

ANNA LIZA REYES-TAYAG, COMPLAINANT, VS. ABELARDO TAYAG AND NERISA V. NACION, RESPONDENTS.

A.M. OCA No. CA-02-16-P (Formerly OCA IPI No. 00-27-CA-P). December 18, 2008

Ponente: BRION, J.

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BRION, J.:

Before the Court is the Affidavit-Complaint filed on October 6, 2000 with the Office of the Court Administrator (OCA) by Anna Liza Reyes-Tayag (complainant) charging respondents Abelardo F. Tayag (Tayag) and Nerisa V. Nacion (Nacion), Clerk III and Records Officer I, respectively, of the Court of Appeals (CA) with immorality.[1] The Antecedents

Sometime in 1998, the complainant, who is the legal wife of Tayag, discovered that her husband was having an illicit relationship with Nacion in the course of which they begot a child named Alexis Francesca V. Nacion, born on February 20, 1999. The complainant alleged that both Tayag and Nacion admitted to her that they have a relationship and have a child.

The complainant further alleged that: a co-employee of Tayag and Nacion saw the two at the UP-PGH when Nacion delivered her child; it is public knowledge that her husband and Nacion have an affair; Tayag and Nacion brought their love-child along during a visit to Tayag's relatives in Malolos, Bulacan; a witness told her that Tayag and Nacion are living together in Pandacan and are also often seen in Tondo together; she was surprised to see Nacion in Tondo on September 4 and 6, 2000 when her husband invited her to go to Tondo; on August 30, 2000, at his aunt's place in Ermita, Manila, her husband suggested that she undergo his "recommended therapy" of facing her fears and insecurities by engaging in oral sex with her husband alternately with Nacion.

The OCA required Tayag and Nacion to comment on the complaint, but only Nacion complied. She filed her comment on December 6, 2000.[2] She alleged that the complainant filed on October 4, 2000 with the CA the same affidavit-complaint[3] against her and Tayag, docketed at the CA as Adm. Case No. 1-M-2000.

Attached to the comment was the counter-affidavit/comment[4] Nacion filed with the CA where she denied all the complainant's material allegations. Specifically, she claimed that she never had an affair with Tayag; therefore, he could not have fathered her child Alexis Francesca V. Nacion.

Nacion re-pleaded with the OCA the same allegations she made before the CA. She prayed for the dismissal of the complaint for lack of factual basis and on ground of procedural lapses, contending that: Tayag was just one of her many friends at the CA and the two of them used to go out with friends after office hours; Tayag was just a friend, confidant and officemate; the complainant must have her own personal problem with Tayag and it was malicious of complainant to involve her in their marital rift; she was under no obligation to disclose the paternity of her child; she could not recall any encounter or conversation with the complainant; she had not committed any immoral perversity as insinuated by the complainant; the complaint was not accompanied by a certification of non-forum shopping, and also failed to include copies of documentary evidence and affidavits of witnesses.

Nacion further alleged that at the hearing on October 23, 2000 at the CA, the complainant verbally manifested her withdrawal from the case. She formalized this withdrawal in a motion dated October 23, 2000. Despite this withdrawal, Justice Eliezer de los Santos (Justice de los Santos) - who conducted the investigation - continued with the investigation and considered the complaint submitted for decision in his Order of October 27, 2003.[5]

For Tayag's failure to comment on the complaint, then Acting Court Administrator Zenaida N. Elepaño (now retired as Court Administrator) sent a "1[st] Tracer" dated March 14, 2001 addressed to Tayag at the CA.[6] In a letter dated March 28, 2001,[7] CA Clerk of Court Tessie L. Gatmaitan (Gatmaitan) disclosed that based on CA records, Tayag, a former Clerk III, had been dropped from the CA rolls effective at the close of office hours on March 15, 2001 due to absences without approved leave. Gatmaitan furnished the OCA with the provincial address of Tayag based on his 201 File.

On March 19, 2002, then OCA Officer-in-Charge, now Court Administrator Jose P. Perez wrote Gatmaitan a letter-query[8] for information on the status of the case that Justice de los Santos was investigating.[9] Gatmaitan replied[10] that Nacion had been found guilty of immorality and meted the penalty of suspension for three (3) months in OCA IPI No. 00-27-CA-P (Adm. Case No. 1- M-2000).[11] On motion for reconsideration, then CA Presiding Justice, now Associate Justice of the Supreme Court Ma. Alicia Austria-Martinez, reduced her penalty to a fine of P10,000.00.[12]

The OCA recommended that the complaint filed with it be re-docketed as a regular administrative matter and that the Court ratify the Order of Justice Martinez dated November 28, 2001.[13] The OCA noted that because Tayag had been dropped from the rolls, the complaint against him had become moot and academic. The Court directed the re-docketing of the complaint, as recommended, and required the parties to manifest whether they were submitting the case for decision on the basis of the pleadings/records already filed and submitted.[14]

On January 17, 2003, Nacion filed a Manifestation with Motion[15] contending that: the present complaint was also docketed at the CA as Adm. Case No. 1-M-2000; on November 5, 2001, Justice Martinez rendered a decision, based on the recommendation of Justice de los Santos, finding Nacion guilty of immorality and suspending her for three (3) months; on motion for reconsideration, Justice Martinez modified the penalty from a three-month suspension to a fine of P10,000.00; on November 8, 2002, she paid the fine of P10,000.00;[16] as a consequence of the order and pursuant to CA guidelines, she failed to receive her bonus and other benefits for that year; the order of Justice Martinez had been undisturbed for more than a year already and even the complainant did not assail the order, thereby making the order final; the complainant had resorted to forum shopping and, although she withdrew the case she filed with the CA, the case was nevertheless decided on the merits; litigating anew before the Court might result in a different decision which would be tantamount to vexing her twice for the same cause.

Nacion prayed that the present complaint be dismissed and that the order of Justice Martinez dated November 28, 2001 be sustained and declared final and executory.

On January 21, 2003, the complainant filed her Manifestation and Motion[17] expressing her disappointment with the modification of Nacion's penalty from three (3) months suspension to a fine of P10,000.00. She claimed that the modified penalty was not commensurate to the misdeed. She posited that the primary objective of administrative cases is not only to punish and discipline erring judicial employees but also to safeguard the administration of justice by protecting the courts and the public from the immoral character and unworthiness of employees like Nacion. She invited attention to the birth to Nacion of another daughter whom her husband confirmed and admitted as his.

The complainant submitted the case for decision based on the pleadings submitted as well as the records of Adm.

Case No. 1-M-2000 at the CA. She prayed that Nacion be dismissed from the government service for immorality and for gross and serious misconduct.

With the parties' submissions, the Court resolved to refer the case to the OCA for appropriate action considering that the case had previously been referred to that Office.[18] The OCA responded with the recommendation that the case be referred to an Associate Justice of the CA for investigation.[19] The recommendation was based on the following evaluation:

A perusal of the pleadings herein presented x x x reveals that respondent Nacion could not completely claim that she could no longer be disciplined by the Court. Although she had already paid the fine, thus, satisfying the penalty imposed upon her x x x there is a new allegation in the Manifestation of complainant that deserves further consideration x x x complainant claimed that respondent Tayag admitted to her that he fathered another child with respondent Nacion. The birth of a second child was not covered by the findings in the Order dated 05 November 2001. Moreover, the penalty imposed on respondent Nacion carried with it a stern reprimand and warning that a repetition of the same offense will be dealt with more severely. The birth of a second child would then merit a harsher penalty. However, since complainant presented no proof of such birth, it is only proper that a formal investigation be conducted to determine the truth or falsity of said allegation.

The OCA viewed the case of Tayag to be beyond the administrative jurisdiction of the Court since he had previously been dropped from the CA rolls.

Acting on the OCA's recommendation, the Court (First Division) issued a Resolution dated March 12, 2007 referring the complaint to an associate justice of the CA for investigation, report and recommendation.[20] The case was eventually raffled to Associate Justice Ramon M. Bato, Jr. (Justice Bato) whose Report dated July 19, 2007 the Court received on October 9, 2008.

Justice Bato summarized the developments in the case, essentially as outlined above. His investigation concentrated on whether there was basis to support the complainant's fresh allegation that Nacion had a second child with Tayag; if she had, whether this violated the Order dated November 28, 2001 of Justice Martinez.

Justice Bato found that the complainant failed to prove the allegations of her complaint. He pointed out that despite due notice, the complainant failed to appear at the hearings of June 14, 2007[21] and June 28, 2007.[22] At these hearings, the complainant was issued a subpoena ad testificandum, while Ms. Juanita P. Tibayan-Castro, CA Chief of the Personnel Division, was issued a subpoena duces tecum for the production of Nacion's 201 File.

In an Order issued at the hearing of June 28, 2007, Justice Bato considered the complainant's right to present oral/documentary evidence waived. Nacion and her counsel, who appeared at the hearing, manifested that she was submitting a position paper with a certified true copy of the birth certificate of her second child, Aldrin Mae V. Nacion. At the same hearing, Ms. Juanita Tibayan-Castro testified on the contents of Nacion's 201 File. Nacion's 201 File revealed that Nacion has two daughters, namely: Alexis Francesca V. Nacion, born on February 20, 1999, and Aldrin Mae V. Nacion, born on May 13, 2001.

On July 9, 2007, Nacion filed her position paper as promised. She admitted that she has a second child born on May 13, 2001, but failed to admit that Tayag is the father of the child. She maintained that she had not violated the November 28, 2001 order of Justice Martinez since her second child was born before the order was issued.

Justice Bato recommended that the administrative complaint against Nacion be dismissed. He reasoned out that the complainant failed to support her allegation that Tayag and Nacion were still living together or still had an illicit relationship, and that Tayag fathered Nacion's second child. Justice Bato stressed that he failed to ascertain the paternity of Nacion's second child despite efforts exerted; the evidence on record consisted merely of Nacion's 201 File and the certificate of live birth of her second child. These pieces of evidence do not prove that Tayag is

the biological father of the child.

The Court's Ruling

At the outset, we note that the complainant instituted two separate actions for immorality against Tayag and Nacion in two venues - the CA[23] and this Court[24] - based on exactly the same allegations. The complainant withdrew the case with the CA through a motion dated October 23, 2000 in order not to contravene the rule on non-forum shopping.[25] The CA, however, proceeded with the case, leading to the finding of immorality against Nacion and the imposition of suspension for three months which was later reduced to a fine of P10,000.00 on Nacion's motion for reconsideration.[26] Neither Nacion nor the complainant questioned the CA's ruling on the case which eventually attained finality.

These developments notwithstanding, the complainant insisted, through a manifestation and motion dated December 27, 2002,[27] that we decide the case she filed with the OCA, based on the pleadings submitted and the records of Adm. Case No. 1-M-2000 in the CA. On the OCA's recommendation and based on the new allegation that the complainant's husband fathered another child with Nacion, we directed an investigation designating CA Justice Bato for the purpose. Essentially, this was a new complaint and a new investigation separate from that conducted and terminated at the CA level. As narrated above, Justice Bato's investigation found no evidence to support the allegations of the complaint, based largely on the complainant's failure to appear at the hearings to adduce evidence.

We find the recommendation of Justice Bato for a dismissal of the complaint to be well-founded. The complainant, who failed to attend the hearings and to submit evidence of the alleged illicit conduct of Nacion and Tayag, failed to prove her case.

Apparently, the complainant chose to rely on her previous submissions before the CA, a wrong and miscalculated move as the present complaint is essentially a new one involving allegations of continued marital infidelity, resulting in another child of Tayag by Nacion. The complainant can no longer rely on her past CA allegations and submissions as these have been considered and made the basis for the CA's finding of immorality against Nacion for which she had been penalized. Penalizing her anew for the same act would be tantamount to placing her twice in jeopardy for the same acts of immorality.

Thus, when the complainant failed to appear and adduce evidence in the new investigation undertaken by Justice Bato at our orders, she failed to support and substantiate the allegations of her new complaint. Under the circumstances, her new complaint has nowhere to go but towards its dismissal and the complainant has only herself to blame for this result.

Rule IV, Section 52, A(15) of the Revised Uniform Rules on Administrative Cases in the Civil Service[28] classifies disgraceful and immoral conduct as a grave offense. To find a civil service employee guilty of this offense, competent and reliable evidence must be adduced and found sufficient to prove the elements of the offence. In the words of *Mikrostar Industrial Corporation v. Mabalot*:[29]

x x x even in administrative cases, if a court employee is to be disciplined for a grave offense, the evidence against him or her should be competent and should be derived from direct knowledge. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. x x x.

As in *Mikrostar*, the complainant's case has "no leg to stand on" and must therefore be dismissed.

WHEREFORE, premises considered, the administrative complaint against **NERISA V. NACION** for immoral conduct is hereby **DISMISSED** for lack of evidence. The case against **ABELARDO TAYAG** is likewise **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 2-3.

[2] Id., pp. 5-6.

[3] Case No. 1-M-2000.

[4] Annex "A," Comment; rollo, p. 7.

[5] Annex "B," id., p. 10.

[6] Id., p. 17.

[7] Id., p. 18.

[8] Id., p. 21.

[9] OCA IPI No. 00-27-CA-P.

[10] Letter dated April 25, 2002; rollo, p. 22.

[11] Order dated November 5, 2001 of Justice Ma. Alicia Austria Martinez, id., pp. 26-31.

[12] Order dated November 28, 2001 of Justice Ma. Alicia Austria Martinez, id., pp. 23-25.

[13] Report dated September 11, 2002; id., pp. 32-24.

[14] Id., p. 35.

[15] Id., pp. 36-39.

[16] Annex "B," Manifestation with Motion; id., p. 41.

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

[18] Resolution dated February 24, 2003.

[19] Report dated September 13, 2006; rollo, pp. 55-57.

[20] Id., p. 59.

[21] Order of Justice Bato, Jr. dated May 31, 2007.

[22] Order dated June 14, 2007.

[23] Supra note 3, p. 2.

[24] Supra note 1, p. 1.

[25] Rollo, p. 13.

[26] Supra note 11, p. 4.

[27] Rollo, pp. 42-43.

[28] MC No. 19, s. 1999, issued by Civil Service Commission Chairman Corazon Alma de Leon.

[29] A.M. No. P-05-2097, December 15, 2005, 478 SCRA 6.

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