

RETIRED JUDGE VICENTE G. RUDAS, COMPLAINANT, VS. LEONILA R. ACEDO, CLERK OF COURT II, 12TH MCTC, ABUYOG-JAVIER, LEYTE, RESPONDENT.

Adm. Matter No. P-93-931. August 14, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In his complaint filed on 1 March 1993 with the Office of the Court Administrator, retired Judge Vicente G. Rudas charges respondent Leonila R. Acedo, a clerk of court, with the following acts and omissions:

(a)

undue interference in Criminal Case No. 14746 for grave threats instituted against her husband;

(b)

negligence in failing to act speedily and with dispatch on her assigned task to avoid the clogging of cases in court, as in Criminal Cases Nos. 14494 for qualified theft; 14513 for murder; 14551 for violation of P.D. No. 705; 14544 for estafa; and Civil Cases Nos. 2382, 2373, 2774, and 2375 for sums of money;

(c)

the violation of Sections G, I, J, M, and N, Chapter VIII of the Manual for Clerks of Court for acting as notary public ex-officio and for administering oaths in matters not related to her official business; and

(d)

preparing bonds for the release of accused persons and following up cases transmitted to the Office of the Prosecutor either for the fixing or reduction of bail, as in Criminal Case No. 14506.

Attached to the complaint are two special powers of attorney[1] acknowledged before the respondent, and five joint affidavits[2] and eleven affidavits[3] subscribed and sworn to before her. In all the said documents, the respondent designated herself as "MCTC Clerk of Court II, MCTC Abuyog-Javier, Leyte."

The respondent denies the charges and alleges that she did not interfere in the criminal case filed against her husband even if she believed that it was a political harassment and a fabricated charge, and that the delay therein was due to postponements made by the counsels for the parties. She also avers that, as shown by the monthly reports submitted to this Court, there has been no clogging of cases in her court in that: (a) Criminal Case No. 14449 was disposed of more than a year prior to the filing of this complaint, and the records thereof were transmitted on 12 December 1991 to the Regional Office of the Department of Agrarian Reform (DAR) of Region VIII; (b) Criminal Case No. 14513, which is for concealment of a deadly weapon, not murder, and is entitled *People vs. Gonzaga*, not *People vs. Penson*, was dismissed on 30 October 1992; (c) in Criminal Cases Nos. 14551 and 14544; the accused therein are at large, and the records thereof were transmitted to the Office of the Provincial Prosecutor of Leyte on 23 February 1993 and 5 March 1993, respectively; (d) in Civil Cases Nos.

2382, 2373, and 2375, the court is awaiting motions by the plaintiffs therein to declare the defendants in default for failure to file their respective answers despite service of summons; (e) Civil Case No. 2774 does not exist, as the last docketed case is Civil Case No. 2386. As to the special powers of attorney acknowledged before her, she entered them in the Court's Notarial Book. She administered the oaths of affidavits as part of her administrative duties. And, she could not have prepared a bail bond in Criminal Case No. 14506 because the accused therein was at large.[4]

In his Reply, the complainant refutes the allegations of the respondent. He attached thereto the affidavit of Evangeline Ganoza, the complainant in the criminal case against the respondent's husband, wherein Ganoza claims that the respondent prepared for her an affidavit of desistance and solicited the influence of the municipal mayor to convince her to sign it, but to no avail. He further alleges that although Criminal Case No. 14449 was transmitted to the DAR, it was returned to the Municipal Circuit Trial Court (MCTC) for further proceedings and was held pending for a long time; that the records of Criminal Cases Nos. 14551 and 14544 were transmitted to the Office of the Provincial Prosecutor not by the respondent but by a court interpreter acting as Clerk of Court designate; that the civil cases he cited in his complaint which had long been pending were calendared for hearing only in April 1993 after he had filed the complaint; that in "notarizing" the special powers of attorney of Alberto Reas and Loreta Yunzal, the respondent violated the Manual for Clerks of Court and usurped the official function of the presiding judge as notary public ex-officio; and that although the records of Criminal Case No. 14506 were already transmitted to the Office of the Provincial Prosecutor, the respondent prepared the bail bond for the accused therein and accompanied the bondsmen to the Office of the Clerk of Court of the Regional Trial Court in connection therewith.

On 26 July 1993, this Court resolved to refer this case to Executive Judge Josephine Bayona of Branch 10 of the Regional Trial Court (RTC) of Leyte, for investigation, report, and recommendation. Unfortunately, Judge Bayona retired before she could commence the investigation. Her successor, Judge Enrique C. Asis, set the case for the reception of evidence.

After the hearing on 16 November 1993, the investigating Judge directed the parties to submit their respective memoranda. The complainant and the respondent complied. Finding that the complainant's memorandum disclosed factual issues, Judge Asis ordered a reception of evidence.

On 18 July 1994, however, after a discussion on the procedure of the presentation of evidence, the judge suggested a possible amicable settlement.

On 15 August 1994, the complainant filed a Manifestation informing Judge Asis that due to humanitarian considerations, he is no longer interested in the prosecution of the case and has no objection to the dismissal of the case against the respondent.

In its Order of 19 August 1994, Judge Asis recommended to this Court the dismissal of the case in view of the manifestation of the complainant.

It was only on 4 January 1995 that the records of the case were forwarded to this Court.

In its Memorandum of 5 May 1995, the Office of the Court Administrator disagrees with the recommendation of Judge Asis because, in the light of this Court's ruling in *Espayos vs. Lee*,^[5] the desistance of the complainant in further prosecuting his case does not warrant a dismissal of the case, since the documents on file can readily provide ample basis to determine the respondent's liability. It found that:

[The] respondent exhibited undue interference in Criminal Case No. 14476 where her husband Marcelino Acedo is the accused. There is showing that it was only after the instant administrative complaint was lodged against

respondent by the complainant, who also appeared for the prosecution that the case was calendared and eventually terminated in 1993. Respondent's act of interfering in the cases is inimical to the service (*Zari vs. Flores*, 94 SCRA 318).

With regards to the charge of Usurpation of Judicial functions, the records on file readily show that respondent notarized a private document which does not have any relation to matters pending in court. Art. 242 of the Rev. Adm. Code provides who are the ex-officio notaries public. Respondent is not one among those enumerated.

With regards to allegation on gross negligence in the transmittal of records of criminal cases to the Prosecutors Office and non-calendaring of a number of civil cases, we find the same not to have been fully substantiated.

The facts on record fully established that respondent committed undue interference in the disposition of Criminal Case No. 14,476 and for usurpation of judicial functions, hence, a corresponding penalty should be imposed against her.

The Office of the Court Administrator then recommends that the respondent be held liable for malfeasance in office and usurpation of judicial functions and that she be suspended for a period of three months without pay with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

We concur with the Office of the Court Administrator that this case should not be dismissed on the sole ground that the complainant is no longer interested in its prosecution. It must never be forgotten that complaints against public officers and employees relating or incidental to or in connection with the performance of their duties are necessarily impressed with public interest. A public office is a public trust and the holders thereof are servants of the people to whom they are accountable at all times.^[6] Public interest and the need to maintain the faith and confidence of the people in the Government and its agencies and instrumentalities demand that proceedings in administrative cases should not be made to depend on the benevolence or whims and caprices of complainants who are, in a real sense, only witnesses. Complainants' motions to withdraw or dismiss their complaints are inimical to public interest and are highly suspicious, for if the charges are in fact true, the grant of such motions will hide the evil deeds committed,^[7] and such withdrawal may even be suspected as having been precipitated by payment of certain considerations by blackmailed respondents to scheming complainants.

The admissions of the parties, the documents attached to the pleadings, and the arguments in their respective memoranda provide substantial bases for a fair and judicious resolution of the controversy. A dismissal of the instant case cannot therefore be justified.

The respondent did not refute the assertion of the complainant that she had not placed in the calendar for a long time the criminal case for grave threats filed against her husband and that it was set for trial only after the filing of the administrative complaint against her. Neither did she deny that she had prepared an affidavit of desistance and solicited the help of the mayor to convince the offended party in the case against her husband to sign it. Such complained acts, which are now deemed admitted, amount to undue interference in the criminal case against her husband.

Also, the respondent's act of receiving the acknowledgements in the special powers of attorney constitutes usurpation of the function of the judge of her court as notary public ex-officio. The respondent has absolutely no authority to receive proof or acknowledgment of documents, that authority being vested only in notaries public or notaries public ex-officio.^[8] While Clerks of Court of the Supreme Court and the Regional Trial Courts are notaries public ex-officio, those of the Municipal Trial Courts and the Municipal Circuit Trial Courts like the herein respondent are not.^[9] In municipal courts, only the judge thereof can act as notary public ex-officio. The notarial register used by the respondent for the special powers of attorney is admittedly that of the judge of her

court in his capacity as notary public ex-officio, as required by law and the Manual for Clerks of Court.[10]

The respondent cannot, however, be held liable for administering the oaths in the numerous affidavits presented by the complainant, as she is one of the public officers authorized to administer oaths.[11]

We find sufficient proof that the respondent was negligent in the performance of her duty as clerk of court. She delayed the transmittal of the records in Criminal Cases Nos. 14544 and 14551 to the Office of the Provincial Prosecutor. She did not make any report to the judge that no answers were filed in Civil Cases Nos. 2382, 2373, and 2375 despite the fact that summonses therein had been served in 1992, for the first case, and in 1990, for the last two. She was thus remiss in her duty to assist in effective docket control.[12] It must be noted that presiding judges of trial courts are required to conduct a physical inventory of their dockets for the purpose of determining the actual number of cases pending in their salas upon assumption of office and every semester thereafter or on 30 June and 31 December of every year.[13] If the foregoing facts were not brought by the respondent to the judge's attention, it is not improbable that such cases were not submitted for inventory or that no such inventory was made at all. In either case, the misfeasance of the respondent is undeniable.

The respondent must have forgotten that the office she holds and the duties and responsibilities appurtenant thereto require from its holder competence, honesty, and integrity; that, in relation to the judge, she occupies a position of confidence which should not be betrayed; and that with the prestige of the office goes the corresponding responsibility to safeguard the integrity of the court and its proceedings, to earn respect therefor, to maintain loyalty thereto and to the judge as the superior officer, to maintain the authenticity and correctness of court records, and to uphold the confidence of the public in the administration of justice. As clerk of court, she should serve as a model for the court employees to act speedily and with dispatch on their assigned tasks to avoid clogging of cases in court and thereby assist in the administration of justice without undue delay.[14]

For the respondent's misfeasance and malfeasance in office, disciplinary sanction is in order, and we find the recommendation of the Office of the Court Administrator appropriate.

WHEREFORE, respondent LEONILA R. ACEDO, Clerk of Court II, Municipal Circuit Trial Court of Abuyog-Javier, Leyte, is hereby **SUSPENDED** from office for a period of three months without salary with a stern warning that the commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Annexes "A" and "B" of the complaint.

[2] Annexes "C" to "G," Id.

[3] Annexes "H" to "R," Id.

[4] Comment, 1-3; Rollo, 34-36.

[5] 89 SCRA 478 [1979].

[6] Section 1, Article XI, Constitution.

[7] Sy vs. Academia, 198 SCRA 705 [1991].

[8] Section 241 and 242, Revised Administrative Code of 1917; Section G, Chapter VIII, Manual for Clerks of Court, 182.

[9] Id.

[10] Section 243, Id.; Section I, Id.

[11] Section 41, Chapter 10, Book I, Administrative Code of 1987.

[12] Paragraph 3(e), Section A, Chapter II, Manual for Clerks of Court, 23.

[13] Paragraph 3(e), Section A, Chapter II, Manual for Clerks of Court, 23; Administrative Circular No. 1, dated 28 January 1988, issued by then Chief Justice Claudio Teehankee.

[14] Manual for Clerks of Court, 3.

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