

MIGUEL CUENCO, COMPLAINANT, VS. HON. MARCELO B. FERNAN, RESPONDENT.

Adm. Case No. 3135. April 15, 1988

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PER CURIAM:

Complainant Miguel Cuenco has filed an untitled pleading dated 27 March 1988 which, considering the melange confus of allegations therein, the Court treats as a consolidated:

(1)

Second Motion for Reconsideration of the decision dated 23 July 1987 rendered by the Third Division of the Court in the Consolidated Petitions in G.R. No. L-41171 (entitled "Intestate Estate of the Late Vito Borromeo. Patrocinio Borromeo-Herrera v. Fortunato Borromeo, et al."), G.R. No. 55000 (entitled "In the Matter of the Estate of Vito Borromeo, Deceased. Pilar N. Borromeo, et al. v. Fortunato Borromeo"), G.R. No. 62895 (entitled "Jose Cuenco Borromeo v. Court of Appeals, et al."), G.R. No. 63818 (entitled "Domingo Antigua, et al. v. Court of Appeals, et al."), and G.R. No. 65995 (entitled "Petra Borromeo, et al. v. Francisco P. Burgos, etc., et al.");

(2)

Motion for Reconsideration of the Court's En Banc Resolution of 17 February 1988 in this case; and

(3)

Compliance with the directive in aforesaid Resolution of 17 February 1988 requiring complainant Cuenco "to show cause why he should not be administratively dealt with for having made unfounded and serious accusations against Mr. Justice Fernan."

A. On the Second Motion for Reconsideration of the Decision in the Consolidated Petitions

The record of the Vito Borromeo estate proceedings discloses that the 23 July 1987 decision of the Court in the five (5) Consolidated Petitions mentioned became final and executory on 19 October 1987 and that Entry of Judgment was made on 24 March 1988. There is thus no need to discuss here the arguments made by complainant Cuenco in respect of the Court's decision therein on the matter of attorney's fees of Mr. Cuenco and all the other lawyers concerned.

B. On the Motion for Reconsideration of the Resolution of the Court in Administrative Case No. 3135

The present administrative case for disbarment filed by complainant Cuenco against Mr. Justice Fernan was previously dismissed by the Court "for utter lack of merit" in a Per Curiam Resolution issued on 17 February 1988 on, inter alia, the ground that complainant had failed altogether to substantiate his charges against Mr. Justice Fernan. The Court also held that, under the Constitution, removal from office of a Member of the Supreme

Court can be effected only through impeachment, and not indirectly through disbarment proceedings. To the extent that the Court can understand complainant Cuenco's untitled pleading, complainant would now seek reconsideration of the Court's Resolution on the following grounds:

- That in the estate proceedings of the late Vito Borromeo, Mr. Justice Fernan "made up his mind that some persons have to be declared heirs of Vito Borromeo" and that the several petitions for declaration of heirs "were heard jointly at the law office of Atty. now Justice Fernan in Cebu City";
- That it is unlikely that Mr. Justice Fernan "had a stony face, was motionless, expressionless, without uttering words, views, opinions, so that he did not assert any influence (during) long deliberation (of the Consolidated Petitions)", hence, "it is impossible to deny Justice Fernan's participation in the preparation of the 32-page decision of the Third Division of the Supreme Court [in the Consolidated Petitions]"; consequently, Mr. Justice Fernan not only "voted for his exoneration which is naturally seriously anomalous", but he also "acted as respondent, his own counsel for himself and judged of himself -- three conflicting positions rolled into one";
- That "(t)he decision of the Third Division in the five cases is open to the suspicion that Justice Fernan is protecting Judge Burgos, and Attys. Antigua and Estenzo for violating the provisions of the Civil Code"; and
- That "(t)he theory that Mr. Justice Fernan is not accountable for any grave misconduct, except by impeachment proceeding, is not absolute."

In its Resolution of 17 February 1988 in this case, the Court found complainant Cuenco's charges against Mr. Justice Fernan to be "completely unsupported by the facts and evidence of record." We find in the present instance that complainant Cuenco, in his untitled pleading, has once more failed to submit any proof whatsoever to substantiate the statements made by him therein which are so extravagant as to be preposterous.

- As pointed out in the Court's 17 February 1988 Resolution of this case, Special Proceedings No. 916-R for probate of the will of the late Vito Borromeo was instituted in 1952, while it was in 1954 that the "heirs" referred to by complainant Cuenco in his pleading claimed rights of ownership over thirteen (13) parcels of land which they sought to be excluded from the estate of the decedent. Upon the other hand, Mr. Justice Fernan's involvement in the Vito Borromeo estate proceedings began only on 7 August 1965 and ended on 19 February 1968, long after said "heirs" had surfaced and asserted their respective claims against the decedent's estate. There is, therefore, no rational basis for the assertion of complainant Cuenco that Mr. Justice Fernan "made up his mind that some persons have to be declared heirs of Vito Borromeo."

Complainant Cuenco further asserts that the several petitions for declaration of heirs filed by the different claimants to the estate of the late Vito Borromeo "were heard jointly at the law office of Atty. now Justice Fernan in Cebu City." It will be noted from the 23 July 1987 decision of the Court in the Consolidated Petitions that said petitions for declaration of heirship were heard jointly by the trial judge -- not by Mr. Justice Fernan -- sometime during or after the month of December 1968, after probate of the will had been disallowed by the probate court, and after Mr. Justice Fernan had already withdrawn as counsel for two (2) of the instituted heirs in the Vito Borromeo estate proceedings.

- The record explicitly shows that Mr. Justice Fernan inhibited himself from participating in the deliberations on the Vito Borromeo estate cases and, in fact, did not take part in the resolution thereof. This fact of non-participation is manifested in the annotations appearing beside Mr. Justice Fernan's signature: "No part -- I appeared as counsel for one of the parties." Complainant Cuenco, however, continues simply to ignore this express statement on the record and, instead, presents his own personal notions of the "true" facts and circumstances of this case. The record, however, is entirely bereft of any suggestion that Mr. Justice Fernan had in any way influenced any Member of the Third Division of the Court or participated in the deliberations and resolution of the estate cases.

- We are unable to understand Cuenco's assertion that the Decision of the Court's Third Division in the Consolidated Petitions "is open to the suspicion that Justice Fernan is protecting Judge Burgos, and Attys. Antigua and Estenzo for violating the provisions of the Civil Code."

- On the statements made by complainant Cuenco concerning the rule referred to in the per curiam Resolution of 17 February 1988 that a Member of the Supreme Court may be removed from office only through impeachment, not by a disbarment proceeding, it suffices to furnish Mr. Cuenco a copy of the extended Resolution of this Court dated 15 April 1988 on this same topic.

C. On Compliance with the Resolution of 17 February 1988 in Administrative Case No. 3135.

The Court finds the explanation given by complainant Cuenco to be totally unsatisfactory.

Complainant Cuenco vehemently denies acting in bad faith in filing the present administrative complaint against Mr. Justice Fernan and suggests that his acts have been "misunderstood" by the Court. Complainant, however, has failed to present a shred of evidence to support the very serious charges he has made against Mr. Justice Fernan. In his untitled pleading, complainant Cuenco has not only declined to prove the accusations he has made against Mr. Justice Fernan but has also chosen to make additional statements and charges so extravagant and so clearly uninformed as to require no discussion. Because the Court cannot assume that complainant Cuenco is totally unaware of the nature and gravity of the charges he has made against Mr. Justice Fernan and which he has completely failed to support with anything but his own bare assertion, the Court is compelled to conclude that those accusations were made in bad faith.

ACCORDINGLY, the Court Resolved:

a)

to DENY Mr. Cuenco's Second Motion for Reconsideration of the decision of the Court dated 23 July 1987 in G.R. Nos. L-41171, 55000, 62895, 63818 and 65995, said decision having become final and executory;

b)

to DENY, with finality, complainant Cuenco's Motion for Reconsideration of the Resolution of this Court dated 17 February 1988 in Administrative Case No. 3135; and

c)

to FIND Mr. Cuenco guilty of misconduct as a lawyer and an officer of the Court.

Complainant Cuenco is hereby severely REPRIMANDED and WARNED that the same or similar misconduct in the future will be dealt with more severely by the Court. Were it not for complainant Cuenco's advanced age, frail health and prior service to the country, the Court would have imposed a more severe penalty in this case.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Fernan J., no part.

Gutierrez, Jr., J., on leave.

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