

CITA BORROMEEO-GARCIA, COMPLAINANT, VS. JUDGE ERNESTO P. PAGAYATAN, EXECUTIVE JUDGE, REGIONAL TRIAL COURT, BRANCH 46, SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.

A.M. NO. RTJ-08-2127 (FORMERLY OCA IPI NO. 07-2697-RTJ). September 25, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Cita Borrromeo-Garcia (complainant) filed a Complaint before the Court dated June 14, 2007 charging Judge Ernesto P. Pagayatan (respondent), Executive Judge of the Regional Trial Court (RTC), Branch 46, San Jose, Occidental Mindoro with falsification, partiality, dishonesty, gross incompetence, evident bad faith, immorality and grave misconduct.

Complainant avers: Respondent committed falsification when, serving as Register of Deeds (RD) of San Jose, Occidental Mindoro, he cooperated with Soledad Ulayao (Ulayao) and Soledad Ortega Olano (Olano) in transferring 165 titles from the name of her father's mistress Blandina Garcia (Blandina) to her father Salvador S. Borrromeo, Sr. (Borrromeo, Sr.), even though respondent was fully aware that the signature appearing thereon was falsified. As payment for their services, Borrromeo, Sr. gave Ulayao, Olano and respondent, 20 of the 165 titles which Ulayao kept until a judge from another branch, pursuant to another case, ordered to have said titles kept in custodia legis.[1]

Complainant further claims that: respondent was guilty of falsification and perjury when he granted the petition of her half-brother, Salvador G. Borrromeo, Jr. (Borrromeo, Jr.) for the issuance of owner's duplicate copies of 62 Transfer Certificate of Title (TCTs) knowing that Borrromeo, Jr., illegitimate son of Borrromeo, Sr. with Blandina, was not the owner of the same; respondent hastily ruled for a commissioner's hearing, decided for the issuance of new owner's certificates of titles, without requiring the production of certified true copies of all the titles being petitioned or requiring the Officer in Charge (OIC) Registrar to produce the book of titles; respondent also keeps a mistress, Elsa Aguirre (Elsa), Borrromeo, Jr.'s former wife, which could explain the swift decision in favor of Borrromeo, Jr.; Elsa wielded power in the RTC, as acting clerk of court and sheriff, even though she is not a lawyer; Elsa together with Asst. Prosecutor Luduvico Salcedo, also acted as respondent's bagman.[2]

The Office of the Court Administrator (OCA) referred the Complaint to respondent for his Comment in a 1[st] Indorsement dated June 29, 2007.[3]

In his Comment[4] dated July 30, 2007, respondent denied the charges against him, claiming the same to be unfounded, hearsay and malicious. He avers that: he does not know complainant and that the latter is not a resident of San Jose, Occidental Mindoro; at the time the first falsification allegedly took place, respondent was an Asst. Provincial Prosecutor who acted as an Ex-Officio Registrar of Deeds, putting in extra hours to perform his added assignment; the documents allegedly falsified were "sales" leading to the registration and transfer of TCTs from Blandina to Borrromeo, Sr.; he affixed his signatures to the TCTs after all pertinent documents were evaluated by Land Examiner Ulayao and were found to be complete and in order; if indeed signatures were

falsified, respondent had nothing to do with the falsification or had any knowledge of the same; respondent never conspired with Olano and Ulayao and there was no agreement for them to split the 20 titles among themselves; as to the second charge of falsification, he rendered the decision on the petition of Borromeo, Jr. after due notice and hearing and all jurisdictional requirements were complied with; contrary to complainant's assertion, certified true copies of the 62 TCTs to be reconstituted were attached to the petition; Borromeo, Jr. also submitted a certification from the RD stating that the original copies of the TCTs were intact in said office; there was also no opposition during the hearing, hence, it was subject to an ex-parte hearing before the Clerk of Court as commissioner; he did not declare Borromeo, Jr. to be the owner of the properties but merely quoted Borromeo, Jr.'s testimony; moreover, the reconstituted titles are still in the name of Borromeo, Sr.; the allegation that Elsa is his mistress is false; whatever dealings he has with Elsa, who is the Acting Clerk of Court of the RTC, is strictly related to their respective official duties; it is also not true that Elsa and Prosecutor Salcedo are respondent's bagmen; in all his years as prosecutor and later as judge, respondent never asked anyone to be his bagman and neither has he resolved or decided any case for any consideration; he has no unexplained or hidden wealth and is living a simple and modest life.[5]

Upon recommendation of the OCA, the Court in the Resolution dated January 23, 2008 referred the instant case to Associate Justice Jose C. Reyes, Jr. of the Court of Appeals (CA), Manila, for investigation, report and recommendation.[6]

Hearings were conducted and in his Report dated July 31, 2008, Investigating Justice Reyes found that complainant failed to substantiate her allegations. As stated in his Report:

x x x [T]he investigating justice finds that aside from bare assertion complainant failed to present any evidence to substantiate her charges. She even admitted during her testimony that she had no direct knowledge of the facts constituting her allegations but that she derived her knowledge from other persons, that is, she had no direct knowledge of the facts constituting the alleged irregularities.

x x x x

As to the charges of immorality and grave misconduct which stemmed from the alleged illicit affair of respondent judge with Ms. Aguirre, the undersigned finds that complainant's own testimony showed that she based her allegation on what someone else had told her.

x x x x

The charges of partiality, dishonesty, and gross incompetence are all tied up to the petition for re-issuance of owner's duplicate certificate of titles filed by Salvador, Jr. From the same petition arose the allegation of falsification. Complainant claimed that respondent judge was partial, dishonest and had acted in bad faith because he granted Salvador, Jr.'s petition knowing that he was not the registered owner. She also claimed that this decision showed that respondent judge was grossly incompetent because the decision was not supported by facts and the law. By the same token she claimed that respondent judge was guilty of falsification.

x x x x

[Based on Sec. 109 of Pres. Dec. No. 1529] it is clear that not only the registered owner but any person in interest may file a petition for re-issuance of the owner's duplicate title. In the present case, petitioner Salvador, Jr. is admittedly the illegitimate son of the deceased Salvador, Sr. and as such is an heir. As explained by respondent judge he believed that an heir has the right to file the petition. Other than the fact that the case was granted, complainant failed to adduce any concrete evidence of partiality, dishonesty or bad faith on the part of the respondent judge. It should be remembered that good faith is always presumed and complainant's bare testimony failed to rebut this presumption.

As to the charge of falsification, complainant herself admitted that the misrepresentation was done by Salvador, Jr. and not by the respondent judge. He cannot, therefore, by any stretch of imagination be held responsible for such falsification.

The only remaining charge against respondent judge is the falsification regarding the twenty (20) TCTs held by Ms. Ulayao and now in custodia legis in Branch 45 of the RTC of San Jose, Occidental Mindoro. Again, the undersigned finds that aside from complainant's bare testimony that she was informed by Ms. Ulayao of the falsification she utterly failed to present any evidence to buttress her assertion. She does not even have a copy of the alleged forged deed of sale allegedly used to transfer said titles in the name of Salvador, Sr.[7]

While Justice Reyes found the complaint to be without merit, he still found respondent liable however for failing to prevent any appearance of impartiality on his part. Justice Reyes held in his report:

x x x the investigating justice finds it necessary to deal on another matter which the respondent judge himself testified on. The reception of evidence for Spec. Proc. No. R-936 was performed by Ms. Aguirre. Although the fact that Ms. Aguirre was the former wife of the petitioner, this fact alone should be considered unprocedural. However, what the investigating justice finds disturbing is that Ms. Aguirre was not the OIC Branch Clerk of Court of Branch 46 but rather she was the OIC Clerk of Court. Respondent judge explained that his OIC Branch Clerk of Court Asuncion Pabellano was busy, hence, unable to conduct the ex-parte reception of evidence. Under the circumstances what respondent judge should have done was to dispense with the ex-parte reception of evidence and to conduct the hearing himself instead of appointing the OIC Clerk of Court. This would have avoided any appearance of partiality. However, the undersigned does not find this infraction grave enough to warrant a severe penalty. Considering that respondent had already filed his application for optional retirement and only to stress that all judges should at all times be circumspect especially in their official functions, the investigating justice deems it appropriate to recommend the imposition of a fine of P5,000.00 on respondent judge.[8]

Justice Reyes then recommended that:

x x x the complaint against respondent Judge Ernesto P. Pagayatan be DISMISSED. However, in view of the finding that Judge Pagayatan failed to prevent any appearance of impartiality on his part, it is recommended that he be FINED in the amount of P5,000.00.[9]

The Court agrees with the report of the Investigating Justice but finds that the recommended fine should be modified.

Administrative complaints leveled against judges must always be examined with a discriminating eye for its consequential effects are, by their nature, highly penal, such that respondents stand to face the sanction of dismissal and/or disbarment.[10] While the Court will not shirk from its responsibility of imposing discipline upon its magistrates, neither will it hesitate to shield them from unfounded suits that disrupt rather than promote the orderly administration of justice.[11] When the complainant relies on mere conjectures and suppositions and fails to substantiate her claim, such as in the case at bar, the administrative complaint against the judge must be dismissed for lack of merit.[12]

In this case, complainant charged respondent with two acts of falsification. First, for allegedly authorizing the transfer of titles from the name of Blandina to that of Borromeo, Sr. based on forged signatures, when respondent was still Register of Deeds of Occidental Mindoro; and second, for granting Borromeo, Jr.'s petition for issuance of owner's duplicate copy of 62 TCTs, knowing that Borromeo, Jr. was not the owner thereof. She also charged respondent with having an illicit relationship with Elsa, Acting Clerk of Court and ex-wife of Borromeo, Jr., allowing her to exert influence over the decisions of the court, and for keeping Elsa and Prosecutor Salcedo as respondent's 'bagmen.'

Complainant however was not able present proof of her allegations. As to the first charge of falsification, she claims that it was Ulayao, former OIC Registrar of Deeds of Occidental Mindoro, who told her about the circumstances surrounding the transfer of titles from the name of Blandina to that of Borromeo, Sr. and the supposed agreement among Borromeo, Sr., Ulayao, Olano and respondent regarding the said transfer.[13] Ulayao however died on July 31, 2007[14] and could neither refute nor corroborate complainant's story. When asked by the Investigating Justice, complainant also could not present copies of the alleged falsified deeds of sale which, according to her, were the basis for the issuance of the titles in favor of Borromeo, Sr.[15]

Anent the second charge of falsification, complainant claims that respondent granted Borromeo, Jr.'s petition even though he knew that Borromeo, Jr. was not the owner of the subject properties. She agreed however, before the Investigating Justice, that respondent's decision in S.P. No. R-936 did not order that new owner's copies of the 62 titles be registered in the name of Borromeo, Jr., and that the same were in fact still in the name of Borromeo, Sr.[16]

As to the charge that respondent was having an immoral relationship with Elsa, complainant admits that she has no personal knowledge about the same, and that her basis for alleging such offense is the "fact" that it is known to everyone in San Jose, Occidental Mindoro.[17] Complainant failed to present any witness, however, to support her charge of immorality.[18] She also failed to present any evidence to substantiate her charge that Prosecutor Salcedo and Elsa were receiving money as "bagmen" of respondent.

The Court cannot give credence to charges based on mere suspicion and speculation.[19] It is settled that in administrative proceedings, the complainant has the burden of proving the allegations in her complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties.[20] Indeed, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[21] As the charges herein being hurled by complainant against respondent are grave in nature, in order for him to be disciplined therefor, the evidence against him should be competent and derived from direct knowledge.[22] With the failure of complainant to substantiate her claims, the complaint against respondent should be dismissed for lack of merit.

The dismissal of the charges of complainant against respondent, notwithstanding, respondent should still be disciplined for failure to avoid the appearance of partiality, which offense the Investigating Justice correctly appreciated.

When asked during the investigation why Elsa, who is the ex-wife of the petitioner therein, Borromeo, Jr., was designated to receive evidence ex-parte in SP No. R-936, when she was not the acting Branch Clerk of Court, but the acting Clerk of Court of the Office of the Clerk of Court (OCC), respondent only answered that it had been their practice to refer ex-parte proceedings to the acting clerk of court of the OCC and not to the acting branch clerk of court, because such proceedings were simple; and the branch clerk of court had too much work, while those in the OCC had lesser load.[23] Respondent also said that he didn't see any conflict with the fact that Elsa was the ex-wife of petitioner in S.P. No. R-936, Borromeo, Jr.[24]

The Court has held that a judge must at all times not only be impartial, but maintain the appearance of impartiality. Thus, it is provided in Canons 3 and 4 of the New Code of Judicial Conduct for the Judiciary, which took effect on June 1, 2004, that:

CANON 3
IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

x x x x

Sec. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

For indeed, the appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.[25]

Lower court judges, such as respondent, play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.[26]

Respondent was previously imposed a fine of P5,000.00 for gross ignorance of the law in *Domingo v. Pagayatan*.^[27] In the present case, the Court finds that for his failure to avoid the appearance of impropriety, a penalty of P10,000.00 is proper.^[28] Such fine is to be deducted from his retirement benefits which have been withheld pursuant to the Court's Resolution in A.M. No. 12967-Ret. entitled *Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and P.D. 1438, of Hon. Ernesto P. Pagayatan, RTC, Br. 46, San Jose, Occidental Mindoro, dated July 7, 2008* which approved respondent's application for optional retirement under Republic Act No. 910, as amended by Republic Act No. 5095 and Presidential Decree No. 1438 effective at the close of office hours of December 31, 2007 with the proviso that the payment of his retirement benefits shall be held in abeyance pending final resolution of the administrative complaint in AM No. RTJ-07-2089, AM No. RTJ-07-2058, OCA IPI No. 07-2697-RTJ, 07-2698-RTJ and 08-2482-RTJ. The Court, in the same resolution, also granted Judge Pagayatan's request for payment of his terminal leave pay subject to the availability of funds and the usual clearance requirements.

WHEREFORE, the charges filed by Cita Borromeo-Garcia are hereby **DISMISSED** for lack of competent evidence. However, the Court finds Judge Ernesto P. Pagayatan, former Executive Judge of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, **GUILTY** of violating Canon 3, Section 2 and Canon 4, Section 1 of the New Code of Judicial Conduct for the Judiciary for which he is **FINED** in the amount of P10,000.00 to be deducted from his retirement benefits which have been withheld pursuant to the Court's Resolution in A.M. No. 12967-Ret. entitled *Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and P.D. 1438, of Hon. Ernesto P. Pagayatan, RTC, Br. 46, San Jose, Occidental Mindoro, dated July 7, 2008*.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 2-4.

[2] *Id.* at 2-12.

[3] *Id.* at 54.

- [4] Id. at 57-70.
- [5] Rollo, pp. 57-70.
- [6] Id. at 133.
- [7] Report, pp. 24-28.
- [8] Id. at 29-30.
- [9] Id. at 30.
- [10] Dayag v. Gonzales, A.M. No. RTJ-05-1903, June 27, 2006, 493 SCRA 51.
- [11] Diomampo v. Alpajora, A.M. No. RTJ-04-1880, October 19, 2004, 440 SCRA 534.
- [12] Diomampo v. Alpajora, id. at 539.
- [13] Rollo, pp. 2-3; TSN, April 22, 2008, pp. 55-56.
- [14] Exhibit "16-A", Respondent's Folder of Exhibits, p. 7.
- [15] TSN, April 22, 2008, pp. 56-57.
- [16] TSN, April 22, 2008, p. 35.
- [17] TSN, April 23, 2008, pp. 63-64, 68-69.
- [18] TSN, April 25, 2008, p. 14.
- [19] Diomampo v. Alpajora, supra note 11, at 538.
- [20] Dayag v. Gonzales, supra note 10; Rondina v. Bello , Jr., A.M. OCA IPI No. 04-72-CA-J, July 8, 2005, 463 SCRA 1.
- [21] Dayag v. Gonzales, supra note 10.
- [22] Rondina v. Bello, supra note 20, at 11.
- [23] TSN, AM No. OCA IPI No, 07-2697, May 14, 2008, pp. 20-23.
- [24] Id. at 23.
- [25] Montemayor v. Bermejo , Jr., A.M. No. MTJ-04-1535, March 12, 2004, 425 SCRA 403.
- [26] Chan v. Majaducon, A.M. No. RTJ-02-1697, October 15, 2003, 413 SCRA 354.
- [27] A.M. No. RTJ-03-1751, June 10, 2003, 403 SCRA 381.
- [28] See Montemayor v. Bermejo, Jr., supra note 25.

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