

**CALI A. IMPAO, DANIEL M. ESPERAT AND NENA E. HERRERA,
PETITIONERS, VS. JUDGE JACOSALEM D. MAKILALA, RESPONDENT.***A.M. No. MTJ-88-184. October 13, 1989*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/31fddd73e43f/>**PER CURIAM:**

Judge Jacosalem D. Makilala, Presiding Judge of the Municipal Trial Court (MTC) of Maganoy, Maguindanao and Designated Acting Judge of the Municipal Circuit Trial Court (MCTC) of Ampatuan-Sultan Sa Barongis, Maguindanao was charged in three separate complaints by the employees of the above mentioned courts with gross misconduct, falsification, abuse of authority and neglect and irregularity in the performance of duties. The three letter-complaints were designated as Administrative Matter Nos. MTJ-88-184, MTJ-88-217 and MTJ-88-221.

Complainants alleged that from September 1985 up to the last week of April 1988, Judge Makilala held office every Monday at his residence in Maganoy and the rest of the week stayed at his residence in Tacurong, Sultan Kudarat. Respondent judge allegedly refused to hold office at the newly constructed municipal building where a suitable space for a court was furnished by the municipal government of Maganoy. It is alleged that whenever hearings are held in his residence, respondent judge would always appear in sleeveless shirt and slippers while the party-litigants and their counsels were in business attire.

While respondent judge required his staff to strictly observe the Civil Service Rules on office attendance, he allegedly had no qualms in filling up his daily time record as if he rendered full service when in fact he was always absent because of his illness and when he was not absent, he only stayed in court for a short period [Affidavit of Ellen Villaruel and Gina Natividad, Annex "D", Adm. Matter No. MTJ-88-217.]

The complainants also charged respondent judge with unduly favoring two court personnel -- Josue Calzado, Process Server of Maganoy Municipal Court, and Jose Subaldo, Process Server of Ampatuan-Sultan Sa Barongis Municipal Circuit Court --- because they were allegedly used by respondent judge in his house as driver-mechanic, house guard or errand-boy. Calzado and Subaldo were given high performance ratings by respondent while all the other employees were given failing marks.

Complainants averred that Judge Makilala found pleasure in scolding them in front of other people, uttering insulting words like "mga baboy kayong mga Kristiyano," [Affidavit of Rosamar Maregmen, Annex "C-3", Adm. Matter No. MTJ-88-184.] On one occasion, Judge Makilala allegedly told visiting soldiers to choose from among his female staff members whom they wanted to rape. He also told the male court employees not to waste their time and to start having sexual intercourse with the female employees from Ampatuan [Joint Affidavit of Daniel Esperat and Cali Impao Annex "G", Adm. Matter No. MTJ-88-217.] At one time respondent judge threatened his female staff members that if he could not dismiss them, he will have them ambushed on their way home to Esperanza, Sultan Kudarat. The employees were so alarmed by this threat that they reported the matter to the Office of the Provincial Commander of Maganoy.

Complainants also alleged that Judge Makilala punched Daniel Esperat, Court Aide of the MTC of Maganoy,

because the latter failed to deliver the entire volume of nipa ordered by respondent for the roof of his house. After punching Esperat, respondent judge allegedly went inside his house to get his gun and threatened to kill Esperat. Esperat then ran away and later went to the provincial hospital for treatment. A medical certificate issued by Dr. Teogenes F. Baluma, which was attached to the letter-complaint of Esperat, shows that he suffered a "swelling contusion" on the right side of the abdomen.

Respondent judge is also charged with having accepted a bribe from an accused in a criminal case. Datu Cali Impao, Court Interpreter of the MTC of Maganoy, narrated that during the hearing of the case entitled *People v. Mario Labrador*, respondent Judge Makilala gave a sign to the accused to follow him (respondent) inside his chambers. When they emerged from the chambers, Judge Makilala immediately ordered the dismissal of the case. Later, respondent proudly announced to his staff that he got four hundred pesos (P400.00) from Labrador which will be used in purchasing the office supplies needed by the court [Affidavit of Datu Cali Impao, Annex "C", Adm. Matter No. MTJ-88-184.]

To support the foregoing allegations, complainants submitted affidavits from the employees concerned. They also submitted the affidavits of Datu Gambay A. Upam, a member of the Sangguniang Bayan of Maganoy, and Olandigan A. Sulaik, the Municipal Secretary of Maganoy, who both corroborated the claim of the complainants that Judge Makilala seldom reported in the municipal court in Maganoy [Annexes "D" and "D-1", Adm. Matter No. MTJ-88-184.] Also attached to the complaints as annexes were copies of a "diary" kept by Nena Herrera, Stenographic Reporter of the MTC of Maganoy, containing a record of the behavior of respondent judge from April 1988 up to the time he was suspended, including the insulting utterances he made and the time of his arrival in and departure from the municipal court. The diary was signed not only by Nena Herrera but also by the other court employees.

On August 22, 1988, the court employees under respondent Judge Makilala went on mass leave to show their protest against respondent judge's behavior towards them.

On September 13, 1988 the Court issued a resolution referring Adm. Matter No. MTJ-88-221 to Judge Ismael C. Bagundang of the Regional Trial Court of Maganoy, Maguindanao for investigation, report and recommendation, and ordering the suspension of respondent judge pending the investigation of the charges against him. Subsequently, the Court issued a resolution dated September 22, 1988 ordering the consolidation of Adm. Matter No. MTJ-88-184 and Adm. Matter No. MTJ-88-217 with Adm. Matter No. MTJ-88-221 earlier referred by the Court to Judge Bagundang in the September 13, 1988 resolution. The Court reiterated the order of suspension of Judge Makilala and required respondent judge to file a consolidated comment within ten (10) days from notice.

In his consolidated comment, respondent judge denied the charges against him and claimed that the allegations were fabricated by the complainants to get back at him for his strict enforcement of the Civil Service Law.

On the use of his residence as the MTC of Maganoy from 1974-1984, respondent explained that it was with the approval of the municipal government because at that time there was no municipal building and the municipal government had to rent private buildings and houses for its use as its offices. He claimed that in 1984 he refused to transfer to the new municipal building because the municipal government had not fixed the space allotted for the municipal court. However, from 1985 up to the present, the municipal court and office have always been in its permanent space in the Maganoy Municipal Building.

As to his alleged absences and short stay in court, respondent insisted that this was due to the lightness of his caseload, and that the records will show that he has no pending or unfinished work [Ibid., p. 4.]

Lastly, respondent asked the Court to reconsider his suspension pending the investigation of the charges against

him considering his old age and his long service without any previous record of serious official misconduct [Ibid., p. 5.] A counter-complaint against the court personnel was also filed by respondent judge for alleged violation of Civil Service Rules and Regulations, conduct prejudicial to the best interest of the service, and dishonesty and immorality.

The initial investigation of the case was conducted on October 17, 1988, during which respondent judge manifested that he will file a motion to inhibit the investigating judge due to partiality. On November 17, 1988 respondent filed his motion to inhibit Judge Bagundang but the latter denied the same. Respondent then filed the motion with this Court but it was likewise denied by this Court in a resolution dated December 12, 1988.

Meanwhile, on the scheduled hearing on December 5, 1988, respondent's motion for postponement on the ground of Judge Makilala's illness was granted by the investigating judge but with a warning that henceforth the hearings will continue even without the presence of the respondent. The hearing was resumed on January 16, 1989, but neither the respondent nor his counsel were present. No explanation was given for the absence of respondent and his counsel, hence the hearing proceeded as scheduled and was terminated on January 19, 1989.

On January 30, 1989 Investigating Judge Ismael C. Bagundang submitted to this Court a report, with the following findings:

. . . there is reasonable ground to believe that Judge Makilala really abused his authority against his staff, the utterances made by him that he will have his staff be raped (sic), calling the staff "mga baboy kayong mga kristiyano" which utterances have been duly blotted in the Office of the Provincial Commander of Maganoy, the seeming biased attitude of Judge Makilala by giving failure rating for the majority of the staff while giving high performance rating to Jose Calzado and Jose Subaldo, is clear indication that he really harrassed (sic) his staff. The boxing of Daniel Esperat because [he] failed to deliver on that particular day the nipa intended for the roofing of his private house, is an act unbecoming for (sic) him as a Judge. The threatening remarks that he have (sic) uttered on several occasions against the staff of Maganoy and Ampatuan-Sultan sa Barongis, uttered almost daily is a clear sign that he really harrass (sic) the employees. The entry that he made in his daily time record from 1987 to 1988, that he reports to the office Monday thru Friday when in truth and in fact he only goes to Maganoy every Monday and stays most of his time in Tacurong residence and when cases were filed, the cases has (sic) to be brought to his residence at Tacurong for his signature, is a clear indication that he has falsified his daily time record and is a violation not only of the Civil Service Law but also with (sic) the Revised Penal Code. The taking of money from Mr. Labrador for the sum of P400.00 under the guise of donation for the purchase of supplies for the use of the court, is a clear violation of the provision of the law regarding bribery [Report of the Investigating Judge, p. 5.]

Judge Bagundang recommended that respondent judge be separated from the service and that all his retirement benefits be forfeited in favor of the government [Report of the Investigating Judge, p. 6.]

After a careful review of the records of the case, the Court finds that the findings and conclusions contained in the report of Investigating Judge Bagundang are supported by the evidence on record. The Court agrees with the investigating judge that the testimonial and documentary evidence presented by the complainants convincingly established the charges against the respondent. The Court finds nothing in the records which would warrant the reversal of the investigating judge's findings and conclusion.

In his Comment on the Resolution of the Hearing Officer filed with this Court on May 12, 1989, respondent judge assailed the findings of Judge Bagundang on the ground of "gross denial of due process" because his counsel was not given the opportunity to cross-examine the witnesses who testified against him [Comment on the Resolution of the Hearing Officer, p. 4.]

It is readily apparent from the records of the case that the above contention is manifestly devoid of merit.

Respondent and his counsel were present during the hearings on November 17 and 18, 1988 [TSN, November 17, 1988, pp. 2-3; TSN, November 18, 1988, pp. 2-3.] Respondent's counsel cross-examined witnesses Nena Herrera and Daniel Esperat during the November 18, 1988 hearing [TSN, November 18, 1988, pp. 3-37.] As to the other five witnesses, namely, Cali Impao, Noemi Socias, Belen Pasaforte, Ellen Villaruel and Rosamar Maregmen, the failure of respondent's counsel to cross-examine them was entirely the fault of respondent and his counsel. They failed to heed the warning of the investigating judge that the hearings on January 16 to 20 would continue even without the presence of respondent. Despite due notice both respondent and his counsel did not appear in the scheduled hearings nor did they explain the reason therefor. By their unexplained absence, respondent and his counsel effectively waived respondent's right to cross-examine the other witnesses.

Judge Makilala contends that "when the sickly, old respondent failed to appear in the investigation, proof must be shown [by the investigating judge] . . . of such efforts of giving [respondent the] opportunity to be present." It is further contended by respondent that since his two counsel "are both residents of Cotabato City with telephone connection in their respective homes," the investigating judge could have "easily contacted [them] to find out why they failed to be present on the scheduled investigation." [Ibid., p. 4.]

The above contentions sadly reflect ignorance of the requirements of due process. As a lawyer and a municipal judge for a number of years, respondent should know that it is not incumbent upon the investigating judge to call up respondent's counsel to inquire into the reason for their non-appearance in the scheduled hearings. Nor is it for the investigating judge to prove that he gave respondent "an opportunity to be present." It is the duty of the respondent's counsel to be present during the hearings and to inform the court of the reason for their absence.

Disagreeing with the investigating judge's recommendation, Deputy Court Administrator Reynaldo Suarez recommended that Judge Makilala be instead considered resigned from the service as of the time he was suspended with full payment of retirement benefits. The Deputy Court Administrator is of the opinion that the penalty of dismissal with forfeiture of retirement benefits is too harsh considering that Judge Makilala is "already in the twilight years of his career as a judge" and is now "sickly and in need of medical check-ups and constant medication" [Memorandum of Deputy Court Administrator Reynaldo L. Suarez, p. 10.]

The Court is not unmindful of the fact that respondent Judge Makilala is suffering from a lingering illness. Respondent himself alleges in his Comment on the Resolution of the Hearing Officer that he cannot travel long distances nor do any job requiring physical exertion because the nature of his illness, known as polycythemia vera, requires that his blood be drained periodically. However, the seriousness of respondent's illness cannot justify his failure to perform his duties nor does it excuse him from the consequences of his misconduct and abuse of authority. If indeed respondent found it difficult to discharge the functions of a municipal judge, then he should have retired voluntarily instead of clinging to his office at the expense of the litigants, his staff and the general public. Considering the number and the serious nature of offenses committed by respondent judge, the Court believes that the penalty of dismissal with forfeiture of retirement benefits should be imposed upon him.

It is an important judicial norm that a judge's private as well as official conduct must at all times be free from the appearance of impropriety [Luque v. Kayanan, G.R. No. L-26826, August 29, 1969, 29 SCRA 165; See Section 3, Canons of Judicial Ethics.] As held by this Court in the case of De la Paz v. Inutan, Adm. Matter No. 201 MJ, June 30, 1975, 64 SCRA 540:

. . . The judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests, specially in the station of municipal judges, like respondent Judge, who have that close and direct contact with the people before anybody else in the judiciary. Thus, for the judge to return that regard, he must be the first to abide by the law and weave an example for the others to follow . . .

The behavior of respondent judge complained of and proven in this case, i.e. his acceptance of a bribe, his holding office and conducting hearings at his residence, his falsification of his daily time record, his failure to observe proper decorum in conducting court proceedings, his intemperate language and threats against the personnel of his courts, and his use of physical violence against Daniel Esperat, among others, shows beyond doubt his unfitness to occupy the position of a municipal judge. Respondent judge violated the established norms for judicial behavior, and the best interest of the judiciary demands that respondent be dismissed from the service.

WHEREFORE, the Court finds respondent Judge Jacosalem D. Makilala guilty of serious misconduct and abuse of authority and is hereby **DISMISSED** from the service. Any retirement benefits due him are hereby ordered **FORFEITED** to the government.

SO ORDERED.

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

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