

LEONARDO P. DADULA, COMPLAINANT, VS. JUDGE MANUEL V. GINETE, MUNICIPAL TRIAL COURT, MASBATE, MASBATE, CLERK OF COURT DIOSCORO V. CONAG, AND PROCESS SERVER ROLLY ALMORADIE, BR. 4...

A.M. NO. MTJ-03-1500. March 18, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a letter complaint dated January 15, 1998 filed by complainant, Leonardo P. Dadula, against Judge Manuel V. Ginete, Municipal Trial Court (MTC), Masbate, Clerk of Court, Atty. Dioscoro V. Conag and Court Process Server Rolly Almoradie, both of the Regional Trial Court (RTC), Branch 45, Masbate, Masbate charging them with bias, partiality and conduct prejudicial to the best interest of the service.

In his complaint, Dadula alleges: He filed with the Office of the Ombudsman charges for violation of the Anti-Graft and Corrupt Practices Act against Hilda Revil, former School Division Superintendent of Masbate, her children, namely: Arturo and Amanda, both surnamed Revil, and two other relatives. After investigation, the Ombudsman filed five counts of graft charges against them before the RTC, Branch 45, Masbate, Masbate, docketed as Criminal Cases Nos. 18747 to 18751. These cases were then set for hearing. On November 12, 1997, he (complainant) and his counsel, Atty. Makilito B. Mahinay, appeared before the court pursuant to the subpoenae sent to them. However, they were surprised to find out that their cases were not included in the court's calendar. Atty. Mahinay then requested for the inclusion of their cases for the day's hearing since the Presiding Judge was still in the courtroom calling the other cases and the counsel of the accused and the representative from the Office of the Provincial Prosecutor were present, which the court personnel present at that time refused to do. Later, complainant found out that accused Hilda Revil and Atty. Arturo Revil were in court earlier in the day. He then suspected that their presence had something to do with the non-inclusion of their cases in the court's calendar. Complainant's counsel filed a formal protest addressed to respondent Clerk of Court Atty. Conag, copy furnished the Court Administrator, requesting for an explanation for such incident.

Meanwhile, Atty. Arturo Revil, one of the accused who was dropped by the Ombudsman in OMB 1-89-02462, filed before the MTC of Masbate, a case for perjury[1] against complainant based on the latter's sworn statement made before the Ombudsman. Complainant claims that respondent Judge Ginete issued the warrant for his arrest without first conducting a personal examination on him and his witnesses as mandated by the Constitution; that when his son examined the records of the perjury case, he found no transcript of stenographic notes (TSN) of any personal examination conducted by the respondent Judge, not even on Atty. Revil. Later, complainant filed a motion to quash the warrant of arrest which after a long period of time was denied by respondent Judge. Complainant insinuates that in the meantime, respondent Judge had already inserted in the records of the case a copy of the TSN of the alleged examination conducted on Atty. Revil to correct his error. Complainant put up a bond of P12,000.00 for his temporary liberty. He concludes that a conspiracy to whitewash the outcome of the anti-graft cases exists among the personnel of RTC, Branch 45, Masbate as well as respondent Judge Ginete, a

close friend of Atty. Revil who is a well-known politician in the province.

Complainant asked for the following reliefs:

- (a) Transfer of venue of the hearing of Criminal Cases Nos. 18747 to 18751 now pending before RTC Masbate to any court in Manila;
- (b) Assignment of a state prosecutor to prosecute said criminal cases;
- (c) The disqualification of Judge Ginete from hearing and trying Criminal Case No. 10801; and
- (d) The imposition of administrative sanction on Atty. Arturo Revil.

On September 29, 2000,[2] then Court Administrator Alfredo Benipayo and Danilo L. Mendoza, OIC Legal Office, Office of the Court Administrator (OCA), submitted their initial report, to wit: (1) The change of venue of the abovementioned criminal cases is the subject matter of a separate agenda dated September 29, 2000; (2) the matter of assigning a state prosecutor should be addressed to the Department of Justice; (3) the disqualification of respondent Judge Ginete is a judicial matter properly addressed to the Judge himself; (4) the complaint against Atty. Arturo Revil has been referred to the Office of the Bar Confidant through a First Indorsement dated September 29, 2000; and recommended that respondents be required to file their respective comments on the administrative complaint.[3]

The letter of Atty. Mahinay on the non-inclusion of Criminal Cases Nos. 18747-18751 in the court's calendar was referred by the OCA to then Executive Judge Ricardo M. Merdegia of Branch 45, RTC of Masbate,[4] for appropriate action. Accordingly, Judge Merdegia directed respondent Conag, his Branch Clerk of Court, to file his comment thereto.[5]

Respondent Conag admitted that there was a mistake in the calendaring of cases on November 12, 1997 due to the fact that the list of cases in the control book was inadvertently deleted by respondent Process Server Rolly Almoradie. Respondent Conag further contends that: Almoradie was in the honest belief that the said cases were scheduled for November 13, 1997 since the Prosecutor's Office informed Almoradie that Prosecutor Cabataña was not appearing in the court on November 12, 1997, hence the failure of the interpreter to include the said cases in the court's calendar; attached to his comment was the affidavit of Almoradie; when respondent Conag saw complainant in the courtroom, he approached the latter and told him that the accused will be summoned upon the arrival of the Prosecutor and complainant's counsel since the house of the accused was only a walking distance from the trial court.

Respondent Conag denied the accusation of conspiring to whitewash the case. He also attached the affidavit of Georgina Teodoro and Gloria Merdegia, both stenographic reporters, and Florien Aban, court interpreter, all of Branch 45, RTC, Masbate, attesting to the fact that Atty. Mahinay appeared in the courtroom at about 10:30 a.m.

Executive Judge Merdegia submitted his report as follows:

This serious accusation is now the subject of an inquiry and although, the undersigned is very much cognizant of the fact that his function is to come up with a report and recommendation based on the affidavits and supporting documents presented by the parties; Nevertheless, undersigned cannot just close his eyes to the reality that the incident complained of happened in his very own court. Setting aside therefore technicalities, it is my bounden duty as the Presiding Judge of the Court to set the record straight with impartiality so that the unsullied integrity of the Court shall be upheld and render justice where justice is due.

Atty. Mahinay is not helping the cause of his client by imputing allegation to the Clerk of Court which is bereft of truth and has a vestige of falsity. His insinuation that "he requested from the staff for the calling of cases while the undersigned was still at the courtroom" is not true. Before the cases were called on November 12, 1997, in open court, Atty. Conag informed and asked the undersigned to have the aforementioned cases included in my calendar. I acceded, and when the cases scheduled for that day were finally called, Assistant Prosecutor

Felipe Cabataña failed to appear together with Atty. Makilito B. Mahinay. So, all the cases scheduled for November 12, 1997 had been reset.

At around 10:30 a.m. of November 12, 1997, Atty. Makilito Mahinay entered my chamber and apologized to the undersigned for coming late. We talked trivial matters. His frustrations and sad experienced (sic) in the practice of his profession in the cities of Cebu and Manila. Before leaving though, undersigned suggested to Atty. Makilito Mahinay that since he was late in coming, we might as well hear the cases tomorrow, November 13, 1997. Atty. Mahinay said he has to attend to his cases in Manila and will just wait for the resolution of the Court on the propriety of his appearance as private prosecutor in the Revil cases.

The Court issued an Order dated November 26, 1997 which disallowed the appearance of Atty. Makilito Mahinay as private prosecutor on the Revil cases.[6]

Judge Merdegia found that assuming Atty. Mahinay insisted for the correction of such error, he should have asked for an explanation directly from respondent Conag who could have remedied the omission immediately. He then recommended that the letter of Atty. Mahinay be expunged from the records of the subject criminal cases for being untruthful.

Complainant and Atty. Mahinay filed their separate comments on the report of Judge Merdegia disputing the Judge's findings that Atty. Mahinay was late for the November 12, 1997 hearing. They both claimed that they were in the courtroom as early as 8:30 a.m. Atty. Mahinay admitted that he went to see the Presiding Judge in his chambers not to apologize but to talk to him; that it was the Judge who told him that there was an oversight in the scheduling of cases and he accepted the simple explanation because of the friendly atmosphere.

In a Resolution dated November 15, 2000,[7] respondents Ginete and Conag were required to file their respective comments on the complaint.

Respondent Conag reiterated his statement in his affidavit filed before Judge Merdegia. He further stated that contrary to the allegation in the complaint, an immediate correction of the error was made by the court. [8] He submitted for the Court's consideration the following: Judge Merdegia's report of investigation, his comment submitted to Judge Merdegia, the joint affidavit of the court personnel attesting to the fact that Atty. Mahinay came in late on November 12, 1997, and the affidavit of Process Server Rolly Almoradie who was the one who inadvertently deleted the subject criminal cases from the trial court's calendar.

Respondent Process Server Almoradie made reference to his affidavit dated February 9, 1998 which he executed in connection with the investigation conducted by then Executive Judge Merdegia; and alleged that he had already retired from government service effective May 11, 1998 hence the administrative case against him is now moot and academic. [9]

Respondent Judge Ginete filed his comment[10] alleging that he conducted clarificatory examination on Atty. Revil on January 15, 1997. He denied delaying the resolution of complainant's motion for reconsideration of the order denying his motion to quash warrant of arrest. He explained that since complainant filed with Branch 45 of RTC, Masbate, a Manifestation of his intention to file an administrative case before the Supreme Court, copy furnished his office, respondent decided to hold in abeyance action on the motion. However, since complainant's counsel filed a Motion to Resolve the motion for reconsideration on January 27, 1999, respondent Judge acted on it and issued an Order dated March 16, 1999 which denied complainant's motion for reconsideration. Respondent Judge claims that complainant had filed a petition for certiorari before the RTC of Masbate, Branch 48, assailing his Orders denying complainant's motion to quash information in Criminal Case No. 10801 and his motion for reconsideration which was dismissed since no grave abuse of discretion amounting to lack of jurisdiction was found to have been committed in issuing the assailed orders.

Respondent likewise denied complainant's charge of conspiracy and collusion between him and Atty. Revil. He averred that the fact that he issued a warrant of arrest against Atty. Revil in Criminal Case No. 11779 filed by complainant belied the allegation of conspiracy and collusion.

In a Resolution dated March 19, 2003, we referred the case to the OCA for evaluation, report and recommendation.

In a Memorandum dated June 2, 2003, the OCA recommended the following: (a) to re-docket the case as a regular administrative matter; (b) to refer the same to Executive Judge Maximino R. Ables of RTC, Masbate, for investigation, report and recommendation insofar as respondent Judge Ginete and respondent Conag are concerned; and (c) to dismiss the complaint against respondent Almoradie for being moot and academic in view of his retirement from the service.

In a Resolution dated July 9, 2003,[11] we dismissed the case against Almoradie and referred the case against respondents Ginete and Conag to Judge Ables.

Judge Ables submitted his investigation report dated August 10, 2004 recommending the dismissal of the administrative case. He adopted the facts as narrated by Judge Merdegia in his report that Atty. Mahinay was not inside the courtroom when the cases were called since if it were otherwise, then it would have been easy for Atty. Mahinay to request the judge, in open court, to call the Revil cases as the same were scheduled for that day; that except for respondent Conag's inadvertent non-inclusion of the criminal cases in the court calendar, he found no infraction committed by respondent Conag to make him administratively liable. Anent complainant's charge that respondent Judge Ginete issued the warrant for his arrest without conducting a preliminary examination on Atty. Revil and that the TSN was merely subsequently inserted, Judge Ables found the same unsubstantiated. He stated that a verification of the record showed that the TSN taken during the clarificatory examination on January 15, 1997 was attached to the expediente of the perjury case.

In a Resolution dated September 15, 2004,[12] we referred the investigation report of Judge Ables to OCA for evaluation, report and recommendation.

In their Memorandum, Court Administrator Presbitero J. Velasco and Deputy Court Administrator Jose P. Perez recommended that the administrative case against respondents be dismissed for lack of merit for the following reasons:

This case was required to be investigated precisely because the conflicting allegations of the parties cannot be resolved merely on the basis of the documents at hand. However, to insist that an investigation be conducted in this case would be an exercise in futility considering that the parties have expressed disinterest in pursuing the case.

Although the Supreme Court has consistently held that mere desistance of the complaint does not necessarily result in the dismissal of an administrative case, the undersigned are constrained to recommend the dismissal of the instant case since the complainant's desistance left the court with no other means of determining the veracity of the allegations against respondents.[13]

The records show that complainant, through counsel, had asked for the postponement of the initial conference set by Judge Ables because of a previous hearing set in another case. Also, in an order dated September 26, 2003, the cases of perjury filed by Atty. Revil and complainant against each other were dismissed by reason of their respective affidavits of desistance. Although, there was no showing that another conference was set for this administrative case, the opening statement in the investigation report of Judge Ables showed the reason behind it, thus:

Sometime in the month of May 2003, Leonardo Dadula, Ms. Hilda Revil and Atty. Arturo Revil met inside the chambers of the Presiding Judge of RTC Branch 47, Masbate City. In their meeting, Leonardo Dadula and Hilda Revil, who have both retired from the government service realized that their petty misunderstandings will bring them nowhere. The parties, after looking back, decided to forgive and forget. On June 11, 2003, Criminal Cases Nos. 18747, 18748, 18749, 18750 and 18751 entitled People vs. Hilda Revil, et al., pending before Branch 47 were dismissed for failure of the government to prosecute. Criminal Case No. 10801 against Leonardo Dadula pending before the City Court of Masbate was also dismissed on the basis of the affidavit of desistance executed by Atty. Arturo Revil. The parties also intimated to have this administrative case dismissed. This representation personally knows about this matter because he is the presiding Judge of RTC Branch 47.

We have ruled in a number of cases that desistance of the complainant will not have the legal effect of exonerating respondent from administrative disciplinary action.[14] This is because regardless of desistance by any of the parties, the court has the duty to root out misconduct among its employees. Administrative proceedings do not depend upon the whims and caprices of the concerned employees for the aggrieved party is the court system.[15] We are therefore constrained to just rely on the records available to us.

Complainant charges respondent Judge of impartiality in the conduct of hearing of the perjury case filed against him for the following reasons: (1) the warrant of arrest was issued without giving him first the chance to answer the complaint; (2) the warrant of arrest was issued without examining the complainant under oath in the form of searching questions and answers; (3) the perjury case should have been referred to the Office of the Provincial Prosecutor for the finding of probable cause.

The perjury case filed by Atty. Arturo Revil against complainant has a penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period[16] which falls under the expanded jurisdiction of the MTC under R.A. No. 7691.[17] Section 6, Rule 112 of the Rules on Criminal Procedure provides:

Sec. 6. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure. –

(a) Where filed with fiscal. – If the complaint is filed directly with the fiscal or state prosecutor, the procedure outlined in Section 3(a) of this Rule shall be observed. The fiscal shall take appropriate action based on the affidavits and other supporting documents by the complainant.

(b) Where filed directly with the Municipal Trial Court. - If the complaint or information is filed directly with the Municipal Trial Court, the procedure provided for in Section 3(a) of this Rule shall likewise be observed. If the judge finds no sufficient ground to hold the respondent for trial, he shall dismiss the complaint or information. Otherwise, he shall issue a warrant of arrest after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers.

Clearly, the rule provides that it is the complainant and his witnesses who must be personally examined under oath in the form of searching questions and answers for the issuance of the warrant of arrest.

Respondent Judge conducted the examination[18] in the form of searching questions and answers on Atty. Revil on January 15, 1997. Investigating Judge Ables reported that he had verified the records of Criminal Case No. 10801 and the TSN taken during the preliminary examination was attached to the expediente of the subject criminal case. Complainant's insinuation that the TSN was merely inserted to the records was not proven at all. Bare allegations are not proofs. The determination as to whether or not a warrant of arrest should be issued is an exercise of judicial discretion, thus judicial in nature.

Even assuming *arguendo* that respondent Judge made an erroneous interpretation of the law, the matter is judicial

in nature. Well-entrenched is the rule that a party's remedy, if prejudiced by the orders of a judge given in the course of a trial, is the proper reviewing court, and not with the OCA by means of an administrative complaint.[19] As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.[20] The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.[21] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[22]

We likewise find no merit to complainant's contention that respondent Judge should have referred to the Office of the Provincial Prosecutor the perjury case filed by Atty. Revil against him for the finding of probable cause. Again, this matter is judicial in nature and could best be resolved in a judicial proceeding. It is worthy to note that complainant had availed of his remedy in this case when he filed a motion to quash the complaint in Criminal Case No. 10801 which respondent Judge denied in an Order dated October 6, 1997.[23] He filed a motion for reconsideration which was denied in an Order dated March 16, 1999.[24] Aggrieved by such orders, complainant filed a petition for certiorari[25] with the RTC of Masbate, Branch 48, seeking the annulment of the abovementioned Orders for having been issued with grave abuse of discretion amounting to lack of jurisdiction. In a judgment dated January 6, 2000,[26] the trial court found no grave abuse of discretion committed by respondent Judge and dismissed the petition for being unmeritorious. Complainant's motion for reconsideration was also denied.[27]

Complainant's claim of impartiality on the part of respondent Judge was not proven. On the contrary, records show that respondent Judge had also issued a warrant of arrest[28] on Atty. Revil based on the Information for perjury[29] filed by the Provincial Prosecutor of Masbate. The Information was based on the complaint filed by complainant as his counter-charge against Atty. Revil's filing of perjury case against him. In fact, respondent Judge even issued an order of detention of Atty. Revil on February 23, 1999[30] but the latter was released on the same day upon his posting of sufficient cash bond.[31] In the absence of contrary evidence, respondent Judge is presumed to have performed his work regularly.

Complainant charges respondent Conag for his failure to include Criminal Cases No. 18747-18751 in the court calendar of November 12, 1997, despite the notices sent to the former and his counsel and respondent's alleged refusal to correct such error.

Respondent Conag admitted that their Process Server inadvertently deleted the criminal cases in the court calendar. However, respondent Conag denied that he deliberately refused to correct such error since there was no truth that Atty. Mahinay requested for their inclusion in the court's calendar as the latter arrived in the court after the cases had been called and reset. The affidavits of his witnesses attested to the fact that Atty. Mahinay appeared in the courtroom only at about 10:30 a.m. The court's Presiding Judge confirmed that Atty. Mahinay was not in the courtroom when his cases were called. Even Investigating Judge Ables, in his report, concluded that Atty. Mahinay was not in the courtroom when the cases scheduled for the day were called. Complainant failed to adduce evidence to show that respondent Conag deliberately excluded his criminal cases in the court's calendar.

Complainant's evidence shows that respondent Conag was not among those who allegedly refused to correct the error of the non-inclusion of the criminal cases in the court calendar. Based on the affidavit dated August 15, 2001 of Atty. Mahinay, upon learning that the criminal cases were not among those cases included in the calendar for that day, he called the attention of the stenographers and the court interpreter and showed them the notice of the hearing of his cases for that day and requested them to insert the same in the calendar to be called for the day.[32] There was no showing that he went to talk to respondent Conag regarding such non-inclusion and made a request

for him to include the same in the calendar. In fact, the same affidavit showed that when Atty. Mahinay was already outside the chamber of the Presiding Judge after a talk with the latter, one of the staff members of Branch 45 approached him with the information that in the early morning of that day, the accused in the criminal cases were inside the Office of the Clerk of Court but hurriedly left before the court session started; that because of such information, Atty. Mahinay felt that the accused had something to do with the non-inclusion of the criminal cases in the calendar for that day and thus decided to ask for a formal request for an explanation from respondent Conag.[33] Mere suspicion that respondent Judge is partial to the accused in criminal cases is not enough to hold him administratively liable.

WHEREFORE, the administrative complaint filed against respondents is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Docketed as Criminal Case No. 10801.

[2] Rollo, pp. 1-2.

[3] Id., p. 2.

[4] Id., p. 56.

[5] Id., p. 41.

[6] Id., pp. 42-43.

[7] Id., p. 107.

[8] Id., pp. 110-114.

[9] Id., pp. 131-132.

[10] Id., pp. 142-148.

[11] Id., pp. 228-229.

[12] Id., p. 309.

[13] Id., p. 321.

[14] *Caseñares vs. Almeida, Jr.*, 324 SCRA 388 (2000); See *Estreller vs. Manatad, Jr.*, 268 SCRA 608, 616 (1997).

[15] *Guro vs. Doronio*, 397 SCRA 1 (2003); *Mamaclay vs. Francisco*, 399 SCRA 251 (2003).

[16] Art. 183, Revised Penal Code.

[17] Section 2, R.A. 7691 provides:

SEC. 2. Section 32 of the same law (BP Blg. 129) is hereby amended to read as follows:

SEC. 32 Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. – Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Court shall

exercise:

(1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdiction: and

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, that in offenses involving damages to property through criminal negligence they shall have exclusive original jurisdiction thereof.

[18] Rollo, p. 25, Annex “F.”

[19] Hilario vs. Ocampo III, 371 SCRA 260, 272 (2001).

[20] Dela Cruz vs. Concepcion, 235 SCRA 597, 607 (1994).

[21] Abdula vs. Guiani, 326 SCRA 1 (2000).

[22] Datuin, Jr. vs. Soriano, 391 SCRA 1, 7 (2002).

[23] Rollo, pp. 163-164.

[24] Id., pp. 170.

[25] Case No. 4873

[26] Id., p. 171; Annex “10”; Per Judge Jacinta B. Tambago.

[27] Id., pp. 174-175; Annex “11.”

[28] Id., p. 178; Annex “14.”

[29] Id., p. 177; Annex “13.”

[30] Id., p. 179; Annex “15.”

[31] Id., p. 180; Annex “16.”

[32] Rollo, p. 211; Affidavit. p. 1.

[33] Id., p. 212; Affidavit, p. 2.

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