

## THIRD DIVISION

**[ A.M. No. MTJ-01-1381. (Formerly OCA I.P.I No. 97-426-MTJ), January 14, 2002 ]**

**FR. ROMELITO GUILLEN, COMPLAINANT, VS. JUDGE ANTONIO K. CAÑON, RESPONDENT.**

### D E C I S I O N

**MELO, J.:**

In Civil Case No. 185-H entitled, "Barangay Lacasa, Hinatuan, Surigao del Sur, as represented by Bebiana Sayson, Barangay Captain vs. Eloy Ampis, et al.," Barangay Lacasa sought the eviction of 40 residents for illegally and unlawfully occupying a 1-hectare land they claimed to own. In order to prevent said residents from making repairs, improvements, or construction within the 1-hectare land, Judge Antonio K. Caxion, Presiding Judge of the 7<sup>th</sup> Municipal Circuit Trial Court of Hinatuan-Tagbina, Surigao del Sur, issued a writ of preliminary mandatory injunction on December 27, 1996. The residents allegedly continued to disobey said order, thereby prompting the court to issue three separate orders of arrest all dated September 5, 1997, against 11 individuals for direct contempt. These arrest orders became the seed of the present case.

In a sworn letter-complaint dated September 9, 1997, complainant Fr. Romelito Guillen, parish priest of San Agustin, Barangay Poblacion, Hinatuan, Surigao del Sur, in his capacity as representative of the Social Action Center of the Diocese of Tandag, Surigao del Sur, charged respondent Judge Antonio K. Caxion with issuing unjust orders of arrest and with gross ignorance of the law relative to the ejectment case. Complainant asserted that the orders of arrest against the 11 individuals, whose affidavits were included in his letter-complaint, were defective since: 1) the 11 affiants, except for Abon Lebeste, were not among the 40 defendants in Civil Case No. 185-H; 2) the orders were issued without any motion to cite affiants in contempt of court and were issued solely at the court's instance; 3) the orders were issued without giving affiants notice that they violated the court's orders and did not give them a chance to explain and defend their actions; and 4) affiants merely initiated repairs on their *nipa* huts without disturbing the *status quo* sought to be preserved by respondent. Complainant further contended that respondent acted in an arbitrary and despotic manner in causing the arrest of affiants who, as of the writing of the letter-complaint, were still detained at the Municipal Jail of Hinatuan. Finally, complainant averred that respondent is no longer physically and mentally fit to sit as presiding judge since he is almost completely paralyzed, unable to write, speak, or walk unaided.

In his comment dated February 28, 1998, respondent admitted having issued a writ of preliminary mandatory injunction on December 27, 1996 and the three separate orders of arrest all dated September 5, 1997. He alleged that through an affidavit filed by the Lacasa Barangay Council on September 5, 1997, he found that

defendants Julie Lisayan and Abon Lebeste had violated said writ of preliminary mandatory injunction, the former for having made major repairs and improvements on her house, and the latter for having constructed a concrete or hollow-block toilet. The Barangay kagawads, at their examination following the filing of their joint affidavit, reported that Abet Antonio, Lino Costan, Ely Engalan, Eme Suan, Maning Davenes, Celso Davenes, Ronnie Capunong, Bellie Morales and Carlos Munion had also violated the aforementioned order upon the prodding and inducement of Lisayan and Lebeste.

Respondent claimed that these surrounding events were enough reasons for affiants to be brought to court and to show cause why they should not be held for contempt. He contended that since Civil Case 185-H is covered by the Rules on Summary Procedure, the summary issuance of the warrants by virtue of the affidavit filed by the Lacasa Barangay Council and the aforementioned circumstances was justified and not unjust, arbitrary, or despotic. Respondent further claimed that summary hearings were held in his chambers, and after the parties had given their explanations on why they should not be held in contempt, he concluded that only Lisayan and Lebeste had indeed defied the writ of preliminary mandatory injunction and not the 9 other affiants. Respondent subsequently lifted the orders of arrest against these 9 individuals, while Lisayan and Lebeste were committed at the municipal jail for 3 days as a punitive lesson for their defiance. Respondent also alleged that the imputation made by complainant that affiants were all detained as of September 9, 1997 is absolutely bereft of truth. In fact, the 9 individuals were not even arrested despite the orders of arrest as seen in the indorsement warrant of arrest issued by the warrant officer of the Office of the Chief of Police of Hinatuan-PNP and duly confirmed by a certification from the officer-in-charge of the same office.

Lastly, respondent disputed complainant's allegation that he is no longer physically and mentally fit to maintain his position, claiming that he has been regularly attending to his official duties in his station in Hinatuan every Wednesday and Thursday, in his sub-station at Tagbina which is 27 kilometers from Hinatuan, every Friday, and as judge-designate of the 8<sup>th</sup> MCTC of Bislig-Lingap at Bislig which is approximately 55 kilometers from Hinatuan, every Monday and Tuesday. Respondent claimed that he shuttles through the poor third-class gravel road which is tattered with potholes riding in passenger jeeps, or at times, even only on two-wheel motorcycles. Respondent argued that this weekly travel through long distances cannot be made by one who is said to be almost completely paralyzed.

Both complainant and respondent were required by the Court on February 21, 2000 to manifest whether they were willing to submit the case for resolution on the basis of the pleadings filed, but no response was made by them despite proper service of notice. Further arguments were, therefore, deemed waived.

In the report and recommendation dated January 19, 2000 submitted by then Court Administrator Alfredo L. Benipayo, it was pertinently observed that respondent is liable for issuing unjust orders of arrest and of gross ignorance of the law.

We agree.

Respondent is liable for issuing unjust orders of arrest in that he failed to observe