



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 13, 2020 which reads as follows:

“A.M. No. P-17-3723 (Formerly OCA I.P.I. No. 15-4405-P) – Renante Zerna v. Andres D. Real, Clerk of Court IV, and Leonardo B. Jimar, Sheriff III, both of the Municipal Trial Court in Cities (MTCC), Tanjay City, Negros Oriental

The Court resolves the complaint filed by Renante Zerna (Zerna) against Andres D. Real (Real), Clerk of Court IV, and Leonardo B. Jimar (Jimar), Sheriff III, both of the Municipal Trial Court in Cities (MTCC), Tanjay City, Negros Oriental, charging them with gross misconduct, abuse of authority and violation of the fundamental right to due process.

The antecedents of the case are as follows:

Elena Zerna and Pastor Zerna (deceased), together with several others, were impleaded as defendants in an ejectment case filed by Hilario Comcom, Sr. (Comcom) before the MTCC of Tanjay City, Negros Oriental, docketed as Civil Case No. 955 (*Hilario Comcom, Sr. v. Mr. and Mrs. Arthur Cardoso, et al.*). In a joint Decision¹ dated January 26, 2006 in Civil Cases No. 952-957, the MTCC of Tanjay City, Negros Oriental ruled in favor of Comcom, the *fallo* of which reads:

WHEREFORE, after a serious appraisal of the facts, circumstances and related laws and jurisprudence, the Court hereby renders judgment against defendants, directing defendants: Emmie Banogon, Mimi Magaya, William Pilarita, Dorio Toting, Nenet Lopez, Felising Tapis, Boy Lopez, Felix Barba, Jolico Dael, Jonathan and LudevenTajaran, Eddie and Leticia Yuroga, Kano and Armina Cernal, Gil and Marites Tapis, Reynaldo and Ruby

- over – eight (8) pages ...

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¹ Penned by Judge Debbie Ann Alerre-Vallega; *rollo*, pp. 11-20.

Tagyamon, Porlu and Vading Ramos, Undo and Lita Aguilar, Jolly and Anita Magaya, Summy and Charmine Sabihon, Nicomedes and Rosita Silva, Berto and Joy Ahos, Alex and Nonet Canoy, Sammie and Naning Benlot, Eric and Emelda Sibala, Enggot and Segunda Tapis, Julito and Epay Alba, Santiago and Marie Academia, Roberto and Teli Regalado, Fernando and Norma Villacampa, Ricardo and Haidi Tapis, Arthur and Jocelyn Cardoso, Fernando and Marife Maro, Perfecto and Marites Zerna, Danilo and Bebie Tapis, Pastor and Elena Zerna, Andres and Virgilia Gerson, Bomifacio and Emma Saycon, Toton and Basilia Tapis, Jun and Bebie Ysulan, Romeo and Neneng Jurua, Anthony and Alona Magave, Pedro and Carmen Benlot, Junior and Bandina Aguilar, Edger and Bading Sevilla, Rene and Bening Pitos, Ricardo and Susan Quipot, Ismael and Vicky Alba, Joseph and Lalyn Maro, Joseph and Ita Alba, Junie and Sherly Gutang, Porferio and Masing Sambilad, Melchor and Maria Buot, Warlito and Raquela Guilario, Macario and Maureta Cornelio, Dominador and Roselyn Alba, Teodoro and Ekit Calumpang, Nandy and Antonieta Marro Tapis, Porlo and Lideng Ramos, Berto and Annie Lope, and Vicente and Remedios Academia to vacate from Lot 1744 of the cadastral survey of Tanjay and remove/demolish all structures existing thereon within a period two (2) months from receipt of this judgment at defendants' expenses; to pay plaintiff the amount of P500.00 a year rental reckoned from November 14, 2001, the date of demand up to the time the defendants shall vacate the area; and to pay plaintiff attorney's fees in the amount of P5,000.00 for each case.

With costs against the defendants.

SO ORDERED.²

When the defendants refused to vacate and remove their houses, Comcom filed a Motion for Issuance of Writ of Demolition which was granted by the MTCC. Accordingly, the MTCC issued Writs of Demolition commanding Jimar to remove the structures. The Writ of Demolition pertaining to Civil Case No. 955 reads in part:

NOW THEREFORE, we command you to demolish the structures erected by the defendants in civil case no. 955, to wit:

- | | |
|----------------------------------|----------------------------------|
| 1. ARTHUR and JOCELYN CARDOSA | 6. ANDRES and VIRGILIA GERSON |
| 2. FERNANDO and MARIFE MARO | 7. BONIFACIO and EMMA SAYCON |
| 3. PERPETO and MARITES ZERNA | 8. TOTON and BASILIA TAPIS |
| 4. DANILO and BEBIE TAPIS | 9. JUN and BEBIE YSULAN |
| 5. PASTOR and ELENA ZERNA | 10. ROMEO and NENENG JUMUAD |

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² Id. at 18-19.

on the portion of the land belonging to the plaintiffs located at Barangay VII, Tanjay City, denominated as Lot [N]o. 1744 covered by TCT No. 13616.³

In his Affidavit-Complaint,⁴ Renante Zerna (Zerna) alleged that he is the son of Elena Zerna and Pastor Zerna (deceased), and that his parents have been living since time immemorial on a lot located on the foreshore area of Barangay 7, Tanjay City, which was being administered by one Marietta Liboon. Said lot is alleged to be adjacent to Lot No. 1744 covered by Transfer Certificate Title (TCT) No. 13616. Zerna later on built his own house adjacent to his parents' house, not knowing that it was already inside Lot No. 1744, and spent about ₱150,000.00 for its construction and improvement. However, despite not being a party to Civil Case No. 955, he was informed that his house will be among those which will be demolished by virtue of the Decision in Civil Case No. 955. In particular, Zerna alleged that Jimar arrogantly told him that his house will also be demolished since he is bound by the decision rendered against his parents. Eventually, Zerna's house was demolished. His parents' house, however, was not demolished after Jimar, together with masked workers and police officers, allegedly realized that it was outside Lot No. 1744. Zerna argued that his right to due process was violated when his house was demolished despite not being a party in Civil Case No. 955.

In their *Comment/Opposition*,⁵ Real and Jimar denied the allegations in Zerna's complaint for being false, fabricated, malicious, and intended to harass them. They disputed Zerna's allegation that Elena and Pastor's house was located in the lot adjacent to Lot No. 1744. While they denied any knowledge regarding the value of Zerna's house, they admitted the latter's allegation that the demolished house was built adjacent to Pastor and Elena's house. Finally, they argued that judgment in ejectment suits shall not only be binding upon the defendants in the suit but also against those not impleaded as parties if they are members of the family relatives, or privies of the defendant. Here, despite not being impleaded as a defendant in the ejectment cases filed by Comcom, the Decision in said case is binding upon Zerna as his parents and his brother (Perpeto Zerna) were made defendants thereto.

In the *Joint Reply to [Real and Jimar's] Comment/Opposition*,⁶ Zerna and Niño A. Tapis (Tapis), who was the complainant in a

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³ Id. at 45-46. Also quoted in the recommendation of the Office of the Court Administrator (OCA); id. at 51.

⁴ Id. at 1-4.

⁵ Id. at 42.

⁶ Id. at 39.

similar case involving the same respondents docketed as OCA IPI No. 15-4406-P (*Niño A. Tapis v. Andres D. Real, Clerk of Court IV, and Leonardo B. Jimar, Sheriff III, both of the Municipal Trial Court in Cities (MTCC), Tanjay City*), argue that they cannot be bound by the Decision in the ejectment case since they were not living with their parents but established their own dwellings. Hence, they should be considered as indispensable parties to the case since their dwellings were not owned by the defendants therein.

The Office of the Court Administrator (OCA) recommended⁷ that the complaint against Real be dismissed in the absence of proof of his participation in the implementation of the Writ of Demolition, other than his ministerial issuance thereof. The OCA noted that said Writ did not deviate from the MTCC's Decision.

As regards Jimar, however, the OCA recommended that he be found guilty of grave abuse of authority or oppression and be suspended for six (6) months and one day, without salary and benefits, for demolishing Zerna's house, who was not a party in the ejectment cases filed by Comcom. The OCA opined that although a pre-demolition conference was conducted, it was not shown that Zerna was called to attend the same to prove the legality of his possession or whether he was a mere successor-in-interest of his parents. Whether Zerna was bound by the Decision in Civil Case No. 955 is still disputed as it has not been established that he derived his right of possession over Lot No. 1744 from his parents, and because it has been shown that he claims ownership of a house separate and distinct from his parents. Furthermore, the Writ of Demolition clearly stated that the structures to be demolished are the ones which were erected by the defendants named therein, which did not include Zerna.⁸

The Court resolves.

As previously mentioned, Tapis filed a Joint Reply together with Zerna, asserting that they are not bound by the ruling in the ejectment case as they were not parties thereto. Notably, Tapis filed a separate complaint against Real and Jimar, docketed as OCA IPI No. 15-4406-P (*Niño A. Tapis v. Andres D. Real, Clerk of Court IV, and Leonardo B. Jimar, Sheriff III, both of the Municipal Trial Court in Cities (MTCC), Tanjay City*), alleging that his dwelling was likewise demolished by Jimar through the implementation of the similar Writ of Demolition. Clearly, Tapis' complaint involved a similar factual

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⁷ Id. at 47-52.

⁸ Id. at 50-51.

milieu, as he alleged that it was his parents, and not him, who were impleaded as defendants in the ejectment cases filed by Comcom; yet his house was also demolished.

In OCA IPI No. 15-4406, the OCA recommended that said complaint against Real be dismissed. The same complaint was, however, re-docketed against Jimar as a regular administrative matter, who was found liable for grave abuse of authority and was ordered to pay a ₱20,000.00 fine.

The Court's Third Division noted and adopted the OCA's recommendation in a Resolution dated March 12, 2018.

Going now to the present case, the Court agrees with the OCA's findings of fact and recommendation to dismiss the case against Real. As correctly found by the OCA, Zerna has not shown that Real had any participation in the demolition of his house other than the issuance of the Writ of Demolition, which, as already mentioned, did not deviate from the Decision of the MTCC in Civil Case No. 955. We note that the OCA in this case arrived at the same finding and recommendation in OCA IPI No. 154406-P.

As regards Jimar, we also agree with the OCA's recommendation that he should be held liable for grave abuse of authority or oppression. Whether Zerna is bound by the Decision in Civil Case No. 955 despite not being a party thereto is beside the point. As correctly pointed out by the OCA, the Writ of Demolition was worded clearly such that it specifically commanded Jimar to demolish the structures erected by the named defendants. Even assuming that there was ambiguity, he should have sought judicial clarification on the matter,⁹ considering that his duty to implement the writ is ministerial.¹⁰ Such course of action becomes more imperative, considering that it appears that Real and Jimar even admitted Zerna's allegation that his house was erected adjacent to that of his parents, which indicates that such house was distinct from the one subject of the Writ of Demolition.

For demolishing Zerna's house even if it was not covered by the Writ of Demolition, Jimar went beyond the scope of his authority and in the process deprived Zerna of his property without due process of law. As stated in *Stilgrove v. Sabas*,¹¹ also cited by the OCA:

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⁹ *Stilgrove v. Sabas*, A.M. No. P-06-2257, November 29, 2006, 508 SCRA 383, 398.

¹⁰ *Id.*

¹¹ *Supra.*

His actions, which were beyond the scope of his authority, deprived complainant spouses of their property without due process of law. They make him liable for grave abuse of authority. Good faith on the part of the respondent, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefore, it behooves him to make due compliance. Any method of execution falling short of the requirement of the law deserves reproach and should not be countenanced.¹²

Going now to the proper penalty, the OCA recommended a penalty of suspension for six (6) months and one (1) day without pay and other benefits. Under Section 46(B)(2), Rule 10 of the 2011 Revised Rules on Administrative Cases in the Civil Service (2011 RRACCS), which was in effect at the time the OCA made its report and recommendation, grave abuse of authority or oppression is a grave offense punishable by suspension for six months and one day for the first offense and dismissal from service for the second offense. This is reproduced in Section 50(B)(2), Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), promulgated on July 3, 2017, which repealed the 2011 RRACCS.

The Court notes that in OCA IPI No. 15-4406-P, Tapis' complaint was re-docketed as a regular administrative matter (A.M. No. P-18-3829) and was similarly found guilty of grave abuse of authority or oppression and was ordered to pay a ₱20,000.00 fine, in lieu of suspension, "in order not to hamper the operations of the court and the proper administration of justice."

In *Boston Finance and Investment Corp. v. Gonzalez*,¹³ it was recognized that the Court has, *in its discretion*, applied the provisions of civil service rules, such as the 2011 RRACCS, in imposing penalties upon erring court personnel who are not judges or justices. This is because offenses under civil service rules committed by such personnel are violations of the Code of Conduct for Court Personnel (CCCP), which do not provide specific sanctions for such violations, but incorporate, among others, civil service rules.

The Court sustains the recommendation of the OCA that the penalty of suspension for six months and one day without salary and benefits be imposed upon Jimar. Considering that both the present case and A.M. No. P18-3829 arose from a common factual antecedent (the implementation of the Writs of Demolition in connection with the

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¹² Id. at 399-400.

¹³ A.M. No. RTJ-18-2520, October 9, 2018.

joint Decision in Civil Case Nos. 952 to 957), and had these cases been consolidated and jointly decided by the Court, this would have resulted in Jimar being found guilty of two counts of grave abuse of authority or oppression.

Under Section 50 of the 2011 RRACCS, “[i]f the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.” The counterpart provision in Section 55 of the 2017 RRACCS, on the other hand, differentiates whether the respondent is found guilty of *two or more different offenses*, or of *two or more counts of the same offense*. In the former, the penalty to be imposed should be that corresponding to the most serious offense and the rest shall be considered as aggravating circumstances, while in the latter, the penalty shall be imposed in the maximum regardless of the presence of any mitigating circumstance.


However, considering that Jimar was already penalized in A.M. No. P-18-3829, it would be harsh to impose a suspension of one year in this case by considering his infraction in A.M. No. P-18-3829 for purposes of imposing the maximum penalty. Such would be tantamount to penalizing Jimar for said infraction more than once.

WHEREFORE, respondent Leonardo B. Jimar, Sheriff III of Municipal Trial Court in Cities (MTCC), Tanjay City, Negros Oriental, is hereby found **GUILTY** of grave abuse of authority and is hereby **SUSPENDED** from the service for six (6) months and one (1) day, without salary or benefits, effective from finality of this Resolution, with a **STERN WARNING** that a repetition of the same or other similar act shall be dealt with more severely.

The instant complaint against respondent Andres D. Real, Clerk of Court IV, same court, is hereby **DISMISSED** for lack of merit.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *10/1/20*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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Mr. Renante Zerna
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Tanjay City, 6204 Negros Oriental

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Mr. Leonardo B. Jimar
Respondent – Sheriff III
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The Clerk of Court
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