GERMAN AGUNDAY, COMPLAINANT, VS. JUDGE NIETO T. TRESVALLES, MTC, VIRAC, CATANDUANES, RESPONDENT.

A.M. No. MTJ-99-1236. November 25, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This refers to a complaint filed by German Agunday against Judge Nieto T. Tresvalles of the Municipal Trial Court of Virac, Catanduanes charging him with gross ignorance of the law, inefficiency, and partiality in connection with his handling of Criminal Case No. 4792, entitled "People v. Lope Panti, Sr., et al."

The facts of this case are as follows:

On September 25, 1997, the Second Assistant Provincial Prosecutor of Virac, Catanduanes filed an information for malicious mischief against Lope Panti, Sr., Leopoldo Panti, and Engr. Fernando Asuncion in the Municipal Trial Court of Virac, Catanduanes, presided over by respondent judge. Respondent judge conducted a preliminary investigation of the case and then required the accused to post bail in the amount of P4,200.00 each. On January 26, 1998, four months after the filing of the case with his court, respondent judge issued an order declaring that the case was covered by the Revised Rule on Summary Procedure and, for this reason, directing that a copy of the complaint and the affidavits of the complainant be served on the accused who were ordered to file their counter affidavit within ten days.

Complainant, the offended party in the criminal case, appeared at the hearings held on April 7, April 20, and June 1, 1998. At around 9:25 in the morning of August 10, 1998, counsel for the defense filed a motion to quash the information, stating that:

COME NOW, the accused by the undersigned counsel and to this Honorable Court, respectfully move to Quash the information in the above-entitled case on the following:

GROUND:

> THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE (Sec. 3, Rule 117, Rules of Court) AS BOLSTERED BY THE FINDINGS OF THE OMBUDSMAN AFFIRMING THE PREVIOUS DISMISSAL OF THIS CASE BY THE PROVINCIAL PROSECUTION OFFICE

ARGUMENTS:

Per Review Action issued by the Office of the Deputy Ombudsman for Luzon, dated July 14, 1998, copy of which is hereto attached as Annex "1" and forming integral part hereof, the resolution of 2nd Asst. Provincial Prosecutor Antonio C.A. Ayo, Jr. (a) dismissing the case filed by Mr. German Agunday against public respondents Lemuel B. Velasco, Valentin Gonzales and Isidro Guerrero, Deputy Sheriff, Process Server and Aide respectively, of the RTC of Virac, Catanduanes for violation of Sec. 3 (e) of R.A. 3019 and violation of R.A. 6713, and (b) dismissing the case filed against respondents Lope Panti, Sr., Leopoldo Panti and Fernando Asuncion for Malicious Mischief

were elevated to said Office of the Ombudsman for review. As embodied in said Review Action, thus:

The case against private respondents for Malicious Mischief was likewise dismissed by the Hon. Asst. Prosecutor stating that private respondents demolished the structure in the honest belief that said structure could already be torn by them.

The dispositive portion of the aforementioned Review Action textually reads:

WHEREFORE, premises considered the undersigned respectfully recommends that the Resolution under Review be AFFIRMED.

As maybe intelligently gleaned from the foregoing, the dismissal of the above-entitled case by the Hon. 2nd Asst. Provincial Prosecutor Antonio C.A. Ayo, Jr. was likewise affirmed by the Ombudsman.

> WHEREFORE, premises considered, it is most respectfully prayed that the above-entitled case be QUASHED.
>
> Complainant's counsel was informed of the filing of the motion only a few minutes before the hearing began in the afternoon of August 10, 1998. She opposed the motion on the ground that its filing was not allowed under the Revised Rule on Summary Procedure. Instead of outrightly resolving the motion to quash, respondent judge required complainant's counsel to put her opposition in writing and, for this purpose, gave her 30 minutes to prepare the same.
>
> In an order, dated August 11, 1998, which complainant's counsel received only on September 8, 1998, respondent judge dismissed the criminal case for alleged lack of jurisdiction. The order reads:
>
> After going over the entire records of the case the same do not reveal that this case of Malicious Mischief which falls under the Summary Procedure in Special Cases as previously determined by its Court Order dated January 26, 1998 was referred first to the barangay justice for mediation and conciliation before filing the same with this Court.
>
> This being so, and even without determining the merits of the Motion to Quash and the Opposition thereto, the instant case is hereby ordered DISMISSED for lack of jurisdiction of the Court over the case. All proceedings and/or orders previously made are temporarily set aside until such time when the Court legally acquires jurisdiction over the case.
>
> SO ORDERED.

On September 24, 1998, complainant's counsel moved for a reconsideration, claiming that the requirement to refer cases to Lupon Tagapayapa for conciliation and mediation proceedings did not apply to the criminal case because the parties were residents of different barangays. Respondent judge, therefore, reinstated the case and set it for pre-trial on December 16, 1998.

On October 7, 1998, the instant complaint was filed. Complainant alleges respondent judge should have denied the motion to quash the information filed by the accused instead of requiring his counsel to put her opposition in writing since the trial court is a court of record. Complainant alleges further that when his counsel complied with the court's order to put the opposition in writing and he and his counsel returned to the courtroom, they found that the session that afternoon had been adjourned and that the courtroom was already empty; that when they filed their written opposition, they were informed that the order containing the court's resolution would be mailed to them; and that in an order, dated August 11, 1998, respondent judge dismissed the criminal case for lack of prior referral of the case to the Lupon Tagapayapa for conciliation.

Complainant claims that respondent judge antedated his order of dismissal in order to hide the fact that it took him 20 days to resolve the motion to quash, making it appear that it was issued on August 11, 1998 when, in truth, it

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was mailed to his counsel on August 31, 1998 and received by the latter on September 8, 1998. Secondly, he contends that even if it were true that respondent judge acted on complainant's motion to quash on August 11, 1998, he should still be considered inefficient because it took him 11 months from September 25, 1997, when the complaint was filed, to determine whether the case should be dismissed for lack of prior referral to the Lupon Tagapayapa, only to later on retract the order of dismissal when it was pointed out to him that no prior referral was required as the parties lived in different barangays. Thirdly, complainant contends that respondent judge is guilty of impropriety by refusing to inhibit himself from the case despite the fact that one of the accused, Lope Panti, Sr., is the father-in-law of respondent judge's daughter.

In his comment on the complaint, respondent judge states:

ISSUES NOS. 2 & 3. When this case of Malicious Mischief was filed on September 25, 1997 a preliminary examination was conducted and [I] misapplied Art. 325, RPC by requiring the three accused to post P4,200.00 bail bond each for their liberty. However, subsequently and after perusing again the records of the case, it was later found out that the instant case falls on the Rules on Summary Procedure in Special Cases, and thus the Complaint was dismissed for failure of the Complainant to refer the matter first to the Barangay Justice.

ISSUE NO. 4. The private complainant and his counsel are simply jealous [of] the undersigned [considering] the fact that his son married [accused Lope Panti] Sr.'s daughter, not the undersigned's daughter marrying the former's son as alleged.

Actually, there is no cause for alarm on the complainant's part considering that the proceedings of the case are just in the preliminaries and they have just began. In fact, before all these and during her first appearance before this Court, Atty. Dalisay approached this respondent inside his chamber inquiring from him if she can obtain fair and impartial trial in his court [despite] the fact that Lope Panti Sr. is his "balae"; right there and then she was assured that despite said fact, the balance of justice will not tilt in the accused's favor if it is not warranted.

It is sad to note that during the last hearing on August 10, 1998, Atty. Dalisay in her opening statement in open court with plenty of spectators and trial lawyers inside the courtroom had asked this humble representation what is the procedure adopted by his court in trying cases which question was answered in a soft and clear response to the effect that the procedures in Metro Manila courts are also applied and adopted by all courts even in the remotest barrio of the Philippines. (Annex "2"). Was she trying to show-off? The undersigned does not know, but what he knows is that his answer to Atty. Dalisay is just proper and appropriate to her intriguing and uncalled for question.

ISSUE NO. 5. It is not true that the accused through counsel, Atty. Velasco, filed their Motion to Quash a few minutes before the session in the afternoon on August 10, 1998. Records show that the said motion was rather filed at 9:25 A.M. of the same date. (Annex "3").

ISSUE NO. 6. Atty. Dalisay was given 30 minutes to make her Opposition to the Motion to Quash in writing. However, after perusing judiciously the facts of the case and without considering the merits of the Motion and the Opposition an Order dated August 11, 1998 was made dismissing the case for lack of jurisdiction.

A motion to dismiss/quash a case falling under the Rules on Summary Procedure in Special Cases is as a general rule prohibited, but such rule does not apply when said motion is based on lack of jurisdiction of the Court or failure of referral to a barangay (p. 21, notes & cases on the 1991 Revised Rules on Summary Procedure, by Ernani Cruz Paño and Daniel T. Martinez) or when the ground is double jeopardy. Based on lack of jurisdiction and such ground being supported by facts on records, a minute resolution was made.

According to the complainant, when his counsel returned to the courtroom at 2:48 P.M., the session was already adjourned and that the undersigned, Atty. Velasco and that the personnel were all gone. This is a brazen lie! The

Court personnel were just outside the Court right at the lobby sitting on the benches for a fresh air as our court is not air-conditioned (Annex "4"). The undersigned was inside his chamber drafting a decision. Complainant's counsel should have [made] known her presence to the judge so that the session could be resumed [even if] to the mind of the Court oral arguments on the Motion and Opposition thereto is no longer necessary as a Minute resolution to the two pleadings could be had as the legal basis for the same is clear. If it is true that the court personnel were all gone at 2:48 P.M., Atty. Dalisay or this complainant is lying in saying that the Clerk of Court had told her that the Order of August 11, 1998 will just be sent by mail to the counsel.

It is inconceivable how a lawyer from Metro Manila and still new in the environment [could have] concluded that not one court employee was still around at that time when the truth is that she does not know who are really the personnel in said court. Such a conclusion is baseless and misleading.

ISSUES NOS. 7 & 8. The accusation that the Order dated August 11, 1998 was antedated is again misleading and a desperate allusion of the Complainant and his counsel. Atty. Dalisay must know for herself that the date of the making/drafting and typing of an Order, more often than not, is different from the date of the mailing. Certain internal processes must first intervene or take place between these two types of work for smooth office flow of communications. The volume of work because of the big volume of pending cases had caused the unwanted delay in the preparation and mailing of the Order.

ISSUE NO. 9. The allegation of the complainant that the case has been pending for 11 months already and yet the final determination as [to] its nature has not been resolved is not a conclusive presumption that the undersigned is incompetent and inefficient, nor shall he be liable for not applying the Rules on Summary Procedure in Special Cases as the first ruling made was to the effect that the case falls on the regular procedure [and] the actions taken by the judge is not deliberate to evade the applications of the summary procedure.

For your kind information this humble representation might also be the same with other judges who have multi courts under him. The undersigned is the Presiding Judge of the capital town of Catanduanes, Virac, the metropolis of the province. On August 18, 1997, he was designated as Acting MTC Judge of San Andres, the second biggest town, 17 kilometers from Virac (annex "5"). And subsequently, he found himself again already radiating in other MCTCs of Bato-San Miguel and Baras-Gigmoto due to another designations (Annex "6" & "7"). Besides these, he is also trying inhibited cases of the other judge in the northern towns of the province with almost impassable rugged roads. Because of the pressure of the work and vicarious responsibility over these six (6) courts, he is now hypertensive.

Should the undersigned [be found] remiss in his work, he seeks therefore your kind indulgence and understanding. Anyway, such was not made with conscious and deliberate intent to do an injustice. The Supreme Court in its En Banc Decision, Justice Campos, Jr., Luis Vuitton, S.A. vs. Diaz Villanueva, Adm. Case No. MTJ-92-643, November 27, 1992, it was ruled that in order to hold a judge liable, it must be shown beyond reasonable doubt that the judgment is unjust and that it was made with conscious and deliberate intent to do an injustice. x x x (underscoring supplied).

In another case the Supreme Court said x x x that the complaint against the respondent judge be dismissed as the issuance of the complained orders and decision pertain to respondent's judicial functions, which in the absence of fraud and bad faith, may not be proper considerations to charge a judge though these acts may be erroneous. The Court further held that the imputation of partiality was a mere suspicion and that as a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action. (Equatorial Realty Development Inc. vs. Judge Casiano P. Asuncion, A.M. No. MTJ-91-562, October 10, 1997)

NOW THEREFORE, premises considered, it is most respectfully prayed unto this Honorable Office and to the

Honorable Chief of Justice and to the Members of the Supreme Court that the Affidavit-Complaint be dismissed for lack of merit and the same be considered terminated and finally closed.

Thank you very much.

In its report, the Office of the Court Administrator made the following findings and recommendation:

The comment of the respondent is not persuasive. Records show that on September 25, 1997, an information for Malicious Mischief, wherein the herein complainant is the offended party, was filed in the Municipal Trial Court of Virac, Catanduanes over which respondent presides. One of the accused in said case is Lope Panti, Sr., the father-in-law of respondent's daughter. The damage sustained by the complainant [as] alleged in the information is P135,000.00. The imposable penalty for the offense is Arresto Mayor in its medium and maximum periods (Art. 329 (1) RPC). The procedure that should, therefore, be observed in said case is the Rule on Summary Procedure. Respondent claims that after preliminary examination, he misapplied Art. 325, RPC by requiring the accused to post a bail bond of P4,200.00 each.

On January 26, 1998, or more than four (4) months after the information was filed, the respondent issued an order stating, "that the case falls under the Rule on Summary Procedure," and served a copy of the information and affidavits of the complainant and his witnesses upon the accused, and directed them to submit controverting evidences within ten (10) days from receipt of the order. . . .

From the date the information was filed on September 25, 1997, it took respondent more that four (4) months to issue the order requiring the accused to submit evidences in support of their defense. Although the accused were not in custody, four (4) months is too long to act on the case by issuing the order and serving a copy of the information and affidavits submitted by the complainants to the accused directing them to submit their counter-affidavits within ten (10) days from receipt thereof.

. . . .

On August 11, 1998, the respondent issued an order dismissing the case for, according to him, when he went over the entire records of the case there is no showing that the case was first referred to the barangay justice for consideration and mediation without determining the merits of the Motion to Quash and the Opposition thereto which was the pending incident. The order, however, was reconsidered after the Private Prosecutor filed a manifestation stating that the parties reside in different barangays.

The dismissal of the case and its re-instatement has again delayed the disposition of the case. The dismissal could have been avoided had respondent read the records of the case because by just going over the affidavit of the complainant and the information filed, he would know that the complainant resides in Cavite. As a matter of fact all notices to the complainant were sent to his Cavite address.

The respondent is expected to follow strictly the provisions of the Rule on Summary Procedure and the rules regarding motions. The respondent should have immediately denied the motion to quash and proceeded with the previously scheduled arraignment and pre-trial of the case on August 10, 1998. Respondent knew that the complaining witness and the private prosecutor who are residents of Muntinlupa City and Cavite, respectively, were in court in obedience to the notices sent to them. Respondent knew that the complaining witness spent much time and money in going to Virac, Catanduanes just to be present at the arraignment and pre-trial of the case. But the respondent, unmindful of the time and money spent by the complaining witness in coming to court with a Private Prosecutor, deliberately disregarded the Rule on Summary Procedure and the rules regarding motions and gave judicial cognizance to the motion to quash, and adjourned the courts' session without even informing the Private Prosecutor and the complainant.

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RECOMMENDATION: Respectfully submitted for the consideration of this Honorable Court are our recommendations:

- That the instant complaint be RE-DOCKETED as an administrative matter; [and]

- Then respondent Judge Nieto T. Tresvalles be fined in the amount of TEN THOUSAND PESOS (P10,000.00) with a STERN WARNING that the commission of the same or similar offense will be dealt with more severely.

We agree with the findings of the Office of the Court Administrator. The records clearly show inefficiency, gross ignorance of the law and impropriety on the part of respondent judge.

First. He failed to determine that the criminal case before him was governed by the Revised Rule on Summary Procedure, as a result of which he applied the regular procedure and required the accused to post bail. It took respondent judge four months from the date of the filing of the information on September 25, 1997 to January 26, 1998 to determine that, after all, the case was subject to the Revised Rule on Summary Procedure and order a copy of the complaint and the affidavits to be served on the accused so that they could file their counter affidavit. Meanwhile, he required them to post bail when, under the Rule on Summary Procedure, this is no longer necessary considering that the charge against them was simply malicious mischief.

Sec. 2 of the Revised Rule on Summary Procedure provides:

SEC. 2. Determination of applicability. ¾ Upon the filing of a civil or criminal action, the court shall issue an order declaring whether or not the case shall be governed by this Rule.

A patently erroneous determination to avoid the application of the Rule on Summary Procedure is a ground for disciplinary action.

Although the said provision states that "patently erroneous determination to avoid the application of the [Rule on Summary Procedure] is a ground for disciplinary action," the provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious. Otherwise, the policy of the law to provide for the expeditious and summary disposition of cases covered by it could easily be frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. In this case, more than four months had already elapsed since the filing of the criminal case before respondent judge found he had made a mistake.

Second. Even after declaring the criminal case to be subject to the Revised Rule on Summary Procedure, respondent judge committed further errors which clearly show gross ignorance of the law and inefficiency on his part. Respondent judge concedes that a motion to quash is a prohibited pleading under the rule of summary procedure. However, he contends that the said prohibition does not apply when the motion is based on lack of jurisdiction over the case or failure of the complainant to refer the case to barangay conciliation. His contention is correct under §19(a) of the rule. However, the facts of the case show that the motion to quash filed by the accused was not based on lack of jurisdiction or failure to refer the case to barangay conciliation but on the ground that "the facts charged do not constitute an offense." Thus, respondent judge should have outrightly denied the motion.

Respondent judge's dismissal of the case on the ground that there was no prior referral of the case to the Lupon Tagapayapa for conciliation proceedings was likewise erroneous. A cursory examination of the records would have shown to him that the parties were not residents of the same barangay and, therefore, the prior referral of the case to the barangay authorities was not required. Complainant lives in Cavite, while the three accused in the criminal case reside in Virac, Catanduanes.

Municipal judges are the front-line officers in the administration of justice.[1] As such, they are the visible

representation of the law. It is, therefore, essential that they live up to the high standards demanded by the Code of Judicial Conduct. As this Court has said, everyone, especially a judge, is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[2] Judicial competence requires no less. The fact that respondent judge was also the acting judge in the Municipal Trial Court of San Andres, Catanduanes, and in the Municipal Circuit Trial Court of Bato-San Miguel and Baras, Gigmoto, Catanduanes, is not an excuse for incompetence. A heavy caseload may affect a judge's efficiency but it cannot justify his ignorance of the law.

Third. Respondent judge's refusal to inhibit himself from trying the criminal case with respect to accused Lope Panti, Sr., who is the father-in-law of respondent judge's son, constitutes impropriety and gives rise to suspicion of partiality.

To be sure, respondent judge and accused Lope Panti, Sr. are not, strictly speaking, relatives within the meaning of Rule 137, §1 of the Rules of Court. Nevertheless, the close personal relations between them as parents of their respective children, being in our culture known as "magbalaes,"should have cautioned respondent judge to inhibit himself from the case, lest his impartiality be placed in doubt. To the contrary, despite the motion of complainant's counsel seeking the inhibition of respondent judge, the latter refused to lay off the case and simply kept assuring complainant's counsel that "the balance of justice will not tilt in the accused's favor if it is not warranted."

As a result, respondent judge's dismissal of the complaint against the accused, on a ground which turned out to be erroneous, immediately gave rise to the suspicion that he did so because the accused was his "balae," the father-in-law of respondent judge's son. His failure to outrightly deny the motion to quash, despite the fact that it is a prohibited pleading under the Revised Rule of Procedure, betrayed his personal interest. Clearly, he committed a disservice to the cause of justice.

Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety. Rule 2.03 of the Code of Judicial Conduct provides:

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.

In Gallo v. Cordero,[3] the Court imposed a fine of P10,000.00 on a judge after finding that -

> he not only has shown gross ignorance of law and procedure but has also failed to live up to the norm that "judges should not only be impartial but should also appear impartial." He thus violated Canon 2 of the Code of Judicial Conduct which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities." In the words of Rule 2.01 of that Canon, "A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

In sum and substance, to us in the Court, the whole incident above narrated — the failure of respondent judge to make a determination whether the case before him was covered by the Revised Rule on Summary Procedure, with the result that during the preliminary investigation, he required the accused to post bail for their provisional release, his failure to see that the motion to quash filed by the accused was based on the ground that the facts alleged did not constitute a crime, his erroneous dismissal of the case on the ground of lack of prior referral to the Lupon Tagapayapa, and his refusal to inhibit himself from the trial of the case because the accused is the father-in-law of respondent judge's son — demonstrates beyond doubt, if not respondent judge's lack of acquaintance with basic elementary principle of law, his defiance of legal norms which call on judges to avoid any appearance of impropriety at all times.

FOR THESE REASONS, the Court finds Judge Nieto T. Tresvalles of the Municipal Trial Court of Virac, Catanduanes GUILTY of gross ignorance of the law and impropriety and hereby ORDERS him to pay a fine in the amount of P10,000.00, with a stern WARNING that a repetition of the same or similar transgressions shall be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Junio v. Rivera, 225 SCRA 688 (1993).

[2] Agcaoili v. Ramos, 229 SCRA 705 (1994); Santos v. Judge Isidro, 200 SCRA 597 (1991).

[3] 245 SCRA 219, 225-226 (1995).

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