SUSAN O. REYES, COMPLAINANT, VS. JUDGE MANUEL N. DUQUE, REGIONAL TRIAL COURT, BRANCH 197, LAS PIÑAS CITY, RESPONDENT.

A.M. No. RTJ-08-2136. September 21, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Facts

In her Verified Complaint, Susan O. Reyes (Reyes) charged respondent Judge Manuel N. Duque (Judge Duque) of the Regional Trial Court, Branch 197, Las Piñas City (RTC-Branch 197), with Impropriety, Corruption and Gross Misconduct. Reyes alleged that she was a party-in-intervention in Land Registration Case No. 06-005 entitled "In re: Petition of Philippine Savings Bank for Issuance of a Writ of Possession under Act No. 3135 over Properties covered by TCT Nos. T-85172 and T-84847" filed by the Philippine Savings Bank (bank) against the spouses Carolyn Choi and Nak San Choi (spouses Choi). In a Decision dated 6 November 2006, Judge Duque granted the motion for the issuance of a writ of possession in favor of the bank and ordered the spouses Choi and all those claiming rights under them to vacate the properties covered by TCT Nos. T-85172, T-84848, and T-84847 situated in BF Resort Village, Talon 2, Las Piñas. On 13 August 2007, Reyes filed an "Urgent Petition for Lifting and Setting Aside of Writ of Possession and Quashal of Notice to Vacate" claiming that she bought the subject property covered by TCT No. T-85172 from the spouses Choi and that she was in actual possession of the property with full knowledge of the bank.

At the hearing of Reyes' petition, Atty. Herminio Ubana, Sr., (Atty. Ubana) the lawyer of Reyes, introduced her to Judge Duque who allegedly gave Reyes 30 days to settle matters with the bank. Reyes was unable to re-negotiate with the bank. On the first week of December 2007, Reyes allegedly received a phone call from Judge Duque and the latter instructed Reyes to go "to his house and bring some money in order that he can deny the pending motion to break open." As she did not have the money yet, Reyes allegedly told Judge Duque that she would see him the following day as her allotment might arrive by that time. The following day, when her allotment arrived, Reyes went to the PNB Cubao Branch in Quezon City to withdraw P20,000. She, her secretary, and driver went to the house of Judge Duque at No. 9 CRM Corazon, BF Almanza, Las Piñas. The son of Judge Duque opened the gate. At his house, Judge Duque demanded P100,000. Reyes gave him P20,000 and she asked for time to give him the balance. After a week, Atty. Ubana called Reyes telling her that Judge Duque was asking for her and waiting for the balance he demanded. On 21 December 2007, Reyes went to the house of Judge Duque with P18,000 on hand. Judge Duque allegedly scolded her for not bringing the whole amount of P80,000. Reyes explained that she had difficulty raising the amount. Judge Duque locked the main door of his house and asked Reyes to step into his office. Judge Duque pointed to a calendar posted on the wall and pointed to December 26 as the date when she should complete the amount. All of a sudden, Judge Duque held the waist of Reyes, embraced and kissed her. Reyes tried to struggle and free herself. Judge Duque raised her skirt, opened her blouse and sucked her breasts. He touched her private parts and attempted to have sexual intercourse with Reyes. Reyes shouted for help but the

TV was too loud. As a desperate move, Reyes appealed to Judge Duque saying: "kung gusto mo, huwag dito. Sa hotel, sasama ako sayo." Judge Duque suddenly stopped his sexual advances and ordered Reyes to fix her hair.

In his Comment,[1] Judge Duque averred that since the complaint of Reyes was filed after he retired on 21 February 2008, he was no longer under the jurisdiction of the Office of the Court Administrator (OCA). He denied the charges hurled against him and claimed the allegations were "fabricated, false and malicious."

In its Report dated 26 June 2008,[2] the OCA found that Reyes actually filed four identical complaints. First, Reyes filed a complaint dated 16 January 2008 duly subscribed on 23 January 2008. Reyes was directed to comply with the requirement of verification and she complied by filing on 20 February 2008 verified complaints with the Office of the Chief Justice and the OCA. On 12 March 2008, Reyes filed for the third time another verified complaint with the OCA which was a mere reiteration of her previous complaints. The OCA opined that the jurisdiction of the Court at the time of the filing of the complaint was not lost by the mere fact that Judge Duque had ceased to be in office during the pendency of the case. Thus, as recommended by the OCA, the case was referred to a Court of Appeals' Justice[3] for investigation, report and recommendation per Resolution dated 6 August 2008.[4]

Report and Recommendation of the Investigating Justice

On the charge of graft and corruption, Reyes presented photocopies of P1,000 bills to prove that Judge Duque demanded and received money from her in consideration of a favorable ruling. The Investigating Justice, however, found no compelling evidence to corroborate Reyes' accusation as it was doubtful whether these were the same bills used to pay off Judge Duque.[5]

On the charge of impropriety and gross misconduct, the Investigating Justice opined that the act of Judge Duque in embracing and kissing Reyes, sucking her breasts and touching her most intimate parts were certainly acts of lewdness that were downright obscene, detestable, and unwelcome. These acts were established by substantial evidence. The Investigating Justice, however, stated that Reyes' description of the sexual assault could not be deemed as attempted rape.[6]

The Investigating Justice found Judge Duque guilty of impropriety and gross misconduct constituting violations of the Code of Judicial Conduct and recommended the imposition of fine of P40,000 which should be deducted from the retirement benefits of Judge Duque.

Report of the Court Administrator

In his Memorandum,[7] the Court Administrator[8] confirmed that Judge Duque compulsorily retired from the judiciary on 21 February 2008. He opined that the conduct of Judge Duque bore the marks of impropriety and immorality. The actions of Judge Duque fell short of the exacting standards for members of the judiciary. Judge Duque failed to behave in a manner that would promote confidence in the judiciary. The Court Administrator recommended that a P40,000 fine be imposed on Judge Duque which should be deducted from his retirement benefits.

The Court's Ruling

We agree with the recommendation of both the Investigating Justice and the OCA for the imposition of a fine of P40,000 on Judge Duque.

First, on the question of jurisdiction as Judge Duque is no longer a member of the judiciary having retired from the service on 21 February 2008, the records show that Reyes filed four similar complaints against Judge Duque.

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A complaint dated 18 January 2008 addressed to then Chief Justice Reynato S. Puno and subscribed on 19 February 2008 was received by the OCA on 20 February 2008[9] and by the Office of the Chief Justice also on 20 February 2008,[10] or one day before the date of retirement of Judge Duque. A similar complaint subscribed on 19 February 2008 was received by the OCA on 12 March 2008.[11] An identical complaint addressed to the OCA and subscribed on 23 January 2008 was filed and received by the OCA on 25 January 2008.[12] As pointed out by the OCA, Judge Duque was "inadvertently sent" a copy of the complaint that was filed and received on 12 March 2008.[13] The filing of similar and identical complaints on different dates was due to the directive of the OCA requiring that the complaint be "verified" or that the "original copy of the verified complaint" be filed.[14] Nonetheless, it is clear from the records that Reyes filed her intended complaint before Judge Duque retired. Consequently, the Court no doubt has jurisdiction over this administrative case.

On the charge of graft and corruption, the Investigating Justice and the OCA found insufficient evidence to sustain Reyes' allegation that Judge Duque demanded and received money from her in consideration of a favorable ruling. Thus, this charge should be dismissed for being unsubstantiated.

On the charge of impropriety and gross misconduct, and after a thorough investigation conducted by the Investigating Justice, it was established, and Judge Duque admitted, that Reyes went to his house.[15] Substantial evidence also pointed to Judge Duque's liability for impropriety and gross misconduct when he sexually assaulted Reyes.[16] There is no need to detail again the lewd acts of Judge Duque. The Investigating Justice's narration was sufficient and thorough. The Investigating Justice likewise observed that Judge Duque merely attempted to destroy the credibility of Reyes when he insinuated that she could be a "woman of ill repute or a high class prostitute" or one whose "moral value is at its lowest level." However, no judge has a right to solicit sexual favors from a party litigant even from a woman of loose morals.[17] In Tan v. Pacuribot,[18] this Court further stressed:

> We have repeatedly reminded members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency. We have adhered to and set forth the exacting standards of morality and decency, which every member of the judiciary must observe. A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.

Judges should avoid impropriety and the appearance of impropriety in all of their activities.[19] Judges should conduct themselves in a way that is consistent with the dignity of the judicial office.[20] Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they should always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.[21]

The conduct of Judge Duque fell short of the exacting standards for members of the judiciary. He failed to behave in a manner that would promote confidence in the judiciary. Considering that a judge is a visible representation of the law and of justice,[22] he is naturally expected to be the epitome of integrity and should be beyond reproach. Judge Duque's conduct indubitably bore the marks of impropriety and immorality. He failed to live up to the high moral standards of the judiciary and even transgressed the ordinary norms of decency of society. Had Judge Duque not retired, his misconduct would have merited his dismissal from the service.

WHEREFORE, we find respondent Judge Manuel N. Duque GUILTY of IMPROPRIETY and GROSS

MISCONDUCT. We FINE him P40,000 to be deducted from his retirement benefits.

SO ORDERED.

Corona, C.J., Carpio Morales, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and Sereno, JJ., concur.
Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Mendoza, JJ., on official leave.
Perez, J., no part; acted on the matter as Court Administrator.

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[1] Rollo, pp. 34-36.

[2] Id. at 58-63.

[3] Justice Japar B. Dimaampao.

[4] Rollo, p. 64.

[5] Id. at 129.

[6] Id. at 129-130.

[7] Id. at 401-412.

[8] Jose P. Perez, now Associate Justice of this Court.

[9] Rollo, p. 1.

[10] Id. at 25.

[11] Id. at 5.

[12] Id. at 12.

[13] Id. at 61.

[14] Id. at 9 and 22.

[15] Id. at 131.

[16] Id. at 129.

[17] Madredijo v. Judge Loyao, Jr., 375 Phil. 1, 17 (1999).

[18] A.M. No. RTJ-06-1982 and A.M. No. RTJ-06-1983, 14 December 2007, 540 SCRA 246, 297- 298.

[19] Section 1, Canon 4, New Code of Judicial Conduct.

[20] Section 2, id. provides:

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

[21] Section 6, id.

[22] Geroy v. Calderon, A.M. No. RTJ-07-2092, 8 December 2008, 573 SCRA 188, 198.

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