that complainant be penalized. We find the allegations against respondent Judge utterly baseless, considering that he was just acting in the exercise of discretionary powers appurtenant to his position. Complainant was not able to substantiate his complaint with sufficient evidence to show that the orders issued by respondent Judge were tainted with fraud, dishonesty or bad faith.

It is settled that in administrative proceedings, the burden of substantiating the charges falls on the complainant.<sup>[9]</sup> In the absence of proof, as in the case at bench, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.<sup>[10]</sup>