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SECOND DIVISION

[A.M. No. RTJ-02-1696, June 20, 2002]

MELISSA DOMONDON, ALMIRA BASALO, AND CLEO VILLAREIZ, COMPLAINANTS, VS. JUDGE PERCIVAL MANDAP LOPEZ, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is an administrative complaint against Judge Percival Mandap Lopez of the Regional Trial Court, Branch 78, Quezon City for undue delay and gross ignorance of the law in the resolution of a case filed by complainants.

Complainants were students of the AMA Computer College in Quezon City and members of the editorial board of the official school publication called *Dataline*. It appears that on December 7, 1996, complainants published a spoof edition of the *Dataline*, which they called *Amable Tonite*. After conducting an investigation, the student Disciplinary Tribunal of the college recommended the expulsion of complainants from the school.[1]

On March 14, 1997, complainants and other members of the *Dataline* editorial board filed a complaint for damages with prayer for the issuance of a writ of preliminary mandatory injunction against AMA Computer College and Mauricia Herrera, Dean of Student Affairs. The case was filed in the Regional Trial Court of Quezon City, where it was docketed as Civil Case No. Q-97-30549 and assigned to respondent judge of Branch 78. Complainants alleged that they had been expelled from the defendant school in a despotic and oppressive manner in violation of their constitutional rights to due process and to free speech as well as the provisions of R.A. No. 7079, otherwise known as the Campus Journalism Act of 1991. They sought an award of damages in their favor and the issuance of a temporary preliminary mandatory injunction to enjoin the defendant school in the meantime to allow them to attend their classes and take their examinations.[2]

On March 25, 1997, AMA Computer College and Mauricia Herrera filed an "Opposition," contending that the articles in the spoof edition which complainants had published were slanderous and derogatory; that R.A. No. 7079 itself enjoins student publications to observe the pertinent laws and school policies in the selection of articles for publication; that complainants had been given the opportunity to controvert the charges against them before they were expelled; and that complainants were guilty of using indecent language, committing vulgar and obscene acts, libel, and unauthorized disbursement of *Dataline* funds in the amount of P25,000.00.[3]

On April 3, 1997, complainants filed a reply, contending that the issue in the case was not the alleged defamatory nature of the questioned publication but the legality

of their expulsion because they were expelled solely on the basis of their activities as members of the editorial board of *Dataline* and claiming that they were deprived of their right to due process.[4]

On June 2, 1997, defendants AMA Computer College and Mauricia Herrera filed a rejoinder, opposing complainants' prayer for the issuance of a writ of preliminary injunction. They contended that, under R.A. No. 7079, editorial policies of the student publication should take into account the pertinent laws as well as the school policies in the selection of articles for publication; that the *Amable Tonite* was not a legitimate issue of the *Dataline*; and that complainants could have submitted their grievances to the Commission on Higher Education (CHED) but the fact was that their complaint was dismissed because of their failure to attend a hearing previously set.[5]

On June 7, 1997, complainants pressed their request for the immediate resolution of their application for preliminary mandatory injunction before the end of the enrollment period. They alleged that the delay in the resolution of the writ was due to the defendants' failure to submit their rejoinder within the period given to them as the rejoinder was actually filed more than a month after the prescribed period had lapsed.[6]

On June 14, 1997, on the basis of the pleadings of the parties, respondent judge issued a resolution dismissing the case itself after finding that the expulsion of the complainants from the school was for cause and was effected only after an investigation during which they were duly heard.

Complainants moved for a reconsideration on the ground that the dismissal of the complaint could not be made solely on the basis of the parties' pleadings and affidavits and that trial must first be conducted to receive the evidence of the parties before the case was decided. They reiterated their allegation that a writ of preliminary injunction was necessary because they were expelled from the school solely on the basis of the articles published in their lampoon edition.[7]

Complainants then sought the disqualification of respondent judge on the following grounds: (a) that he had deliberately delayed the resolution of the injunctive writ which tended to arouse suspicion as to his ability to decide the case with fairness and integrity; (b) that he dismissed their complaint without legal or procedural basis and thus deprived them of their day in court; and (c) that they filed an administrative case against him with this Court.[8]

On September 26, 1997, respondent judge denied complainants' motion for reconsideration and motion to inhibit him for lack of merit. Respondent judge said he had conducted a hearing on the motion for preliminary mandatory injunction after which the parties were given time to file their pleadings and only after that did he resolve the case.[9]

Complainants blame respondent Judge Lopez for allowing the question of whether an injunction should be issued become moot by failing to resolve their motion before the start of the enrollment period on the first week of June 1997. In addition, they charge respondent judge with gross ignorance of the law in dismissing their case considering that: (a) no answer or motion to dismiss had been filed by the

defendant school; (b) the pleadings and evidence, if any, on record referred only to the issuance of a temporary preliminary mandatory injunction and none of the defendant's pleadings which averred additional factual matters was verified; and (c) they were not given an opportunity to present their evidence.[10]

In his comment, respondent judge denied that he was guilty of undue delay in resolving complainants' application for injunction. He claimed that it took him only eight days to render his resolution after the issue of the injunction was submitted for resolution on June 6, 1997, the date of the filing of the defendants' rejoinder. He denied that he acted with malice in resolving the matter, claiming that he saw no urgency for the writ of preliminary injunction because (a) complainants' expulsion was for cause, the articles written by complainants being indecent and obscene; (b) complainants had been duly heard before they were expelled; (c) not all of the complainants were graduating students; and (d) the status quo at that point was that complainants were already expelled from the defendant school and such should not be disturbed in the absence of proof of their claims. As for his dismissal of the case on the merits, respondent judge justified his decision on the ground that the defendants' rejoinder contained a prayer for the same. He contends that this was tantamount to a motion to dismiss filed on the ground of lack of cause of action on the part of the complainants.[11]

Complainants filed a "Supplement to the Complaint for Dismissal/Separation from Service," dated November 19, 1998, insisting that no hearing had actually been held on March 31, 1997 as both respondent judge and the defendants' counsel failed to appear during the said date and that respondent judge did not show up despite being contacted by his clerk of court by telephone. Moreover, complainants claim that, although the resolution dismissing their case was dated September 26, 1997, it was actually received by them only on February 19, 1998, almost five months after its supposed issuance, raising the suspicion that the resolution had been antedated by respondent judge to make it appear that it was issued prior to the filing of the present administrative complaint.[12]

Respondent judge filed his comment, making a general denial of the charges against him.[13]

The Office of the Court Administrator (OCA), to which this case was referred, found respondent judge guilty of undue delay and gross ignorance of the law in his handling of Civil Case No. Q-97-30549 and recommended that he be ordered to pay a fine of P2,000.00 with warning that repetition of the same or similar offenses shall be dealt with more severely.

We find the recommendation, except as to the penalty, to be on the main well taken.

First. As regards the charge of delay in resolving the injunction issue raised by complainants, respondent judge says that the Rules of Court does not provide a period within which to resolve a prayer for a preliminary injunction. However, as the OCA well observed:

> Judge Lopez cannot invoke the absence of any provision prescribing a period within which to resolve an application for a writ of injunction. He

> should have been guided by the exigencies of the situation. He knew that complainants were seeking the writ of preliminary mandatory injunction precisely because they wanted to be readmitted by the college and for them to be able to enroll in the first trimester of school year 1997-1998. This is evident from the affidavit of Merit attached to the complaint. (Rollo, pp. 15-16) The least that respondent Judge could have done was to resolve immediately the application for injunctive relief after the defendants failed to submit their Rejoinder on time so as to allow the complainants enough time to seek recourse to a higher court. As it is, even if he granted the application, considering that it was done only on June 14, the same would have been useless because complainants could no longer enroll since, according to them, the period to enroll expires on the second week of June 1997. (Rollo, p. 17)[14]

We agree with this observation and only add that Canon 3, Rule 3.05 of the Code of Judicial Conduct in fact enjoins judges to "dispose of the court's business promptly and decide cases within the required periods."[15] That respondent judge found the application for mandatory injunction to be without merit is of no moment. What was important is that he should have resolved the matter before the start of the enrollment for the first semester of the school year 1997-1998 so that complainants could avail themselves of other remedies if they were not satisfied with the ruling. Complainants repeatedly urged respondent judge to resolve the issue of the injunctive writ with utmost dispatch considering the little time left for them to enroll for the coming semester. But respondent judge failed to heed their plea.

Respondent judge says that the delay was due to the defendants' failure to file their rejoinder on time but he lost no time promulgating his resolution dismissing the complaint as it was in fact issued only eight days after the filing of the rejoinder. This contention has no merit. If this excuse of respondent judge were accepted, all it would do for a party favored by a delay would be to mark time before filing his pleading until an event (*e.g.*, the end of the enrollment period) supervenes to render the issue moot.

As respondent judge admits, the defendants' rejoinder was filed only on June 2, 1997, although the last day for submission of the same was on May 9, 1997.[16] Respondent judge should have considered the defendants to have waived the filing of their rejoinder and resolved the issue of injunction promptly. Respondent judge's procrastination only opens him to suspicion that he was favoring the defendants.[17]

Second. It is undisputed that no trial was ever conducted by respondent judge before issuing his resolution, dated June 14, 1997, dismissing the complaint in Civil Case No. Q-97-30549 for lack of merit. Respondent judge, however, justifies his action on the ground that the defendants' rejoinder sought the dismissal of the case for lack of merit and the same was in the nature of a motion to dismiss the case for lack of cause of action.

To be sure, the defendants did not file a motion to dismiss. What they filed was an "Opposition," dated March 25, 1997, in which they raised factual matters and affirmative defenses to answer the allegations in the complaint against them and prayed for the denial of the writ prayed for. The fact that the defendants filed a responsive pleading seeking affirmative relief and setting up defenses[18] negates