

SECOND DIVISION

[A.M. No. P-03-1760 (formerly A.M. No. 01-1223-P), December 30, 2003]

NOEL G. WABE, COMPLAINANT, VS. LUISITA P. BIONSON, CLERK OF COURT OF MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, RESPONDENT.

DECISION

CALLEJO, SR., J.:

The administrative case before us arose upon the filing of a verified Letter-Complaint^[1] dated September 17, 2001 against Luisita P. Bionson, Clerk of Court, Municipal Trial Court in Cities of Malaybalay City, for grave misconduct. Noel G. Wabe, the complainant, alleged that the respondent acted without authority in issuing summons before a case was even filed, and in adding certain amounts to be paid by the defendant where none were awarded in the judgment, thus:

Firstly, she issued a Summons to my wife, Flora A. Wabe dated November 15, 1999 when there was as yet no case filed against her, copy of Summons hereto attached as Annex "A", as the case was filed only on May 12, 2000.

Secondly, when the judgment was rendered, copy attached as Annex "B", only the following sums were awarded Plaintiff:

- a. P10,000.00 as actual damages;
- b. Interest of the above (6%) beginning December 30, 1998 (when this should correctly begin on May 12, 2000, the date of the filing of the case;
- c. P1,000.00 as litigation expenses plus cost.

That in the Writ of Execution, however, Luisita P. Bionson added the following sums:

- a. The legal rate of interest was to begin October 17, 1998 and increased to 10% in violation of the judgment and the law, as well.
- b. Exemplary damages P1,000.00 was added where none was awarded; and
- c. Attorney's fees of P1,000.00 was, likewise, added when none was awarded.^[2]

In her Comment, the respondent admitted the error in the issuance of the Writ of Execution^[3] dated August 14, 2001, but was quick to point out that by reason of the Opposition filed by therein defendant Flora A. Wabe, the writ was recalled and a new one, September 24, 2001 was issued in its place. There was, however, no explanation with respect to the issuance of summons to complainant's wife notwithstanding the absence of a complaint for sum of money.

On February 21, 2002, Deputy Court Administrator Christopher O. Lock found that the respondent's plain admission would not exonerate her from the charges leveled against her. Deputy Court Administrator Lock noted that the errors made were so glaring that they were not made through mere inadvertence, and recommended that the respondent be suspended for one (1) month, with a stern warning that a repetition of the same or similar acts in the future be dealt with more severely.

In a Resolution^[4] dated March 31, 2003, the instant case was assigned to Executive Judge Rolando S. Venadas, Sr., Regional Trial Court, Malaybalay City, Bukidnon, for investigation, report and recommendation.

The respondent, through counsel, manifested to the Court that the sending of summons even before the actual filing of the complaint had been a long standing practice of the court, dating back to the time of previous judges.^[5] The respondent also presented documents^[6] issued by her and/or previous judges as proof thereof, contending that these were all issued to call the parties to the case for possible settlement without resorting to actual trial, thus:

Q - The Writ of Execution in "Paña v. Wabe" for which you are being charged here does not tally with the judgment. For example, the payment for the interest is 10 percent whereas in the judgment the interest is only 6 percent, can you explain that?

A - I admit that mistake but that is without malice. The truth being that our court is only one sala and I am very busy so that when the stenographer presented that Writ of Execution to me, I signed it knowing that my stenographer can be trusted and [is] a[n] honest employee.^[7]

Executive Judge Venadas, Sr., thereafter, submitted his Report and Recommendation dated September 22, 2003, and made the following findings:

Evidently and without any doubt whatsoever, the respondent issued the said summons (Exhibit "B") without any legal authority or basis as emphasized under Section 1 Rule 14 of the 1997 Rules of Civil Procedure, which allows only the issuance of a summons upon filing of a complaint and payment of the requisite legal fees. Hence, if no complaint is filed and no payment of the required fees is made, a Clerk of Court has no authority whatsoever to issue any summons and could be guilty of Grave Abuse of Authority under her "adjudicative support function to prepare and sign summons, subpoenas and notices and writs of execution in Civil Cases.

...

What is to be noted further was that the respondent still went on to

commit another serious violation which can never be justified by any amount of reasoning or logic for clearly it was against the very decision of the MTCC she was serving as Clerk of Court by issuing a Writ of Execution, duly signed by her as Clerk of Court, on August 15, 2001 (Exhibit "I") directing the Sheriff of Bukidnon to seize and attach properties of the defendant Flora Wabe for the satisfaction of the following:

- a) The sum of P10,000.00 with legal rate of interest from October 17, 1998, until date of payment of the rate of 10% per annum;
- b) Exemplary damages of P1,000.00 and
- c) Litigation expenses of P1,000.00 plus
- d) Attorney's fees of P1,000.00 together with legal fees

when the Judgment of the MTCC of Malaybalay was only for the following: "To pay actual damage of P10,000.00 and interest of 6% per annum of the collective amount computed from December 30, 1998, until the amount to be paid and to pay expenses of litigation of P1,000.00.

Clearly, the foregoing conduct and actuation of the respondent was in violation of her adjudicative support functions to prepare and sign summons and writs of execution as a Clerk of Court and her authority should always be and at all times in accordance with the dispositive portion of the decision of the Court she is serving as a Clerk of Court.^[8]

For issuing summons to a party without a case being filed, and for including awards in the writ of execution not included in the decision or judgment of the court, the respondent clearly acted beyond the scope of her duties as a clerk of court.

A clerk of court shall issue summons only upon the filing of the complaint and the payment of the requisite legal fees.

Section 1, Rule 14 of the 1997 Rules of Civil Procedure provides that "upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the correspondent summons to the defendants." This rule is clear, and it is the duty of the clerk of court to abide by it. The respondent needs no reminder that as an important officer in the dispensation of justice, one of her primary duties is *to uphold the law and implement pertinent rules*. He must be assiduous in the performance of his duties because he performs delicate administrative functions essential to the prompt and proper administration of justice.^[9]

The respondent usurped a judicial function when she issued an "amended" writ of execution.