

COSME ABIOG Y SAMOY, DOMINGO ABIOG Y SAMOY, CATALINO ABIOG Y SAMOY, PONCIANO ABIOG Y SAMOY, LEON ABIOG Y SAMOY, BONIFACIO METILLA Y MADRID, AMBROCIO METILLA Y MADRID, SEGUNDO JO...*Adm. Matter No. 2240-MJ. May 31, 1982*

Ponente: ABAD SANTOS, J.

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This administrative case concerns Judge Jose M. Pascual of the Municipal Court of Lallo, Cagayan. He was charged for allegedly collecting from the complainants varying amounts, without receipts, as payment for survey fees and titling of lots which were then the subject of cadastral hearings before him.

On May 17, 1979, a Civic Action Agency, headed by then Provincial Governor of Cagayan, Teresa J. Dupaya, and Lt. Col. Tirso H. Gador, Provincial Commander of Cagayan Constabulary Command, made a visit and conducted a dialogue with residents of Barangay Binag and Cagoran, Lallo, Cagayan. Some residents voiced out their problems regarding the activities of Judge Jose M. Pascual, Municipal Judge of Lallo, Cagayan, Donato Elizaga and Thelma Sac for allegedly collecting varying amounts from claimants of lots under Cadastral cases filed with the Cadastral Court of Lallo of which Judge Pascual is the Cadastral Judge, for survey fees and titling of lots without issuing receipts and for failure of Judge Pascual to act with dispatch on cadastral cases filed with his Court. The Provincial Commander directed Capt. Narciso A. Catalan, Company Commander, 117th P. C. Company, Aparri, Cagayan, to conduct an investigation to determine the veracity of the reports of the residents of the two barangays. Captain Catalan took down the statements of some residents who aired their complaints against Judge Pascual and others and submitted the report to the Provincial Commander. The latter submitted his report and recommendation to Col. Igmedio S. Gardoce, Regional Commander, RECOM 2, Tuguegarao, Cagayan. Col. Gardoce referred the case to Executive Judge Bonifacio A. Cacdac, Jr., Court of First Instance of Cagayan. Judge Cacdac forwarded the case to Us whereupon We ordered Judge Napoleon R. Flojo of the Court of First Instance of Cagayan to conduct an investigation of Judge Pascual.

Judge Flojo conducted the requisite investigation and thereafter submitted a report which reads in part:

"Judge Jose M. Pascual is the incumbent Judge of the Municipal Court of Lallo, Cagayan, and until September, 1979, was the Cadastral Judge of the Cadastral Court Lallo, Cagayan, when his authority to take cognizance of land cases was suspended by Judge Cacdac by order of this Honorable Court, dated August 16, 1979.

" Cosme Abiog, Domingo Abiog, Catalino Abiog, Ponciano Abiog are the claimants to Lots Nos. 591, 1000, 1051 and 1055 of Cadastral Case No. N-11-3, LRC Cad. Record No. N-625 of the Cadastral Court of Lallo , Cagayan . Segundo Jose is the claimant to Lot No. 528; Virgilio dela Cruz to Lot No. 577; Tecla Samoy to Lot No. 596; Cipriano de la Cruz to Lot No. 647; Melecio Jose to Lot No. 642; Melecio Jose to Lot No. 1042; Demetrio dela Cruz to Lot No. 1044; Agustina Abiog to Lot No. 1048; Bonifacio Metilla to Lot No. 1056 and Lot No. 1057; Domingo Sibayan to Lot No. 321 and Beatriz A. Siriban to Lot No. 322. The aforementioned claimants are the complainants in this administrative case.

"During the cadastral hearing of Lot No. 1056, Bonifacio Metilla, Ambrocio Metilla, claimants, and Leon Abiog who claims to be an actual occupant of the same lot and who is also occupying other lots adjacent to Lot No. 1056, petitioned the Court on February 19, 1975 for a resurvey or relocation of the lot and adjacent lots for the reason that the cadastral survey did not reflect the actual claim and occupation of the said claimants and that their claims and actual occupation of areas were erroneously included in the survey and segregation of Lot No. 1056.

"Likewise, in the initial hearing of the Cadastral Lots embraced in Pls 607-D, Lallo, Cagayan, Public Land Sub-division on April 3, 1975, Atty. Ojelo Roldan, Legal Officer of the Bureau of Forest Development objected to the jurisdiction of the cadastral Court on a number of cadastral lots claimed by several claimants for the reason that PLS 607-D encroached upon a portion of the Magapit Reserve which has been declared a Game Refuge and Birds Sanctuary, a National Reserve by Presidential Proclamation. On the other hand, the Bureau of Lands claimed that Pls 607-D is in order. Several claimants claim that their claims overlap with the lots claimed by others. Others claim that, while they are in possession of certain areas, the Cadastral Map did not indicate the lot numbers. Upon the petition of the Abiogs, Cruzes, Bonifacio Metilla and Segundo Jose for a resurvey, Judge Pascual then issued an order for the relocation of the lots and for them to show after the resurvey that the lots claimed by them are not within the National Reserve. At the same time Judge Pascual ordered that Legal Officer of the Bureau of Forest Development and the Bureau of Lands to submit a report on what portion of Pls 607-D encroached upon the National Reserve. No report had been submitted to the Cadastral Court.

"In the investigation conducted, the affiants and complainants were duly cited. Out of the 19 affiants who executed statements before Capt. Narciso Catalan, only four (4) appeared at the investigation. Domingo Abiog appeared on his own behalf and stated that he is also appearing in representation of Cosme, Catalino, Ponciano, Leon and Agustin, all surnamed Abiog. Bonifacio Metilla appeared in his own behalf and in representation of his brother Ambrocio Metilla. Segundo Jose appeared in his own behalf. Cipriano de la Cruz appeared for himself and in representation of his brothers and sisters, Virgilio, Hospicio, Demetrio, Eulogia, Maria, Estrella, Leonila, all surnamed de la Cruz. Only Lazaro Abiog and Joaquin Felipe failed to appear and were not represented.

"Domingo Abiog stated that he and his brothers claim three (3) lots, subject of the cadastral hearing and another lot of more than thirteen (13) hectares in another public land subdivision, but within Lallo, Cagayan, under Pls-533. They agreed among themselves to have the properties left by their father be subdivided into five (5) parts and each paying P350.00 for the subdivision. The eldest, Cosme Abiog, collected P1,750.00 and paid to the surveyor in the presence of Judge Pascual. They paid P900.00 to the surveyor for the relocation of the thirteen hectares, also in the presence of Judge Pascual. During the survey Tomas Bermudes claimed a portion and after bargaining with him, the Abiogs agreed to pay him P1,350.00. The survey was conducted by Donato Elizaga and his companions. Judge Pascual was present during the survey but the payment of P1,350.00 was made to Tomas Bermudes in the office of Judge Pascual and in his presence. The total amount of P4,000.00 was paid by the Abiog brothers.

"Cipriano de la Cruz testified that the land left by their father, Mariano de la Cruz, consisting of two (2) lots, Lots Nos. 321 and 322, is to be subdivided into 4 parcels with their sisters owning 2 parcels in co-ownership. They contracted to pay Donato Elizaga P350.00 for each parcel of the four parcels. After the subdivision survey they paid Donato Elizaga P1,050.00 in the presence of Judge Pascual and the balance of P350.00 was paid later to Donato Elizaga also in the presence of Judge Pascual.

"Bonifacio Metilla testified that he agreed with Donato Elizaga to have their three (3) lots to be relocated to determine whether they are included within the Magapit Reserve. He agreed that he would pay P900.00. Three Hundred Pesos (P300.00) was given to Donato Elizaga in the presence of Judge Pascual and the balance to be paid at a later date.

"Segundo Jose testified that his one (1) parcel of land be relocated by Donato Elizaga. After the survey he paid the amount of P100.00 to him in the presence of Judge Pascual.

"After the four complainants had testified, Donato Elizaga was presented to testify for the respondent.

"He declared that he was a Surveyor's Aide in the Bureau of Lands but has retired; that after his retirement he contracted with Geodetic Engineer Villie Ancheta to find clients who have lands to be surveyed and the fees to be shared equally by them. In the Cadastral Survey of the Lallo Land Subdivision he was a Senior Surveyor Aide and he knew quite a number of people who were eager to have their inherited lands be subdivided. He was contracted by Cosme Abiog and Cipriano de la Cruz to have their lands inherited from their respective father subdivided. When the parties were ready he informed Judge Pascual to be present during the survey. Judge Pascual attended with his stenographer, Miss Thelma Sac.

"The first to be subdivided was the property of the Abiogs which was divided into five (5) parcels. After the survey Cosme Abiog paid him P1 ,750.00 in the presence of Judge Pascual. At the request of the Abiogs he also relocated the thirteen hectares under Pls-533 for which Cosme Abiog agreed to pay P900.00. This amount was eventually paid to him in the office of Judge Pascual in the latter's presence. Tomas Bermudes was paid by Cosme Abiog the sum of P1 ,350.00 for he opposed the subdivision survey and he only allowed the continuation of the survey upon being paid the amount. The amount was also paid in the presence of Judge Pascual.

"The properties of Cipriano de la Cruz and his brothers and sisters were surveyed and divided into four lots. He was paid P1 ,050.00 after the survey and P350.00 at a later date in the office of Judge Pascual.

" Bonifacio had three lots surveyed and he paid P300.00. The balance of P600.00 has not yet been paid.

"Segundo Jose had his one hectare land surveyed for which he advanced P100.00. The balance of P200.00 has not yet been paid.

"Answering the charge against him, Judge Pascual declared that he is the incumbent Municipal Judge of Lallo, Cagayan and at the same time was also designated as the Cadastral Judge of Lallo, to hear and decide cases of all lots embraced in Pls 607-D, Lallo Public Land Division until his relief on August 16, 1978; that in the initial hearings of the Cadastral Cases he issued an order for the resurvey of the lots of certain claimants because some claims overlap with other claims; that some lots, although in the possession of claimants were not assigned numbers in the Cadastral Map while others show that the area in the possession of claimants, the map did not reflect the actual area occupied by them; that as a consequence of the order Donato Elizaga was contracted by some claimants to make the re-survey and relocation, and that he was present during the re-survey and the survey fees were paid by the claimants to Donato Elizaga.

"It is claimed that Judge Pascual unlawfully intervened in the survey of the lots when he employed Donato Elizaga to make the survey and being present himself during the survey.

"There is no doubt as to the authority of Judge Pascual to conduct Cadastral hearings in any place where the land is situated. (Sec. 11, Cadastral Act No. 2259) and, under Section 19, the Cadastral Court may order a survey or a subdivision survey between persons or tenants for partition under Sections 20, 21 and 22 of the Cadastral Act. In a cadastral hearing, it is legal for the Court to repair to the land subject of hearing and may conduct investigation and may attend to any survey legally made. A duly licensed surveyor can exact payment of their services in accordance with the approved fees of the Director of Lands; up to 1935, the fee for the first hectare was P350.00, and P150.00 for the succeeding hectares; in 1976 the fee was raised to P450.00 and in 1979 for P650.00 for the first hectare.

"It is the subtle inference in the Investigation Report of Capt. Narciso A. Catalan which initiated the present Administrative Case that the team of Judge Pascual, Donato Elizaga, Pepe Elizaga, Thelma Sac, Benito Mamawag and Jessie Rabara, received various amounts from the complainants for survey and titling of lots

which, up to the present had not been issued titles.

"It is clear from the testimonies of the complainants, Donato Elizaga and the respondents, Judge Pascual, that the various amounts paid by the complainants were for the payments of the re-survey of their respective lots which were paid to Surveyor Donato Elizaga in the office and in the present of Judge Pascual. None of the amounts paid was given to him either by the complainants or Donato Elizaga. And, nothing in the record indicates that any amount was given to him in consideration of the titling of lots. It was upon the advice and suggestion of Judge Pascual rather that the claimants should engage the services of a surveyor and split the expenses among themselves. As shown by the evidence the Abiogs, Cruzes and their families wanted to expedite the issuance of titles to their lands but because of the legal impediments as a result of the objection of jurisdiction by the Bureau of Forest Development that a relocation survey was ordered and a Survey Report be first submitted by the Bureau of Lands and the Bureau of Forest Development. The hearings of these Cadastral Cases bogged down because these two agencies have failed up to the present to submit the re-quired Survey Report. Donato Elizaga likewise failed to furnish the claimants the blue prints of the resurvey.

"Based upon the foregoing findings and conclusions, the undersigned is of the considered opinion that Judge Pascual has not committed any of the charges imputed to him. To the mind of the undersigned, Judge Pascual was rather very lenient and lax to the Bureau of Forest Development, Bureau of Lands and Donato Elizaga in the submission of their respective Survey Reports which apparently caused the delay in the disposition of the cases. Aside from this finding of laxity, the undersigned finds no other basis for the imposition of any penalty.

"WHEREFORE, it is respectfully recommended that Judge Jose M. Pascual be exonerated from any and all the charges filed against him in this Administrative Case."

We do not completely agree with the investigating judge.

On November 12, 1979, Domingo Abiog, one of the complainants, testified in part as follows:

"Q: You stated in your affidavit that sometime in 1979 two (2) lots claimed in your name and your co-affiants were to be sub-divided by a survey team headed by Nato Elizaga, Judge Jose M. Pascual and Miss Thelma Sac containing an area of 2 1/2 hectares and 1 1/2 hectare respectively, both under PLS-607-D, can you still recall that portion of your affidavit?

A: Yes, sir.

Q: That you paid P900.00 and P1 ,350.00 for the titling of these two (2) lots?

A: Yes, sir.

Q: To whom did you pay the P900.00 and the P1 ,350.00?

A: We paid it to Judge Jose M. Pascual.

Q: And who handed the money to Judge Pascual?

A: All of us brothers, Cosme, Catalino, Ponciano and Leon.

Q: Did Judge Pascual issue a receipt for this amount of P900.00 and P1 ,350.00?

A: No, sir.

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Q: According to your joint-affidavit on the foregoing date that you paid for P900.00 and P1 ,350.00 when the survey team and Judge Pascual surveyed your lot under PLS 533 containing an area of more or less 131.616 square meters and you paid another amount or P1,750.00 or P350.00 for each of you five (5) claimants. Do you

refer to the other lot to which you paid the amount of P1 ,750.00?

A: This is another lot for which we the five (5) of us paid P350.00 each and/or a total amount of P1 ,750.00."

It is true that on December 13, 1979, Judge Pascual made the following clarification:

"Q: I refer to you the statements of Cosme Abiog, Domingo Abiog, Catalino Abiog, Ponciano Abiog and Leon Abiog. According to their statement they gave a total amount of P4 ,000.00 to you with the agreement that you will be responsible for the working of immediate titling over said lots. What can you say about that?

A: The amount of P4 ,000.00 can be broken as follows: P1,750.00 was in payment of the survey of a certain lot thirteen (13) hectares plus within PLS 533; P900.00 was for an advance payment for two (2) lots within PLS 607-D and the P1,350.00 was in payment of a portion of the lot given to Tomas Bermudes of Lal-lo, Cagayan. That composed the whole amount of P4 ,000.00."

However, the fact remains that the respondent received money for other persons without issuing receipts therefore. It may be that the respondent did not pocket the money but acted merely as a conduit for the actual recipients. He acted improperly in doing so for he demeaned his judicial office by making it a collection agency for private individuals and moreover cast a cloud on his integrity. For this the respondent deserves punishment mild though it might be.

WHEREFORE, the respondent is found guilty of conduct prejudicial to the best interest of the service and is hereby ordered to pay a fine equivalent to seven (7) days salary with a warning that further misconduct on his part will be dealt with more severely.

SO ORDERED.

Barredo, (Chairman), Aquino, Guerrero, De Castro, and Escolin, JJ., concur.
Concepcion, Jr., J., on leave.

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