

GEORGE P. MERCADO (SUBSTITUTED BY HIS WIFE, REBECCA ROYO-MERCADO, AND CHILDREN, NAMELY, REBECCA GAY, KRISTINA EVITA, CRIS OLIVER AND MARIAN RICA, ALL SURNAMED MERCADO), COMPLAIN...

A.M. No. RTJ-03-1781. October 16, 2009

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PER CURIAM:

These are consolidated administrative cases filed against Judge Erasto D. Salcedo (respondent judge), Regional Trial Court, Branch 31, Tagum City, charging him with violations of the Code of Judicial Conduct and the Canons of Judicial Ethics.[1]

Administrative Matter No. RTJ-03-1781

In a series of letters-complaints dated January 2, 2001,[2] July 16, 2001,[3] August 28, 2001[4] and November 23, 2001[5] filed before the Office of the Court Administrator (OCA), George P. Mercado (complainant) charged respondent judge as summarized below.

In the letter dated January 2, 2001, the respondent judge was accused of bias and gross partiality in handling the investigation of the administrative case filed against Judge Napy Agayan (Judge Agayan) of the Municipal Circuit Trial Court of Kapalong-Talaingod, Davao del Norte. The complainant alleged that the respondent judge mishandled the investigation and based his "findings of facts" on "gossip and rumors"[6] to aid a fellow judge.

On January 16, 2001, the complainant formally charged the respondent judge of committing these unethical infractions:

- (1) Mishandling of, or rendering a false report to the Supreme Court on, his investigation of Judge Agayan;
- (2) Grave misconduct and impropriety in possessing and using a stolen Pajero vehicle with knowledge, actually and constructively, that it was a subject of an Anti-Fencing Law case, docketed as Criminal Case No. 11728, which he had earlier dismissed; and
- (3) Serious irregularities, dishonesty or grave misconduct relating to the handling and improper execution of the final decision in Agrarian Case Nos. 31-99 to 51-99, entitled Soriano Fruits Corporation and Others versus Department of Agrarian Reform and/or Land Bank of the Philippines, where the respondent judge modified the final judgment on the amount of just compensation from which the respondent judge benefited in the amount of Three Million Pesos (P3,000,000.00).

The letter-complaint dated August 28, 2001 was filed by the complainant to supplement his earlier allegations. The complainant alleged that in connection with the stolen Pajero, the respondent judge was one of the respondents in a criminal complaint for violation of the Anti-Carnapping Act of 1972 (R.A. No. 6539) and/or the Anti-Fencing Law of 1973 (Presidential Decree [P.D.] 1612) filed by the Philippine National Police. In Agrarian Case Nos. 31-99 to 51-99, the respondent judge showed partiality in hastily resolving the motions filed by the

plaintiff, but not the motions filed by the defendant.

Finally, the letter-complaint dated November 23, 2001 was a reinforcement of the allegations in the earlier letters-complaints. The complainant additionally related that the use by the respondent judge of the stolen Pajero became a subject of media coverage.

The Office of the Chief Justice referred the letters-complaints dated January 2, 2001 and July 16, 2001 to Hon. Zenaida N. Elepaño as Acting Court Administrator.[7] Subsequently, then Court Administrator (now Supreme Court Associate Justice) Presbitero J. Velasco, Jr., in an Indorsement dated January 21, 2002, required the respondent judge to file his comment on the letter-complaint dated November 23, 2001.[8]

The respondent judge duly filed his Comment (dated February 22, 2002[9]), which the OCA received on February 27, 2002. The OCA summarized the respondent judge's position as follows:

Re: Investigation of Judge Napy Agayan.

Judge Salcedo contends that he has already submitted his recommendation to this Office and Mr. Mercado, through his complaint, would like to interfere and dictate what his recommendation would be. x x x

Re: Stolen Pajero found in his possession.

Judge Salcedo contends that Criminal Case No. 11728 against Leopoldo Gonzaga was dismissed in 1999 on motion of the prosecution because during the reinvestigation, the witness of the prosecution did not appear. He adds that from this dismissal the Traffic Management Group did not file any motion for reconsideration. Worse, the TMG authorized the change of color of the vehicle and allowed the buyer to use it for years.

Judge Salcedo avers that in June 2001, the owner lent him the vehicle and he did not know that it was the same vehicle subject of Criminal Case No. 11728, otherwise, he would not have used it for reason of delicadeza. According to him, there was no way of identifying the vehicle because the TMG authorized the change of color. The vehicle was green during the pendency of the criminal case while it was dirty white.

Re: Irregularities in Agrarian Case Nos. 31-99 to 51-99.

Judge Salcedo claims that he was designated as Acting Presiding Judge of the Special Agrarian Court in July 2000. He maintains that when he took over the said cases, the decision therein were already final and executory. Judge Salcedo asserts that he issued an order for the execution of the judgment which function is purely ministerial. He adds that if there was something wrong with the valuation of the land then the counsel for Land Bank should have questioned the same. As for the accusation that he received P3,000,000.00 for which he was able to construct a house in Tagum City, Judge Salcedo contends that the said house was constructed through a bank loan and the proceeds from the sale of a prime lot in Cagayan de Oro City.[10]

The complainant filed a Reply dated March 12, 2002.[11] He argued that the handling of the reinvestigation of the Anti-Fencing case against Leopoldo Gonzaga was hastily concluded and resolved by Prosecutor Matias Aquitan, who conducted the reinvestigation merely two days after the order to reinvestigate was issued by the respondent judge. The complainant further advanced the view that the respondent judge merely relied on the prosecutor's findings and dismissed the case with undue haste. According to the complainant, Leopoldo Gonzaga also had three (3) pending cases in the respondent judge's sala at that time.

The complainant also pointed out that two (2) checks for P800,000.00 were drawn from the payments made by Land Bank in Agrarian Case Nos. 31-99 to 51-99. The proceeds of one of these checks were given to the wife of the respondent judge.

Administrative Case No. RTJ-03-1782

On December 18, 2001, State Prosecutor Emmanuel Y. Velasco (State Prosecutor Velasco) brought to the attention of then Chief Justice Hilario G. Davide, Jr. the indictment of the respondent judge for violation of P.D. No. 1612 and recommended that appropriate administrative charges be initiated by the Supreme Court against him for violations of the provisions of the Code of Judicial Conduct and of the Canons of Judicial Ethics.[12] State Prosecutor Velasco stated:

...undersigned finds no cogent reason why Respondent JUDGE SALCEDO chose to use a vehicle which was the subject of a criminal case before his very own sala. There is no proof or evidence whatsoever that the Respondent Judge forgot that the alleged owner of the subject vehicle (Respondent LEOPOLDO GONZAGA) previously appeared before him as respondent in a criminal case. He could never forget it because the authorities apprehended him, Respondent JUDGE SALCEDO even showed them a copy of his very own July 7, 1999 Decision "exonerating" GONZAGA from the crime of Anti-Fencing. His contention that he did not know that he was using the very same vehicle (subject of the previous criminal complaint before his court) because its color has been changed is fallacious x x x Respondent JUDGE SALCEDO to be more cautious, out of delicadeza, in his dealing with GONZAGA, assuming for the sake of argument that he acted in good faith.[13]

In a Resolution dated April 10, 2002, we referred this administrative matter to the OCA and the respondent judge filed his Answer on August 30, 2002.[14] In addition to the arguments he had already raised, the respondent judge posited that the whole incident was a smear campaign engineered against him by a carnapping syndicate operating in Manila-Mindanao. The respondent judge also posited that there was no impropriety in using the subject vehicle since it was no longer in custodia legis as Criminal Case No. 11728 had already been dismissed.

Thereafter, we referred the administrative cases to Justice Noel G. Tijam[15] (Justice Tijam) of the Court of Appeals (CA) for investigation, report and recommendation. The referred cases involved:

- (a) The respondent judge's investigation of Judge Agayan, his possession of a stolen Pajero and the alleged irregularities he committed in Agrarian Case Nos. 31-99 to 51-99;
- (b) The suspension of Judge Salcedo pending the outcome of the instant case;
- (c) The dismissal of the complaint of George Mercado dated April 22, 2002 for grave abuse of authority for being subjudice;[16] and
- (d) The referral of the dismissal of Criminal Case No. 11728 to the Department of Justice for its appropriate action on the possible administrative liability of Prosecutor Matias Aquitan.

Pending investigation of these administrative cases before the CA, several significant developments took place. First, the respondent judge retired from the Judiciary on November 25, 2003. Second, the complainant was killed by unidentified men on April 14, 2004 and was substituted in the case by his wife and children.[17] Lastly, the respondent judge himself was killed on July 26, 2009.

CA Report and Recommendation

Justice Tijam found the respondent judge guilty of dishonesty, inefficiency, incompetency and violation of Rules 1.01, 2.01 and 3.01 of the Code of Judicial Conduct and of Canon 3 of the Canons of Judicial Ethics. Justice Tijam reported:

FIRST CAUSE OF ACTION[18]

IN THE MATTER OF THE ADMINISTRATIVE INVESTIGATION CONDUCTED BY RESPONDENT JUDGE OF THE ADMINISTRATIVE CASE AGAINST THE LATE MTC JUDGE NAPY AGAYAN AND HIS COURT PERSONNEL

The 1[st] Indorsement dated June 6, 2000 referring the complaint against Judge Agayan and his staff to the Respondent Judge expressly directed the Respondent Judge to investigate therein respondents' irregular attendance in court. Hence, even if Minda Amar was not specifically named by Complainant Mercado in his first letter-complaint, the fact that the charges involved the alleged repeated absence not only of Judge Agayan, but also of the personnel assigned in Judge Agayan's court, Respondent Judge's investigation should have also included the court attendance of Minda Amar, the Clerk of Court.

x x x

. . . In the course of his investigation, the Respondent Judge would have discovered the fact of Minda Amar's prolonged absences. However, Respondent Judge failed to make any findings in this regard. Neither was there a statement that Clerk of Court Minda Amar was absent during said period of investigation and/or that her absences were authorized and approved by Judge Agayan. Instead, the Respondent Judge made a sweeping declaration that Complainant Mercado's charges of absenteeism against Judge Agayan's court personnel were unfounded.

There is no evidence that Respondent Judge examined the Court personnel's daily time records . . .

Indubitably, Respondent Judge was negligent and inefficient, if not dishonest, in his investigation of the administrative complaint filed against Judge Agayan and his court personnel. For this reason, the Respondent Judge must be held liable.

x x x

SECOND CAUSE OF ACTION

IN THE MATTER OF THE STOLEN PAJERO VEHICLE[19]

x x x

. . . although the criminal case against the Respondent Judge for violation of the Anti-Fencing Law was dismissed, the Respondent Judge could still be held liable for his improper conduct pursuant to Rules 1.01[20] and 2.01[21] of the Code Judicial Conduct . . . and Canon 3 of the Canons of Judicial Ethics[22] [Emphasis theirs]

x x x

In this case, Respondent Judge displayed conduct that fell short of the standards expected of a magistrate of the law. Respondent Judge failed to be more circumspect in his dealings with Leopoldo Gonzaga.

Leopoldo Gonzaga was once an accused before Respondent Judge's sala in a criminal case for violation of the anti-fencing law which was later dismissed by the Respondent Judge. From this fact alone, any association which Respondent Judge may have with Leopoldo Gonzaga would be a cause for suspicion. When Respondent Judge borrowed the subject vehicle from the accused, he already displayed improper and reproachable conduct.

The fact that the vehicle lent to Respondent Judge was the same Pajero vehicle which was the subject of the dismissed criminal case makes the act more unethical. Respondent tried to justify that it was only after Gonzaga assured him that the Pajero was not a carnapped vehicle that he allowed himself to use it. This is inexcusable.

Respondent Judge was wrong when he borrowed from the accused the same vehicle subject matter of the criminal case which was dismissed and decided in the accused's favor. Respondent Judge failed to comport himself in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public. x x x

x x x

THIRD CAUSE OF ACTION[23]

IN THE MATTER OF THE CONSOLIDATED AGRARIAN CASES

x x x

Complainant Mercado suggested that the Respondent Judge benefited from the awarded commissioner's fee. Complainant Mercado presented copies of the 3 cashier's checks and the deposit purportedly showing how Respondent Judge profited from said fees.

However, this claim is completely without factual basis. The complainant failed to adduce any substantial, direct and convincing evidence to substantiate his allegation that Respondent Judge materially benefited from the transaction. At most, such allegation is a mere suspicion or conjecture.

x x x

. . . unless there is direct and convincing evidence which will prove Respondent Judge materially benefited from the transaction, the Respondent judge cannot be held guilty of said charge.

However, . . . Respondent Judge is liable for gross ignorance of the law in according and/or modifying a final and executory decision.

As settled, when the judge's inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds, or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

x x x

Respondent Judge had clearly exhibited gross ignorance of the law when he amended the already final decision... He is therefore guilty of violating Rule 3.01[24] of the Code of Judicial Ethics.

Justice Tijam recommended the imposition of the following penalties:

- (a) First cause of action - a fine of P40,000.00;
- (b) Second cause of action - a fine of P20,000.00;
- (c) Third cause of action - a fine in the amount of P20,000.00.

The Court's Ruling

After considering the CA Report and the entire records, we find the Report to be substantially supported by the evidence on record, and by applicable law and jurisprudence. We therefore adopt the findings and recommendations of the CA Report, subject to the modifications indicated below.

Administrative cases against judges stem from the time-honored constitutional principle that a public office is a public trust. This principle requires a judge, like any other public servant and more so because of the sensitivity of his position, to exhibit at all times the highest degree of honesty and integrity;[25] his high and exalted position in the Judiciary requires him to observe exacting standards of morality, decency and competence. As the visible representation of the law and given his task of dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.[26] He must conduct himself in a manner characterized by propriety and decorum; like Ceasar's wife, he must be above suspicion.[27] As we held in *Padua v. Paz*: [28]

Court personnel charged with the dispensation of justice, from the presiding judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct is always beyond reproach. The preservation of the integrity of the judicial process is of paramount importance. All those occupying offices in the judiciary should at all times be aware that they are accountable to the people. They must serve with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.

The records show that respondent judge failed to live up to these exacting standards.

Investigation of Judge Agayan and his court personnel

In his report dated August 2, 2002 (in compliance with the OCA directive to investigate Judge Agayan), the respondent judge stated that the complaint against Judge Agayan and his court staff for absenteeism and irregular attendance had no merit. The respondent judge related that he went twice to the office of Judge Agayan to ascertain the veracity of the complaint and found that Judge Agayan was really sickly because of a heart condition that compelled him to take leaves of absence.[29] The respondent judge claimed that since the complainant failed to specify the particular dates when Judge Agayan failed to report to work, he could not ascertain whether his absences had been authorized. The respondent judge also stated that he personally inquired from other offices in the Municipality of Kapalong, Davao del Norte, from lawyers, and from party-litigants with pending cases in the sala of Judge Agayan; he found that no complaint from party-litigants in the Municipality of Kapalong had been made involving the failure to attend to official transactions due to the absence of Court personnel. Neither was there any complaint from lawyers about proceedings "grinding to a halt." Like party-litigants, local officials are more concerned in the speedy disposition of cases when their constituents are involved. Yet, not a single local official made a complaint.[30]

The respondent judge, in his Comment dated February 22, 2002, emphasized that the present complaint was simply an undue interference by the complainant in his recommendation in Judge Agayan's case.

In its investigation, the CA found evidence refuting the statements made by the respondent judge in his report to the OCA. One of these was the Certification dated February 6, 2003 issued by Jaime Mondejar, Clerk of Court II, Municipal Circuit Trial Court, Kapalong-Talaingod, Davao del Norte, attesting that one Minda Amar, the Clerk of Court in Judge Agayan's sala, had not reported for work prior to and during the dates the respondent judge reportedly conducted his investigation.[31] The CA investigation also found no evidence that the respondent judge ever examined the daily time records of Minda Amar and the court personnel assigned to Judge Agayan's sala.

Justice Tijam noted that since the act complained of was absenteeism, the investigator's first course of action should have been to check and verify the daily time records of the concerned personnel; from such examination the respondent judge would have known of the prolonged absences of Minda Amar and others. Likewise, the respondent judge would have noticed Minda Amar's absence when he went to the sala of Judge Agayan on two occasions. These incidents, however, were not mentioned in the respondent judge's report.

In addition to these findings, we note that the respondent judge was similarly remiss in ascertaining Judge Agayan's absences. The respondent judge merely relied on the leave of absence filed by Judge Agayan for October 8, 1997, and did not at all consider the latter's absences, subject of the complaint, and the fact that the respondent judge conducted his investigation only in February 2000. At the very least, the gap of more than two (2) years between the leave of absence on record and the investigation of Judge Agayan's absences should have alerted the respondent judge to examine the former's records in the intervening period, particularly the period immediately prior to the complaint. The respondent judge failed to do this. We observe, too, that in the "course of his investigation," he did not appear to have asked Judge Agayan about his absences in any formal inquiry or, at

the very least, in an interview. No record appears in the respondent judge's report on Judge Agayan's position on the matter under investigation. A close scrutiny of the report in fact shows that the respondent judge, instead of making an objective report on the results of his investigation, tried to downplay and deflect the issue of absenteeism and irregular attendance by stating that nobody complained of the delay in the disposition of cases due to the absence and irregular attendance of Judge Agayan and his staff.[32]

From all these, what appears clear to us is that the respondent judge conducted a very superficial investigation, if what he did can be labelled as an investigation at all. Based on this shallow effort, he prepared a slanted report that could not but lead to the exoneration of Judge Agayan. These actions tell us that the respondent judge deliberately covered up Judge Agayan's absences and irregular attendance. The motivation for all these is not hard to discern as it can be read between the lines in the respondent judge's report, considered in light of the attendant facts. He did all these under the mistaken notion of aiding a fellow judge, who was allegedly too sickly to fully perform his judicial duties. In rendering this assistance, the respondent judge also overlooked the absences and irregular attendance of the court staff of Judge Agayan.

The respondent judge apparently forgot that his first and foremost duty was to conduct a thorough and objective investigation and to make a complete report of his findings regardless of his personal sentiments and beliefs. The task assigned to him was an assignment involving trust and the exercise of his functions as a judge. An administrative investigation is an essential component in the judicial machinery for the administrative supervision of courts and court personnel; it is a key process in determining violations of the norms of conduct and standards of service in the judiciary. The respondent judge, therefore, not only failed to do his duty, but violated as well the trust reposed in him as a judge.

The absenteeism of judges or court employees and/or their irregular attendance at work is a serious charge that, if proven, may warrant the imposition of the penalty of dismissal or suspension from service.[33] Unauthorized absence and irregular attendance are detrimental to the dispensation of justice and, more often than not, result in undue delay in the disposition of cases; they also translate to waste of public funds when the absent officials and employees are nevertheless paid despite their absence. As heretofore mentioned, the Supreme Court regulates the conduct of court officials and employees and it acts through its subordinates, among them in this case, the respondent judge. His responsibility in this administrative supervision is direct by virtue of the delegation made by this Court. By conducting a superficial investigation and by his slanted findings that caused the OCA to recommend the dismissal of the administrative complaint against Judge Agayan and his court personnel, the Court's administrative machinery failed; the respondent judge's intent to shield another judge, resulting in the lack of objectivity of his report, deprived the Court of the opportunity to act properly on the reported violations of the norms of conduct of judges and court employees.

For failing to faithfully perform the tasks assigned to him, the respondent committed dishonesty, inefficiency, and serious misconduct in violation of Canon 3 and Rule 3.08 of Canon 3, both of the Code of Judicial Conduct, which state:

Canon 3. A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE.

Rule 3.08 - A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

We also find that the respondent judge violated Rule 2.01, Canon 2 of the Code of Judicial Conduct, which states that "[a] judge should so behave at all times as to promote public confidence in the integrity and impartiality of

the judiciary," in relation to Canon 31 of the Canons of Judicial Ethics, which requires that a judge's conduct be above reproach and that he administer justice according to law. This means that a judge, in dispensing justice, "should apply the law impartially, independently, honestly, and in a manner perceived by the public to be impartial, independent and honest." [34]

Serious misconduct, as defined, refers to weighty and serious transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. [35] It warrants dismissal from the service when the judicial act is corrupt and inspired by an intention to violate the law, and when it translates to wrongful intention rather than mere error of judgment. [36]

In this case, by giving premium to personal relations and personal feelings rather than to the faithful discharge of his duty as investigating judge, the respondent judge acted dishonestly and inefficiently, coupled with a deliberate and wrongful intent to perform his duties unfaithfully. This is no less a serious misconduct than a corrupt act undertaken for monetary gains; one as well as the other eroded public confidence in a judge's ability to render justice. [37]

The Possession and Use of a Stolen Vehicle

In his defense on this issue, the respondent judge claimed that the case was filed by the complainant merely to harass him. He also claimed good faith and lack of knowledge that the vehicle he had borrowed from Leopoldo Gonzaga was the same vehicle involved in the Anti-Fencing case that he dismissed in 1999.

The act of borrowing a vehicle by a judge or any court employee is not per se a violation of judicial norms and standards established for court personnel, as borrowing is a legitimate and neutral act that can happen in everyday life. However, judges and court employees - by the nature of their functions and of the norms and standards peculiar to their positions - live their lives under restrictions not otherwise imposed on others; specifically, they cannot simply borrow in situations when this act may or can affect the performance of their duties because of the nature of the thing borrowed or the identity of the borrower, or in situations when borrowing would involve ethical questions under express rules. In this case, the complaint alleged that what the respondent judge borrowed was in fact a vehicle that was the subject of a previous litigation before his sala; the respondent judge borrowed, too, from a lender who still had cases before his sala.

We hold, based on our examination and analysis of the records, that the respondent judge went over the dividing line that separates permissible from impermissible borrowing.

First, during his cross-examination before the CA, the respondent judge admitted that he knew that the vehicle he borrowed was owned by Leopoldo Gonzaga, who was the accused in the Anti-Fencing case previously before him. [38] The respondent judge could not have avoided this admission given the surrounding circumstances of the case; the vehicle in the Anti-Fencing case was a Pajero, while the vehicle he borrowed from Leopoldo Gonzaga was also a Pajero; [39] while the color of the vehicle had been changed from green to dirty white, it was shown that the vehicle consistently carried the same plate number - "UTN 571"; [40] the respondent judge could not have missed the identity of the vehicle considering his admission that the Pajero was under the court's custody for several months. [41]

Second, the records show that the respondent judge's initial claim of lack of knowledge is not true. In the preliminary investigation conducted by State Prosecutor Velasco in the Anti-Fencing case involving the Pajero, the respondent judge, when apprehended by policemen, exhibited a court decision he penned in 1999 dismissing the Anti-Fencing case against Leopoldo Gonzaga for the same vehicle. [42] This incident, which the respondent judge never refuted, clearly indicated that he knew that the vehicle he possessed and used, despite its change of

color, was the same vehicle involved in the 1999 Anti-Fencing case that came before him.

Third, the unrefuted statement of the complainant in his Affidavit (Direct Examination)[43] filed before the CA states:

I know for a fact that Mr. Leopoldo Gonzaga had several cases pending in the two (2) salas presided by Executive Judge Salcedo . . . Also, I know for a fact that before the Criminal Case No. 11728 . . . was dismissed by Executive Judge Erasto D. Salcedo, several cases of Mr. Leopoldo Gonzaga had been pending in the sala of Judge Salcedo. I also know for a fact that Executive Judge Erasto D. Salcedo inhibited himself from the cases of Mr. Leopoldo Gonzaga when there was a question raised on the propriety of his borrowing the Pajero from Mr. Gonzaga, a court litigant in his sala, during the pendency of this Administrative case. [Emphasis theirs]

Thus, the respondent judge not only borrowed a vehicle that was the subject of an Anti-Fencing case before him; he also borrowed it from a lender who had other pending cases before him. In fact, he had to inhibit himself from hearing these cases because of the pendency of the present administrative cases.

Under the circumstances, the respondent judge is liable for serious misconduct, given his repeated and deliberate intention to disregard and violate the legal norms of conduct governing his behavior and action as a judge. He committed serious misconduct, first, in using and possessing a vehicle with the knowledge that it was the subject of an anti-fencing case previously before him; and second, he borrowed this vehicle from a litigant who had pending cases before his sala. Both the character of the vehicle borrowed and the identity of the lender precluded him from borrowing and using Leopoldo Gonzaga's Pajero. While the criminal case filed against the respondent judge by State Prosecutor Velasco was dismissed by the Department of Justice, we agree with Justice Tijam that the respondent judge's acts at least constitute irresponsible and improper conduct whose effect is to erode public confidence in the judiciary.[44] As aptly stated by Justice Tijam, the respondent judge's act compromised the image, integrity and uprightness of the courts of law;[45] it cast suspicion not only in his own impartiality, but also in the impartiality and integrity of his judicial office, thereby impairing public trust in the exercise of his judicial functions.

In several cases of the same import, the Court penalized a judge for highly improper conduct.

In *Cabreana v. Avelino*,[46] the Court castigated the respondent judge who hitched a ride in the car of a party-litigant in going to and from the place of the ocular inspection. We ruled that the respondent judge's act exposed him and his office to suspicion and impaired the trust and faith of the people in the administration of justice.

In *Sibayan-Joaquin v. Javellana*,[47] we admonished the judge to be circumspect in his conduct and dealings with lawyers who had pending cases before him. It was established that the judge displayed before the public his close familiarity with one of the lawyers who appeared before him and whose car the judge sometimes borrowed.

We explained in *Yu-Asensi v. Villanueva* that the duty to avoid improper conduct or the appearance of impropriety becomes more crucial when one is a trial judge who has constant dealings with the public:[48]

...[W]ithin the hierarchy of courts, trial courts stand as an important and visible symbol of government especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, a judge must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x it is essential that judges, like Caesar's wife, should be above suspicion.

The evidence adduced in this charge showed that the respondent judge violated Rule 1.01, Canon 1 and Rule 2.01, Canon 2, both of the Code of Judicial Conduct, in failing to maintain the appearance of integrity and in failing to engage in conduct to promote public confidence in the judiciary. Likewise, he violated Canon 2 of the Code of Judicial Conduct and Canon 3 of the Canons of Judicial Ethics relating to the avoidance of impropriety and the appearance of impropriety in all the judge's activities, official or otherwise.

The Execution of a Final Judgment in the Consolidated Agrarian Cases

The pertinent portion of the joint decision dated February 7, 2000 rendered by the Special Agrarian Court in Agrarian Case Nos. 31-99 to 51-99 reads:

WHEREFORE, all the foregoing premises duly considered, the Court hereby renders its judgment fixing, as it has judiciously determined, the just compensation for the landholdings and the improvements of all the herein petitioners in all these above-captioned docketed agrarian cases, as follows:

First - Hereby fixing, as determined, the just compensation of herein petitioners' aggregate landholdings of 123.4629 hectares hereby fixed and determined at P25,405,553.55, plus the fixed and determined just compensation for the existing improvements thereon of P32,800,000.00, or a total of P58,205,553.55; and proper-computed adjustment to make such valuation at par with current true value of the Philippine Peso vis-à-vis the US Dollar, said upgraded amount in its upgraded value totals P89,547,005.46; and further adding thereto the computed interests pegged at 6% per annum, which amounted to P21,986,680.68, the total amount of just compensation which Respondent-DAR through LBP must pay, jointly and severally, to petitioners for their landholdings and improvements would be, as it is hereby fixed in the aggregate amount of P111,533,686.14;

x x x

The respondent judge contends that he merely acted on the motion filed by the landowners who requested adjustments in enforcing the final judgment considering the statement in the dispositive portion of the judgment that allowed adjustments based on the current true value of the Philippine Peso vis-à-vis the US Dollar.

In his findings, Justice Tijam observed that the adjustment contemplated in the joint decision was already included in the dispositive portion, making it unnecessary for the respondent judge to make any additional adjustment. We also note that this joint decision, after having become final and executory, was entered in the Book of Entries of Judgment of the Special Agrarian Court on May 3, 2000.[49] It was not until October 26, 2000 that the respondent judge made further "adjustment" of the judgment amount when he acted on the motion filed by the landowners.[50]

The respondent judge ought to have known that the joint decision was already final and executory and could no longer be disturbed when he made his adjustments. This legal reality, known as the rule of immutability of judgment, is an elementary principle of law and procedure. Once a judgment becomes final, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the Highest Court of the land.[51] The only recognized exceptions are the correction of clerical errors, or the making of so-called nunc pro tunc entries, which cause no prejudice to any party, and where the judgment is void.[52] To be sure, the respondent judge's ground for modifying the joint decision is not among these recognized exceptions.

For modifying a final and executory decision in the course of its execution, we find the respondent judge guilty of gross ignorance of the law. Where the law is straightforward and its application to the facts plainly evident, not to

know the law or to act as if one does not know it, constitutes gross ignorance of the law.[53] The respondent judge violated Rule 3.01, Canon 3 of the Code of Judicial Conduct which mandates professional competence on the part of a judge. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence;[54] otherwise, he erodes the confidence of the public in the courts.[55] Ignorance of the law by a judge can easily be the mainspring of injustice.[56]

The Penalty

The retirement of the respondent judge and death of both the complainant and the respondent judge pending the investigation of these administrative cases are not deterrents to the resolution on the merits of the complaints and to the imposition of the sanctions demanded by the circumstances. Jurisprudence holds that the death of the complainant does not warrant the withdrawal of the charges against the respondent nor does this development render the complaint moot; the complainant is treated only as a witness in this type of proceedings.[57] On the other hand, the death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability. The recognized exceptions to this rule are: first, when the respondent has not been heard and continuation of the proceedings would deny him of his right to due process; second, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations; and third, when the kind of penalty imposed or imposable would render the proceedings useless.[58] None of these exceptional circumstances are present in the case.

Thus, despite the above supervening events, we can still impose the penalty of fine against the respondent judge deductible from his retirement benefits. In this case, we find that the infractions he committed all constitute serious charges warranting the imposition of fine in the amount of P20,000.00 to P40,000.00 range.[59] Considering the several violations he committed and the gravity and circumstances of these infractions, we find that the maximum amount of fine should be imposed on each charge. In so ruling, we note that this is not the first administrative infraction committed by the respondent judge; he had previously been fined P10,000.00 for undue delay in rendering decisions or orders.[60]

On the first charge (false investigation report on Judge Agayan), we find the respondent judge guilty of dishonesty, inefficiency, and serious misconduct. He violated the provisions of Rule 2.01 of Canon 2, Canon 3 and Rule 3.08 of Canon 3 of the Code of Judicial Conduct; and Canons 3 and 31 of the Canons of Judicial Ethics. Section 8, Rule 140 of the Rules of Court, classifies dishonesty and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges. We impose a fine of P40,000.00 on the respondent judge on this charge.[61]

On the second charge (use and possession of the vehicle of a litigant before his sala), the respondent judge is guilty of serious misconduct and impropriety as provided in Rule 1.01 of Canon 1, Canon 2 and Rule 2.01 of Canon 2 of the Code of Judicial Conduct, and Canon 3 of the Canons of Judicial Ethics. Considering the compounded administrative offenses, he is meted the maximum fine of P40,000.00.[62]

For violation of Rule 3.01, Canon 3 of the Code of Judicial Conduct (in the execution of the decision of an agrarian case), the respondent judge is liable for gross ignorance of the law for which the maximum fine of P40,000.00 is imposed. Gross ignorance of law is considered a serious charge that warrants the imposition of the penalties provided under Section 11 (A), Rule 140 of the Rules of Court.[63]

WHEREFORE, premises considered, we find Judge Erasto D. Salcedo GUILTY of the following administrative offenses:

- Dishonesty, inefficiency and serious misconduct and violation of Rule 2.01 of Canon 2 and Rule 3.08 of Canon

3 of the Code of Judicial Conduct; and Canons 3 and 31 of the Canons of Judicial Ethics. We impose a FINE of P40,000.00.

- Serious misconduct and impropriety in violation of Rule 1.01 of Canon 1 and Rule 2.01 of Canon 2 of the Code of Judicial Conduct, as well as Canon 3 of the Canons of Judicial Ethics. He is meted a FINE of P40,000.00.

- Gross ignorance of the law under Rule 3.01, Canon 3 of the Code of Judicial Conduct, for which a FINE of P40,000.00 is imposed.

The Office of the Court Administrator is hereby ordered to deduct the amount of One Hundred Twenty Thousand Pesos (P120,000.00) from the retirement benefits due to Judge Erasto D. Salcedo, and to proceed with the processing and release of these benefits, unless there are other lawful causes for withholding them.

Finally, we refer to the Department of Justice for appropriate action the possible administrative liability of Prosecutor Matias Aquiatan arising from the imputations made by the complainant that he committed a hasty reinvestigation of Leopoldo Gonzaga in Criminal Case No. 11728.

SO ORDERED.

[**]Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, and Abad, JJ., concur.

Puno, C.J., Velasco, Jr., and Del Castillo, JJ., on official leave,

[**]Acting Chief Justice from October 12 to 16, 2009 per Special Order No. 721 dated October 5, 2009.

[1] Resolution dated August 13, 2002 of the Court En Banc; rollo, RTJ-03-1782, p. 12.

[2] Rollo, RTJ-03-1781, p. 43.

[3] Id., pp. 7-16.

[4] Id., pp. 3-4.

[5] Id., pp. 1-2.

[6] Supra note 2.

[7] Id., p. 33.

[8] Id., p. 166.

[9] Id., pp. 167-184.

[10] Id., pp. 603-609.

[11] Id., pp. 311-326.

[12] Rollo, RTJ-03-1782, p. 1.

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

[14] Id., pp. 13-24.

[15] Resolution dated April 21, 2003; rollo, RTJ-03-1781, p. 623. The case was initially assigned to Associate Justice Lucas P. Bersamin (now a member of this Court), but he requested to be disqualified considering that the

respondent judge was a former classmate of his.

[16] Administrative Complaint with Prayer for Preventive Suspension, etc. in connection with the contempt orders issued by the respondent judge against the complainant. This was subject of a petition for certiorari before this Court, docketed as G.R. No. 151954, wherein we issued a temporary restraining order in favor of the complainant and referred the matter for appropriate action and disposition to the CA (docketed as CA-GR. No. 69246); rollo, RTJ-03-1781, p. 240.

[17] CA Report and Recommendation, p. 4.

[18] *Id.*, pp. 9-10.

[19] *Id.*, pp. 13-14.

[20] Rule 1.01. A judge should be the embodiment of competence, integrity, and independence.

[21] Rule 2.01. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

[22] Canon 3 (3). A judge's official conduct should be free from any appearance of impropriety and his personal behavior, not only in the bench and in the performance of his official duties, but also in his everyday life, should be beyond reproach.

[23] Report and Recommendation of CA Associate Justice Noel G. Tijam, pp. 18- 22.

[24] Rule 3.01. A judge shall be faithful to the law and maintain professional competence.

[25] Judiciary Planning Development and Implementation Office v. Calaguas, A.M. No. P-95-1155, May 15, 1996, 256 SCRA 690.

[26] Calilung v. Suriaga, A.M. No. MTJ-99-1191, August 31, 2000, 339 SCRA 340.

[27] Mirano v. Saavedra, A.M. No. P-89-383, August 4, 1993, 225 SCRA 77.

[28] A.M. No. P-00-1445, April 30, 2003, 402 SCRA 21.

[29] Rollo, p. 156, Administrative Matter No. RTJ-03-1781.

[30] *Id.*, pp. 155 and 158.

[31] *Supra* note 17, p. 9.

[32] Rollo, RTJ-03-1781, p. 155.

[33] Yu-Assensi v. Villanueva, A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255.

[34] OCA v. Floro, A.M. No. RTJ-99-1460, March 31, 2006, 486 SCRA 66.

[35] Manuel v. Calimag, A.M. No. RTJ-99-1441, May 28, 1999, 307 SCRA 657, citing *Amasco v. Magro*, 73 SCRA 108-109 (1976).

[36] *Id.*

[37] *Supra* note 34, pp. 139-140.

[38] TSN, May 9, 2005, p. 70.

[39] *Id.*, p. 68.

- [40] Supra note 17, p. 11.
- [41] TSN, May 9, 2005, p. 68.
- [42] Resolution dated December 18, 2001; rollo, RTJ-03-1782, p. 6.
- [43] CA Rollo, p. 430.
- [44] Supra note 17, p. 15.
- [45] Ibid.
- [46] Adm. Matter No. 1733-CFI, September 30, 1981, 107 SCRA 640.
- [47] A.M. No. RTJ-00-1601, November 13, 2001, 368 SCRA 503.
- [48] Supra note 33, p. 266.
- [49] Land Bank of the Philippines, etc. v. Saludanes, G.R. No. 146581, December 13, 2005, 477 SCRA 506.
- [50] CA Rollo, p. 751.
- [51] Equitable Banking Corporation v. Sadac, G.R. No. 164772, June 8, 2006, 490 SCRA 380.
- [52] Id., p. 417.
- [53] Amante-Descallar v. Ramas, A.M. No. RTJ-08-2142, March 20, 2009.
- [54] Id.
- [55] Id.
- [56] Id.
- [57] Ferrer v. Tebelin, A.C. No. 6590, June 27, 2005, 461 SCRA 207.
- [58] Gonzales v. Escalano, A.M. No. P-03-1715, September 19, 2008.
- [59] Section 11, Rule 140 of the Rules of Court.
- [60] Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31, A.M. No. 04-1-56-RTC, February 17, 2005, 451 SCRA 605.
- [61] QBE Insurance Phils. v. Judge Laviña, A.M. No. RTJ-06-1971, October 17, 2007, 536 SCRA 372.
- [62] Ibid.
- [63] Alconera v. Madajucon, A.M. No. MTJ-00-1313, April 27, 2005, 457 SCRA 378.

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