

VICTOR B. REYES, COMPLAINANT, VS. HON. ERNESTO A. FADERAN, RESPONDENT.

A.M. No. R-581-MTJ. June 14, 1990

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PER CURIAM:

These administrative complaints were filed against Judge Ernesto Faderan, formerly the Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Paoay Currimao, Ilocos Norte until he was transferred to his present station, the MCTC of Piddig-Carasi-Solsona, Ilocos Norte in January 1987.

IN AM. NO. R-581-MTJ

Atty. Victor Reyes, Assistant Provincial Fiscal of Ilocos Norte in a verified complaint dated February 20, 1986, charged the respondent with inefficiency and violation of Republic Act No. 3019.

The complainant averred that the respondent failed to attend scheduled hearings of criminal cases without prior notice to the parties. He also averred that the respondent was not on leave of absence on the scheduled dates of the hearing.

IN AM. NO. R-674-MTJ

Romeo C. Acdal, a detention prisoner since March 1986, in a letter-complaint dated June 9, 1986, charged the respondent with incompetence. The complainant alleged that Criminal Case No. 1981-P was filed against him in the respondent's court but from March to June, 1986, the respondent had not conducted a preliminary investigation as mandated by Sec. 3 (d) and Sec. 4, first paragraph of Rule 112 of the new Rules on Criminal Procedure which is in violation of his constitutional rights under the provisional Constitution and Sec. 3 (e), (f) of Republic Act 3019.

IN AM. NO. R-675-MTJ

Eishenhower (sic) Adaza, barrio captain of Paoay, Ilocos Norte, in a letter-complaint dated June 9, 1986, charged the respondent with ignorance of the law and incompetence.

The complainant alleged that on November 1, 1984, he confiscated a revolver from one Joventino Tolentino which was made a basis of a criminal complaint filed with the respondent's court and docketed as Criminal Case No. 1884. The respondent has not conducted the necessary preliminary investigation as mandated by Sec. 3 (d) and Sec. 4, Rule 112 of the Rules of Court.

IN AM. NO. R-292-MTJ

Lourdes Clemente Santos, in a verified complaint dated April 1, 1985, charged the respondent with gross ignorance of the law, oppression, neglect of duty, and serious misconduct.

The charges against the respondent arose in connection with the criminal case for theft filed against the

complainant by Pacifico Clemente. The complainant averred that the respondent, without conducting a preliminary investigation whereby the respondent should have asked Pacifico and his witnesses clarificatory questions and without even determining whether there is sufficient evidence that the crime of theft has been committed and that the complainant is probably guilty thereof, hastily issued a warrant of arrest against the complainant.

The complainant also averred that the respondent knowingly omitted the express requirement to furnish the complainant with copies of the criminal complaint and the supporting affidavits and did not bother to direct her to submit her counter-affidavit as mandated by the Judiciary Reorganization Act (Batas Pambansa Blg. 129).

IN AM. NO. MTJ-86-49

Leonora M. Pascua, in a verified letter-complaint dated December 2, 1986, charged the respondent with dereliction of duty for failure to resolve within the 90-day period Civil Case No. 242-P for damages which, according to the complainant, had been submitted for decision some three years ago. The complainant averred that she sought the assistance of the Executive Judge of the Regional Trial Court of Batac, Ilocos Norte, who allegedly issued an order directing the respondent to decide the case in question.

IN AM. NO. MTJ-88-206

Vicente Gregorio, in a sworn letter-complaint dated July 18, 1988, charged the respondent with grave abuse of authority and ignorance of law.

The complainant alleged that in the Order dated June 27, 1988, the respondent Judge stated that at the mediation and conciliation conference, his court mediated between the parties (referring to the herein complainant and one Amador Madamba). This was denied by the complainant who claimed that he was not given any opportunity to be heard thereat. In the same order, the respondent Judge directed herein complainant to desist from molesting the priority rights of Amador Madamba over the residential land in question, which, according to the complainant happens to be part of the property belonging to him and which has been in his possession since 1974.

The complainant asserted that the respondent Judge has no jurisdiction to issue the assailed order and argued that pursuant to PD No. 1508, the Barangay Lupon should be the one to conduct the mediation and conciliation proceedings before any action could be formally filed in court. In the instant case, the respondent Judge allegedly undertook to conduct the mediation and conciliation proceedings and decided the controversy in his capacity as Presiding Judge of the MCTC where there was no case actually filed in his sala in connection with the subject matter in question.

In the resolutions dated June 17, 1986 and July 29, 1986, the Court, acting on the complaints in AM No. R-581-MTJ, AM No. R-674-MTJ, and AM No. 675-MTJ, ordered the respondent to comment on the aforementioned complaints.

In a resolution dated October 8, 1987, the Court suspended the respondent from service for his failure to file his comment as required in the resolution of June 17, 1986 and July 29, 1986 and required him to comply with aforesaid resolutions by submitting his comment.

In the other three cases, the respondent likewise failed to submit his comments as required. All the while respondent had been conducting trials, deciding cases and submitting the corresponding monthly reports in defiance of the resolution suspending him from the service, his latest monthly report being for the month of October 1989.

As a result of all these, the Court issued a resolution dated February 8, 1990, ordering the respondent to cease discharging his functions, to show cause within a non-extendible period why he should not be removed from the service for his willful and continued defiance of the resolution of October 8, 1987 and required him to file his comment on the aforesaid cases within a non-extendible period.

The investigation report prepared by the Deputy Court Administrator after interviewing the respondent in Paoay, Ilocos Norte and the respondent's letter dated March 1, 1990 contain the respondent's side on the issues.

The reason given by the respondent for his failure to file his comments in the different administrative cases is that from the time his wife left him in 1985, he felt so depressed and emotionally disturbed that he was not in the proper disposition to answer the charges against him. He even took a leave for a period of two months from December 1986 to January 1987 for him to maintain his mental sanity and composure. Also, with his reappointment and transfer as Judge to the MCTC of Piddig-Solsona-Carasi, the respondent believed that the administrative cases filed against him during his term as MCTC Judge of Paoay-Currimao were rendered moot and academic.

The reasons given by the respondent do not justify the delay in answering the complaints against him. His wife left him in 1985 and he was asked to file his comments in the succeeding years from 1986 to 1988. He had ample time to recover from the depression caused by his wife's sudden departure. Moreover, depression is never a reason for a public officer's non-compliance with simple duties. If he cannot do his work, he should go on leave or resign. Even assuming arguendo that the respondent believed in good faith that the administrative cases against him were rendered moot and academic because of his transfer, his receipt of the resolution dated October 8, 1987 in November 1987 would have notified him that these cases were not rendered moot and academic. He still did not see it fit to comply with the Court's orders. This shows a deliberate disregard and inexcusable flaunting of the Court's orders.

On the matter of the continuous discharge of his functions despite the order of suspension, the respondent states that there were many pending warrants of arrest issued by him before the order of suspension, so that if he will not hold office, many persons arrested by virtue of said warrants will be unduly detained considering that they cannot be temporarily released upon posting a bail without his presence. He alleged that there was no acting judge designated to preside over his sala in his absence as the Executive Judge was not furnished a copy of the resolution ordering his suspension. He stated that people from the municipality where he was transferred to, go all the way to his residence in Paoay to ask him to act on their legal problems. The respondent states that in his desire to help and with good intentions in mind, he usually proceeds to his court sala to attend to litigants and people involved in legal controversies. Also, the respondent wanted to make it appear that the situation was normal as to avoid humiliation. The respondent felt so confused because of his marital problems coupled with the task of supporting his eight children plus the order of suspension.

The respondent continued to discharge his functions as a Judge for a period of two years from his receipt of the October 1987 resolution. The contention about his alleged desire to finish his pending work concerning the warrant of arrests and the failure to notify the Executive Judge of his suspension is completely negated by the recklessly imprudent attitude of the respondent towards his work. Under the circumstances given in his explanations, the respondent continued with his duties as a Judge only to avoid the humiliation of the suspension. This reason is not only flimsy but is also difficult to believe in the light of the facts of this case. More credible is a deliberate disregard of the Court's order of suspension. The respondent deliberately disobeyed an order of suspension.

The respondent also contends that he never conducted hearings during the period of his suspension. He explained

that it was his Branch Clerk of Court who prepared the monthly reports and though he was hesitant to sign such, he did so as the failure to submit the monthly reports will result in the withholding of the said branch clerk's salary.

This reasoning has absolutely no merit. A Judge should know that he should never falsify records for anybody's sake - himself, his subordinates, parties, or third persons. But even assuming that the respondent's contention is correct, the fact remains that he signed the monthly reports knowing that they were false. This reveals how lightly respondent regarded the importance of official reports. This shows gross negligence in the performance of his duties.

Considering the above, there is no question that the respondent acted with great disrespect and willful disobedience to the Court's orders. (See *Court Administrator v. Magtibay*, 161 SCRA 137 [1988])

As to AM. No. R-581-MTJ, the respondent contends that if it were true that he did not show up at the hearing of the criminal cases scheduled, the parties and the lawyers would have also complained about his absence.

A certification was made by the Clerk of Court of the MCTC of Paoay-Currimao that the respondent was indeed absent during one of the scheduled hearings. However, there is no evidence on the record about the other hearings.

As to AM. No. R-674-MTJ, the respondent states that he recommended the filing of the corresponding information against Acdal and forwarded the same to the Office of the Provincial Fiscal. However, Provincial Fiscal Pobre without taking consideration of the recommendation of the respondent, *motu proprio* dismissed the case against Acdal.

The respondent admits that Acdal is a detention prisoner. A misunderstanding between the respondent and the provincial fiscal should not prejudice the rights of the complainant as he is being detained without due process of law being accorded to him. A Judge should be the first person to respect and promote an accused's constitutional rights.

As to AM. No. R-675-MTJ, the respondent contends that the person from whom the gun was confiscated was not a Joventino Tolentino but one Joventino Francisco according to the complaint filed by the police. The respondent issued a warrant of arrest for Francisco but this was returned unserved as the accused had fled to Manila to an unknown address. The respondent issued an alias warrant of arrest on several occasions and likewise, it was returned unserved. Believing in utmost good faith that the Court had not acquired jurisdiction over the case, the respondent archived the said case.

There is nothing in our records to support the allegations of the complainant. However, considering our findings in the other cases against the respondent, we see no need for further investigation of this particular complaint.

Furthermore, the respondent alleges that the above three complaints were all instigated by Provincial Fiscal Pobre in his desire to remove him from office.

This allegation is not substantiated in the records.

As to AM No. R-292-MTJ, the respondent contends that he conducted personal examination of the complainant and his witnesses based on the affidavits submitted by them. However, the said personal examination was not reduced into writing considering that their affidavits had been adopted as the answers of the complainant and his witnesses. The respondent states that after conducting such personal examination, he was of the opinion that there exists a probable cause and correspondingly issued a warrant of arrest. The respondent also claims to have issued an order requiring the submission of counter-affidavits.

The crime was committed five years ago and the witnesses presented by the complainant were 71 years old and 60 years old at the time of the filing of the complaint which means that they were about 66 and 55 years old respectively when the offense was committed. It is true that, in the final analysis, whether or not probable cause exists depends upon the judgment and discretion of the Judge issuing the warrant of arrest (*Marinas v. Siochi*, 104 SCRA 423 [1981]) but in this case the respondent should follow the proper procedures before issuing a warrant of arrest. Moreover, he should have considered the facts and circumstances of the case in the conduct of the personal examination.

In AM. No. MTJ-86-49, the respondent claims that were it not for his leave and his transfer to another sala, he would have immediately acted on the said case. The respondent admits that the case was already submitted for decision before he took his leave but there was no mention as to exactly when it was submitted for decision.

The records are incomplete to support the complainant's allegation that the said case was submitted for decision some three years ago from the filing of her complaint in 1986 but the Judge practically admits that he failed to act on the case on time. We see no need for purposes of this resolution to order further investigations on this matter.

In AM. No. MTJ-88-206, the respondent avers that he was not acting in his official capacity as a Judge but as a friend trying to help the parties settle their differences. It was due to a mental lapse on his part that he issued the questioned order instead of a document embodying the parties intention and agreement. He had no intention of usurping the function of a barangay court but it is common practice in a community that when they want to settle their differences, they go to a judge.

An order issued by a judge is accorded great weight and respect by the people in a community. Therefore, such orders should be issued with great care and discretion. The alleged mental lapse of the respondent is rejected by this Court which can find no excuse for the issuance of an order as a Judge when there was actually no case filed in his sala.

The respondent is found to have acted with great disrespect and willful disobedience to this Court's orders. The facts show that he is negligent in the use of his authority as a Judge.

There is no need to go into great detail as to the many legal bases why the respondent should be dismissed with prejudice. The facts especially the admissions of the respondent when laid against the Rules show guilt beyond reasonable doubt. It is sufficient to stress that Judge Ernesto A. Faderan has violated the following provisions of the Code of Judicial Conduct:

"Rule 1.01. - A judge should be the embodiment of competence, integrity, and independence."

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"Rule 2.01. - A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

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"Rule 2.03. - A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge."

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"Rule 3.01. - A judge shall be faithful to the law and maintain professional competence."

"Rule 3.02. - In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law

unswayed by partisan interests, public opinion or fear of criticism.”

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“Rule 3.05. - A judge shall dispose of the court’s business promptly and decide cases within the required periods.”

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“Rule 3.08. - A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.”

“Rule 3.09. - A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.”

The acts of the respondent show that he is totally unfit and undeserving to be a member of the Judiciary.

WHEREFORE, respondent Ernesto Faderan is DISMISSED from the service with forfeiture of all salaries, benefits and leave credits to which he may be entitled and with prejudice to re-employment in the Government service, including government-owned or controlled corporations. The Court stresses that this action is without prejudice to any criminal or civil liability which may have arisen from the acts complained of in these cases.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Griño-Aquino, J., on leave.

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