

**IRENEO CABREANA AND ANNA ROSE CABREANA, COMPLAINANTS,
VS. HON. JUDGE CELSO AVELINO, PRESIDING JUDGE OF BRANCH
XIII, CFI OF CEBU, RESPONDENT.**

Adm. Matter No. 1733-CFI. September 30, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an administrative case filed by complainant-spouses Ireneo Cabreana and Anna Rose Cabreana against Judge Celso Avelino, Presiding Judge of Branch XIII of the Court of First Instance of Cebu for "serious misconduct, abuse of authority, prevarication and oppression."

The backdrop of the case is as follows:

Complainant-spouses Ireneo Cabreana and Anna Rose Cabreana are the plaintiffs in Civil Case No. R-15988 before Branch XIII of the Court of First Instance of Cebu, presided by herein respondent judge, against the defendant T & E Tumakay Enterprises, owned and operated by Teody O. Tumakay, seeking rescission of sale, with damages against therein defendant firm for having sold to plaintiffs therein and complainants herein pieces of furniture which were not made in accordance with specifications and/or defectively manufactured.

On August 4, 1977, a motion was filed by plaintiff-spouses for an ocular inspection of the furniture sold, which was granted by respondent judge. In the same motion, plaintiff-spouses proposed the appointment of the clerk of court of Branch XIII, Atty. Alejandro Grengia, as the com-missioner.

It was on the occasion of this ocular inspection that the incidents complained of took place, thus –

"xx xx xx.

"5. That pursuant to the order of the respondent judge, the ocular inspection was set in the afternoon of August 31, 1977, on which occasion the said respondent judge rode in the car of defendant Tumakay, with the said defendant Tumakay himself driving the same, to and fro, the place where the ocular inspection was to be conducted at the home of complainants at Estaca, Minglanilla, Cebu, where the respondent judge himself conducted the ocular inspection;

"6. That when respondent judge arrived in the place where the ocular inspection was to be conducted, but before the actual or formal ocular inspection started, the respondent judge started to behave strangely and queerly, by showing hostility on complainants right in their home, treating them shabbily and rudely, talking to complainants in a harsh, sarcastic and in an insulting manner, while being friendly and chummy to defendant Tumakay, as shown by the joint affidavit of the herein complainants, a copy of which is hereto attached as Annex 'C';

"7. That when the ocular inspection commenced, and the herein complainant Anna Rose Cabreana was asked in the direct examination to point out to the respondent where the defects of workmanship were in the furniture, and the said Anna Rose Cabreana would point at the cracks in the furnitures, the respondent judge

would distort the facts through his grossly erroneous observation and orders the same to be placed on record in the stenographic notes that the cracks were merely 'scratches', or if the crack were extensive or severe for a fine furniture, respondent judge would put it on record that the crack was only an inch long although the crack extends the entire length of the furniture.

"8. That in another instance, when the ocular inspection was conducted on the dresser inside the bedroom of complainant Anna Rose Cabreana, and the latter pointed at the crack in the said dresser, the respondent judge who was seated on the bed nearby, but far enough not to enable him to see the defect being pointed to, did not even care to rise up to see or look at the defect referred to and cryptically made his prevaricated observation that the defect referred to was not a crack but merely a 'scratch', although the same was in fact really a crack. (These facts are reflected in the various dialogue in the stenographic notes duly certified by stenographer Graciana on the pro-ceedings on August 31, 1977, a xerox copy of which is hereto attached as Annex 'D');

"9. That when complainant Anna Rose Cabreana pointed at the defects in the bookshelf and in the foot stool, the respondent judge refused to see the defective workmanship, but instead described them merely as either an 'art' or said 'I can't see the defect';

"10. That such a blatant and brazen display of deceit, misrepresentation and prevarication constitutes a case of serious misconduct, abuse of authority, prevarication and oppression, since said act was committed for the purpose of clearly and patently favoring the defendant Tumakay;

"11. That when the subject of materials used was taken up in the same ocular inspection, that where the parties-litigants agreed that the materials to be used in the manufacturing of the furnitures should be narra, as said wood makes a superior quality of furnitures as same would not be attacked by wood borers (bokbok), and the 'bokbok' dust were shown to the respondent judge to show that that proves that the material used was not narra, the said respondent brushed aside complainant's allegation stating that the dust may have been just applied by complainants themselves to simulate 'bokbok' dust, which fact is reflected in the dialogue found in Annex 'D';

12. That with the clever deceit employed by respondent judge, complainants cannot expect to obtain a fair and honest dispensation of justice from respondent or even on appeal, as cases on appeal are adjudicated on the basis of the facts reflected from the records of the case" (pp. 2-4, rec.).

Asked to comment on the administrative case filed against him, respondent judge filed his comment dated December 1, 1977 traversing complainants' allegations, and alleging that:

"Respondent admits the truth of the allegations contained in paragraphs 1, 2, 3, 4 and 5 of the complaint, but denies the allegations in paragraphs 6, 7, 8, 9, 10, 11 and 12. In the joint affidavit submitted (Annex 'C') in support of the complaint, there are assertions that are false and baseless. For example, complainants state that the Branch Clerk of Court, Atty. Alejandro C. Grengia (not 'Gengia' as appearing in the affidavit), was appointed commissioner for purposes of the ocular inspection as prayed for in complainants' motion (Annex 'B' of complaint) and that on the date and time when said ocular inspection was to take place, the Presiding Judge, out of the blues, ordered that he would conduct the ocular inspection himself (underscoring supplied). This is farthest from the truth since respondent never appointed the Branch Clerk of Court to conduct the ocular inspection, although it is admitted that the complainants' motion for ocular inspection proposes the appointment of the Branch Clerk. To belie complainants' contention, it needs only a reference to the Court Order dated August 8, 1977 that resolved com-plainants' motion for ocular inspection.

"It is emphasized that the complaint is premised on the alleged partiality and bias of respondent, solely on the basis of the proceedings taken during the actual ocular inspection conducted on August 31, 1977, copy of which has been attached to the complaint (Annex 'D').

"Respondent denies vehemently the charge of partiality and bias, but maintains the view that all remarks made

by him during the ocular inspection and incorporated in the transcript of proceedings are but a necessary consequence of the inspection in order to record all the observations of the Court so that it may later on be properly and clearly guided in the determination of the issues raised by the parties in their respective pleadings. If some of the remarks made by respondent in the course of the ocular inspection are not complimentary to complainants, the same are but incidental to the primordial purpose of an ocular inspection, which is for the Court to inform itself of the actual state of matters relevant to the cause of action.

"During the ocular inspection, complainants pointed to minor scratches on the floor of their bedroom with the aid of a flashlight, notwithstanding the fact that the inspection was conducted on a very bright afternoon at the early hour of past 2:00 o'clock P.M. or thereabouts. These are the scratches which, in the hearing of August 4, 1977 plaintiff Anna Rose Cabreana while testifying claims as constituting damage worth P1,500.00 representing the deduction in the total purchase price of the furniture.

"For a more thorough and detailed further understanding of the circumstances which complainants base their complaint, certain pleadings that form part of the records of Civil Case No. R-15988 are herewith submitted, marked as Annexes and forming integral parts of this comment, and more particularly specified in the enumeration below.

"It is humbly contended that the complaint has no factual nor legal basis upon which a possible administrative action may lie against the respondent, since the acts complained of have been done in the performance of his official duties as Judge" (pp. 10-11, rec.).

Respondent judge prayed that the complaint should be dismissed for lack of merit.

After considering the complaint under oath and respondent judge's comment thereon, complainants' reply thereto as well as respondent's rejoinder to said reply, the Court resolved to refer the complaint to Associate Justice Jose A. R. Melo of the Court of Appeals for investigation, report and recommendation.

At the hearing set by the Investigating Justice on January 7, 1981, complainants manifested that they were submitting, without further argument or presentation of evidence, their case on the basis of their joint affidavit and the transcripts of stenographic notes taken during the ocular inspection on August 31, 1977. Likewise, respondent judge manifested that he was submitting the case on the basis of his answer.

In his report submitted on February 3, 1981, the Investigating Justice made the following findings:

"xx xx xx.

"Respondent does not deny that he arrived at the house of complainants in Estaca, Minglanilla, Cebu which is situated some 20 kilometers away from the court house in Cebu City, in the company of and riding in the car of defendant Tumakay. Neither does he dispute his description, as appearing in the transcript of stenographic notes, of defects in the furniture inspected as scratches. Undersigned investigator could have gone to Cebu to inspect and see for himself the defects in the furniture but considering the time that has elapsed, which is around 6 years, from the time the ocular inspection was conducted by respondent judge, undersigned thought it better to desist therefrom for, indeed, in the meantime, the furniture may have developed additional defects and blemishes during the years that have passed. It is, therefore, upon the basis of the transcript of stenographic notes taken during the ocular inspection upon which the complaint may be resolved.

"Altogether, upon a reading of the transcript of stenographic notes of the ocular inspection conducted on August 31, 1977 appearing on pages 57 to 92 of the records, undersigned is given the impression that, indeed, respondent judge behaved in such a manner as to give the impression that he is biased against complainants. Thus, when a certain dining set was inspected, alleged cracks thereon were described by respondent as mere scratches:

'Mrs. Cabreana:

Here are the cracks over here and then here on this side also right here is the crack and then over here, Your Honor, this is cracking also, and then we have these scratches over there on the glass and then over here, Your Honor, if you look at it you can see the cracks all way to the chairs.

'Court:

This is not a crack on the glass. That is a scratch.

'Mrs. Cabreana:

These are scratches on the glass. And on this chair if you stand right there, Your Honor, you could see the cracks. These cracks here are marked.

'Atty. Varela, Jr.

I notice that on these chairs there are pieces of strings. What are those pieces of strings, what do they indicate?

'Mrs. Cabreana:

They indicate the cracks on the chairs.

'Court:

Where is that crack?

'Mrs. Cabreana

It is here, your Honor.

'Court:

I can't see the crack.

'Mrs. Cabreana:

This one here is a crack.

'Court

It is a slight crack about one inch.

'Mrs. Cabreana:

And then here, your Honor.

'Court:

Slowly because the stenographer cannot indicate all the alleged defects.

'Court Interpreter:

The witness is pointing to the base of the dining table.

'Mrs. Cabreana:

From here up to here and this one here and also on the other side, your Honor. This one is also starting to crack.

'Court

That is not a crack, that is a scratch.

'Mrs. Cabreana:

Here is another one, Your Honor.

'Court

out one inch long.

'Mrs. Cabreana:

Don't you notice on this chair here, then down here? (Witness referring to the base of the dining table). It's starting to crack right there, Your Honor. Can you see it?

'Court:

It is like a scratch, not a crack. You discovered all these scratches after two months?

'Witness:

Before two months. (Tsn., August 31, 1977, pp. 3-6, Records, pp. 59-62).

"It is, of course, not disputed that respondent may make his own observations but the better procedure for him to have followed would have been to ask the opposing counsel who was also present during the proceedings to make his observations, and for respondent to reserve his findings. But as it was, respondent directly contradicted the witness, describing obvious cracks as appearing in the photograph as submitted by complainants, as simple scratches.

"Concerning a certain cabinet, the following dialogue took place:

'Mrs. Cabreana:

This is straight and this one is not.

'Court

What do you mean by this is straight?

'Mrs. Cabreana:

The left side is straight and the right side is not.

'Court:

When we are facing it, this is the left side.

Atty: Varela, Jr.:

Facing the cabinet, the right side is straight and the left side is not.

'Court:

But the Court does not see any curve or any sign that the left side is not straight.

'Mrs. Cabreana:

This is supposed to be a sliding door. There are no ball bearings put on the sliding doors.

'Court

Is there in the contract that there should be ball bearings?

'Mrs. Cabreana:

That was supposed to be a sliding door.

'Court:

Is there in your contract between the defendant that there should be a ball bearing?

'Mrs. Cabreana:

No, it was not specified to be sliding doors.

'Court:

What do you call these doors now?

'Mrs. Cabreana:

Sliding doors that won't slide.

'Court:

Atty. Grengia, you see if it will slide or not.

'Atty. Grengia (after opening the door):

It will slide, however when we have to move the glass it will not really slide smoothly.

'Court:

Let me see (after opening the door). It will slide; the door is sliding. Maybe you want the American way of making things, the perfect way of making in America.

'Mrs. Cabreana:

It is like this one here, Your Honor.

'Court:

Is there in your contract that the bookcase which the defendant would make would be like that one you pointed to us?

'Mrs. Cabreana:

Yes.

'Court:

Where is that portion of the contract:

'Mrs. Cabreana:

I don't have it.' (Tsn., Aug. 31, 1977, pp. 19-12; Record, pp. 66-68).

"Again, respondent judge appeared to be brusque and curt with the witness. He was practically cross-examining her in regard to the contract. But the irritating and insulting treatment of complainant. Mrs. Cabreana by respondent judge becomes the more obvious when he said upon inspecting the door, that perhaps complainants would want the American way of making things. He was actually personally insulting complainant Mrs. Anna Rose Cabreana who is an American.

"Again, when some footstools were inspected, the legs of which are not straight, respondent judge immediately arrived at the conclusion that such mis-aligned legs of the stools is art and not a defect. Once more, We beg to quote the following from the transcript of stenographic notes:

'Mrs. Cabreana:

The two front legs are not straight.

'Atty. Varela, Jr.:

How about the other one?

'Mrs. Cabreana:

That one is all right, Vicente.

'Court:

What do you mean by they are not straight?

'Mrs. Cabreana:

This one is pointing this way and this one is pointing that way.

'Court:

I don't understand you.

'Mrs. Cabreana:

This is supposed to be done like this, not like that.

'Court:

Atty. Varela, I don't understand your client.

'Atty. Varela, Jr.

My client is stating that the legs are not straight. If you sit on this footstool, the front leg is veered to the right while the right leg is veered to the left.

'Court:

I think that is an art. Don't you like that. All of them are curving inside. I think that is an art. I don't see any defect there. Is there any portion of the contract which says that the legs of that stool should be straight?

'Mrs. Cabreana:

No.

'Court:

That looks like an art.' (Tsn., Aug. 31, 1977, pp. 13-14; Record, pp. 69-70).

"In regard to the presence of borers (bukbok) in the furniture complained of, the following dialogue took place:

'Mrs. Cabreana:

The drawers don't shut real good. There are signs of 'bukboks in this one and in here.

'Court:

Where is the 'bokbok' there?

'Mrs. Cabreana:

This is from the 'bokbok', Your Honor.

'Court:

When there are 'bokboks' there are holes from where they come from. This one has no holes of 'bokboks'. Your lawyer can see.

'Atty. Varela, Jr.:

I would like to make an observation that when this dresser was opened by the witness there was a sign of 'bokbok'.

'Court:

No, there was none. Where is the 'bokbok' there? Don't fool the court.

'Atty. Varela, Jr.:

I am not fooling the court, Your Honor. We request the court not to wipe the thing there.

'Court:

We are looking if there is a hole where the 'bokbok' comes from because you can put white substance there.

'Atty. Varela, Jr.:

It is not necessary that there must be holes.

'Court:

Where will the 'bokbok' come from?

'Mrs. Cabreana:

Open that one, please.

'Atty. Varela, Jr.:

I would like to make of record that when Atty. Grengia, the Clerk of Court, opened the third drawer, he had difficulty in opening it, and in fact Atty. Son had to hold the dresser to help Atty. Grengia open the third drawer. The right side has three drawers and the middle drawer is opened by the witness. Inside the drawer there is ... how do we call this?

'Court:

You don't like that to be touched. How can we know if it is a white substance. You are very delicate; you don't like that to be touched.' (Tsn., Aug. 31, 1977, pp. 15-17; Record, pp. 71-73).

"In this exchange, respondent judge was practically accusing complainants or their counsel of planting evidence when he said 'because you can put white substance there'. The situation became so exacerbated that Atty. Varela, Jr., counsel for complainants, had to remind respondent judge not to wipe the powdery substance which was supposed to have been the traces of borers.

"During the entire proceedings at the ocular inspection it was only once that counsel for defendant therein was

consulted by respondent judge and it was in regard to the presence of 'bokbok' or borers:

'Court:

Do you agree that that is 'bokbok?'

'Atty. Son:

We cannot agree, Your Honor.' (Tsn., Aug. 31, 1977; Record, p. 73).

"Rather, during the entire ocular inspection respondent judge participated most actively, asking questions and making comments and observations. The definite impression conveyed to the undersigned is that the behavior of respondent judge during the proceedings is that he was brusque and severe towards the witness, Mrs. Cabreana. He displayed undue interference in the conduct of the inspection or trial and showed unwarranted intolerance and unjustified impatience to the point of almost maliciously distorting facts in the presence of complainants and despite their protest. He practically charged complainants with planting evidence in regard to the 'bokbok' all of which of course, is conduct(ed) reprehensible of one who is supposed to be an impartial person.

"Further compounding the situation of respondent judge is the fact that he went to the residence of complainants when the ocular inspection was conducted in the company of and riding in the car of defendant Tumakay. It must be said that a judge is precisely given transportation allowance in order that he may not compromise himself, no matter how innocently, in hitching a ride with parties.

"It is the duty of a member of the the Bench to maintain at all times the high esteem and regard to which Our courts of justice must be entitled if the administration of justice is to succeed. It is said that the office of a judge exists for one solemn end -- to promote justice and thus aid in securing the contentment and happiness of the people. This primary and principal and consequently imposes on a member of the Bench heavy responsibilities. Certain duties are cast upon him in respect to behavior, in relation to the State and the citizens, the litigants, the practitioners of law, and the witnesses, and court officials (Canons of Judicial Ethics, 1). In fine, heavy and tremendous as are the burdens of a judicial office, the occupant thereof must exercise extreme restraint in such a way that his independent frame of mind would not be compromised, and thus remaining uncompromised, evoke respect, perhaps admiration even, from litigants. Any act which tends to undermine the people's respect for, and confidence in, the administration must be avoided, and if committed, immediately and swiftly censured. The language employed by respondent judge as well as his demeanor during the ocular inspection leave much to be desired. A judge must comport himself with respect for the parties and the witnesses if he expects respect from them. He must not display impatience and anger, and most especially bias and predilection in favor of or against one or the other party. But as it is, respondent judge appears to have thrown to the winds his facade of impartiality" (pp. 2-12, Justice Melo's Report).

The Investigating Justice of the Court of Appeals recommended that respondent judge be suspended for a period of one month, and severely admonished to refrain from such behavior in the future.

WE have meticulously gone over the records of the case and WE are satisfied that the observations and conclusions made by the Investigating Justice are fully substantiated and supported by the evidence on record.

However, the penalty recommended by the Investi-gating Justice is too light for such a misconduct committed by respondent judge in the performance of his official duties.

Indeed, it appears clear to US that respondent judge falls short of the required judicial norm of conduct. That the acts complained of have been done in the performance of official duties, as respondent contends, aggravates his intolerance, lack of restraint and impatience.

Moreover, respondent judge's hitching a ride in the car of a party litigant in going to and from the place of the

ocular inspection, deserves the stern reprobation of this Court. Respondent judge ought to know that by riding in the car of defendant therein, he openly exposed himself and the office he holds to suspicion, thus impairing the trust and faith of the people in the administration of justice.

Time and again, WE have stated that a judge's official conduct should be free from the appearance of impropriety, and his personal conduct and behavior should be beyond reproach. He should be temperate, patient, and impartial, having always in mind that every litigant is entitled to "nothing short of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal" (30A Am. Jur. 56; Luque vs. Kayanan, L-26826, August 29, 1969, 29 SCRA 165, 178).

WHEREFORE, FINDING RESPONDENT JUDGE OF BRANCH XIII OF THE COURT OF FIRST INSTANCE OF CEBU GUILTY OF SERIOUS MISCONDUCT, HE IS HEREBY ORDERED TO PAY A FINE EQUIVALENT TO THREE MONTHS' SALARY WITH A WARNING THAT A REPETITION OF THE SAME OR SIMILAR ACTS WILL BE DEALT WITH MORE SEVERELY.

LET A COPY OF THIS DECISION BE ENTERED IN RESPONDENT'S PERSONAL RECORD.

SO ORDERED.

Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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