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FIRST DIVISION

[A.M. NO. RTJ-04-1840 (FORMERLY OCA I.P.I NO. 02-1534-RTJ), August 02, 2007]

DOROTEO, DIOSDADO AND URSULA, ALL SURNAMED LAGCAO, COMPLAINANTS, VS. JUDGE IRENEO LEE GAKO, JR., REGIONAL TRIAL COURT, CEBU CITY, BRANCH 5, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

On July 18, 2002, the Office of the Court Administrator (OCA) received the complaint[1] of Doroteo, Diosdado and Ursula Lagcao against respondent Judge Ireneo Lee Gako, Jr. of the Regional Trial Court (RTC), Cebu City, Branch 5.[2]

Complainants are the registered owners of lot no. 1029, a 4,048 sq. m. parcel of land situated in Capitol Hills, Cebu City.[3] They filed an ejectment case against the "settlers" occupying the lot sometime in 1997.[4] The case was filed in the Municipal Trial Court in Cities (MTCC), Cebu City, Branch 1, docketed as civil case no. 38130. In April 1998, the MTCC rendered a decision in favor of complainants, ordering defendant "settlers" to vacate the lot. On appeal to the RTC of Cebu, the decision was affirmed.[5] Hence, in January 1999, the MTCC issued a writ of execution. In February 1999, this was followed by an order for the demolition of certain structures of the "settlers" who refused to leave.

On February 22, 1999, before the demolition order could be enforced, the MTCC suspended its implementation for 120[6] days in deference to a written request of then City Mayor Alvin B. Garcia who cited humanitarian reasons and asked for time to look for a relocation site for the "settlers." The court granted this request.

In the meantime, the "settlers" organized themselves and formed Green Pasture Homeowners Association, Inc. (association), a non-stock corporation.

On June 30, 1999, during the period of deferment of the demolition order, the *Sangguniang Panlungsod* of Cebu City passed Ordinance No. 1772 entitled "An Ordinance Further Amending Ordinance No. 1656 as amended by Ordinance No. 1684 otherwise known as the 1996 Revised Zoning Ordinance of the City of Cebu, by Incorporating therein a New District called Socialized Housing Sites." This ordinance identified subject lot no. 1029 as included in the "Socialized Housing Sites" pursuant to RA 7279 or the Urban Development and Housing Act of 1992.[7] Subsequently, Ordinance No. 1843 was approved on August 2, 2000 authorizing the expropriation of the lot.[8]

Thereafter, the association filed a complaint for injunction, prohibition and damages with prayer for the issuance of a writ of preliminary injunction in the RTC of Cebu

against complainants.[9] It prayed that complainants and the MTCC be enjoined from ejecting its members and demolishing their structures.[10] In a resolution dated March 27, 2000 penned by respondent, the RTC of Cebu granted the writ of preliminary injunction.[11] The complainants' motion for reconsideration was denied in a resolution dated May 22, 2000.[12]

Complainants elevated the matter to the Court of Appeals (CA) via petition for certiorari. The CA, in a decision dated November 19, 2001, set aside respondent's March 27 and May 22, 2000 resolutions. It held that respondent committed grave abuse of discretion when he issued the writ of preliminary injunction in the absence of a clear legal right of the association.[13] Reconsideration sought by the association was denied.[14] Thereafter, another writ of demolition was issued.[15] However, on February 26, 2002, respondent issued a temporary restraining order (TRO) stopping the demolition scheduled on that day.[16]

Meanwhile, the association filed an amended complaint dated February 18, 2002 alleging a supervening event (i.e., the subsequent sale of the lot to the association) that would make execution of the decision of the MTCC inequitable.[17] It also applied for another writ of preliminary injunction which respondent denied in an order dated March 15, 2002.[18] On March 18, 2002, respondent voluntarily inhibited himself from the case.[19]

Complainants charged respondent with gross ignorance of the law, grave abuse of authority and grave misconduct for issuing a writ of preliminary injunction in his March 27, 2000 resolution and TRO in his February 26, 2002 order. They argue that respondent was aware that the MTCC's judgment was already final and executory as in fact there was already a writ of execution and demolition order yet he still issued a writ of preliminary injunction.[20] Moreover, the TRO issued in his February 26, 2002 order was in brazen defiance of the CA's ruling.

In his defense, respondent claimed that he issued the writ of preliminary injunction because there was a Cebu City Ordinance No. 1772 converting complainants' lot no. 1029 into a socialized housing site and making the members of the association program beneficiaries under RA 7279. He granted the writ to prevent the demolition of the structures in the lot so as not to render the main action of the association for injunction, prohibition and damages moot and academic.

The OCA, in its evaluation dated October 29, 2003, stated:

> May the issuance of City Ordinance No. 1772 be considered a supervening event that would justify the suspension or nullification of the execution of a final and executory judgment? It appears so.
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> In the case of "*Ursula Ocdamia Javier, et al. vs. Court of Appeals and Heirs of Luz Javier,*" (G.R. No. 96086, July 21, 1993), the Supreme Court defined what constitutes supervening event that would justify the suspension or nullification of a final and executory judgment. Said the Court. "[T]he supervening event xxx refers to facts and events transpiring after the judgment or order had become final and executory. These circumstances affect or change the substance of the judgment and

render its execution inequitable."

Thus, the passage of City Ordinance No. 1772 and City Ordinance No. 1843 may be categorized as a supervening event that would justify the suspension of the execution of the decision in the ejectment case.

Even granting *arguendo* that the passage of said ordinances could not be considered as supervening events, it is indubitable that respondent judge acted the way he did in deference to the wisdom of the *Sangguniang [Panlungsod]* who passed the Ordinances with its avowed purpose of "to provide a socialized housing project for the landless and low-income city residents." This is in fact a Constitutional guarantee under Sec. 9, Article XIII: "The State shall, by law, [undertake xxx a] continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. xxx" As such, it can be said that respondent judge's misapplication of the rule, therefore, was in response to this social justice call.

Be that as it may, we still find respondent judge administratively liable for issuing a TRO in defiance [of] the decision of the Court of Appeals. However, his liability is mitigated in view of the ruling of the Supreme Court in the case of *"NHA vs. Reyes"* and *"Javier vs. Court of Appeals".* While respondent may have erred in issuing the TRO, such act would not constitute gross ignorance of the law but mere misapplication thereof in the light of the ruling in the said cases.[21]

While the OCA did not consider respondent's act of issuing a writ of preliminary injunction in his March 27, 2000 resolution as tantamount to gross ignorance of the law, still it found him administratively liable for ignorance of the law when he issued a TRO in his February 26, 2002 order in defiance of the CA's decision. Thus, it recommended that respondent be suspended for two months for ignorance of the law with a warning that a similar offense shall be dealt with more severely.[22]

The findings and evaluation of the OCA are well-taken but we modify the designation of the offense and corresponding penalty.

A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law.[23] Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws.[24] They must know the laws and apply them properly in all good faith.[25] They are expected to keep abreast of prevailing jurisprudence.[26] To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence but should also be motivated by bad faith, fraud, malice or dishonesty.[27]

A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts.[28] It is a preservative remedy aimed to protect the complainant's substantive rights and interests during the pendency of the principal action.[29] It is proper only when the plaintiff appears to be entitled to the relief

demanded in the complaint.[30] Thus, there are two conditions for the issuance of a preliminary injunction: (1) a clear right to be protected exists *prima facie* and (2) the acts sought to be enjoined are violative of that right.[31] The issuance of a writ of preliminary injunction is addressed to the sound discretion of the court.[32]

We agree with the OCA that respondent had legal basis in issuing the writ in his March 27, 2000 resolution. It is true that complainants had in their favor a final and executory decision by the MTCC which had become immutable and unalterable.[33] However, one of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire or new circumstances which develop after the judgment acquires finality, rendering its execution unjust and inequitable.[34]

Respondent considered Ordinance No. 1772 as one such supervening event and we do not think he committed grave abuse of discretion in doing so. The ordinance did include lot no. 1029 as one of its socialized housing sites and indicated the association as potential beneficiaries for being occupants thereof.[35] The implementation of the demolition order would have resulted in the destruction of the structures on the lot built by the members of the association who may become entitled to the lot later on by virtue of the ordinance. An ordinance is presumed valid unless repealed or declared invalid by the courts.[36]

With the foregoing, we cannot say that respondent acted with bias, arbitrariness or prejudice in issuing the writ of preliminary injunction.

> Bias and partiality can never be presumed.... The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Similarly, bad faith or malice cannot be inferred simply because the judgment or order is adverse to a party.... There being absolutely no evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail.[37]

At worst, it was an error of judgment or a deficiency in prudence and discretion which may be corrected by proper recourse to available judicial remedies.[38] In fact, the CA, in its November 19, 2001 decision, set aside respondent's resolutions after complainants filed a petition questioning it.[39] However,

> [a]s a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although said acts may be erroneous.[40]

Respondent's issuance of a TRO in his February 26, 2002 order was a different matter. By this time, there was already a CA decision setting aside the injunctive writ that he had issued. Yet he persisted in issuing a TRO which had the same effect as the writ. This act was clearly an act in defiance of the CA decision. Respondent should have known his place in the judicial hierarchy:

> xxx. Inferior courts must be modest enough to consciously realize the position that they occupy in the interrelation and operation of the integrated judicial system of the nation. Occupying as he does a court much lower in rank than the Court of Appeals, respondent judge owes respect to the latter and should, of necessity, defer to the orders of the higher court. The appellate jurisdiction of a higher court would be rendered meaningless if a lower court may, with impunity, disregard and disobey it.[41]

This utter disrespect for the judgment of a higher court constituted grave abuse of authority.[42]

It appears that this was not respondent's first offense. As the OCA enumerated:

> In *Joselito Rallos, et al. vs. Judge Ireneo Gako* (A.M. No. RTJ-99-1484-A; 17 March 2000) respondent was held liable for failing to resolve the complainants' Motion to Remove the Administrator, for changing the date of a hearing without notifying the complainants and making it appear in his order that complainants and their counsel were present; and for retaliating against the stenographer who testified against him. For these infractions, he was fined in the amount of P10,000.00.
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> In *Ronaldo B. Zamora vs. Judge Ireneo Gako* (RTJ 99-1484; 24 October 2000), respondent took cognizance of an injunction case the subject matter of which are articles seized by the Bureau of Customs and granted the application for issuance of a writ of injunction. He was held guilty of Gross Ignorance of the Law and suspended for three (3) months.[43]

In both cases, he was sternly warned that the commission of similar acts in the future would be dealt with more severely. We will take into consideration the fact that, including this case, we would have found respondent administratively liable three consecutive times.

Indifference or defiance to the orders or resolutions of higher tribunals may be punished with dismissal, suspension or fine as warranted by the circumstances.[44] The penalty of suspension recommended by OCA can no longer be imposed considering that respondent retired from the judiciary on September 20, 2006. Having previously warned him, we deem it fair and reasonable to impose on him a fine of P20,000 which is the maximum amount that a division can impose.[45]

Respondent's retirement from office did not render the present administrative case moot and academic. Neither does it free him from liability. Complainants filed the case on July 18, 2002, before respondent retired from office. As such, the Court retains the authority to pursue the administrative complaint against him. Cessation from office because of retirement does not warrant the dismissal of the administrative complaint filed against him while he was still in the service.[46] Hence, the imposed fine shall be deducted from the proceeds of his retirement benefits.

All members of the bench are enjoined to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[47] Respondent's act of