

CUA SHUK YIN, VS. JUDGE NORMA C. PERELLO, REGIONAL TRIAL COURT, MUNTINLUPA CITY, BRANCH 276, RESPONDENT.

A.M. No. RTJ-05-1961(Formerly OCA IPI No. 04-2077-RTJ). November 11, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant administrative complaint involves Judge Norma C. Perello, Regional Trial Court, Muntinlupa City, Branch 276, who stands charged with undue delay in issuing the writ of execution in Civil Case No. 98-031.

In her unverified Complaint dated January 26, 2004, the complainant made the following allegations:

I filed my complaint [Civil Case No. 98-031] on February 10, 1998, but due to [the] unnecessary delays by Spouses Arciaga that were tolerated by the presiding judge, Judge Perello decided the case only on September 25, 2000 after I filed an administrative case against her for misconduct and/or inexcusable negligence in Administrative Case No. OCA IPI 00-990-RTJ.

On appeal, however, the Court of Appeals, in its decision dated December 12, 2001, reversed and set [aside the] decision of Judge Perello.

In the meantime, the Supreme Court issued on April 3, 2002 a resolution dismissing Administrative Case No. OCA IPI 00-990-RTJ against Judge Perello. But the Court advised Judge Perello to resolve with dispatch pending motions before her to avoid similar complaints against her and warned her that similar delays in the future would be dealt with more severely. Copy of the resolution is here attached as Annex A.

...

On my motion, Judge Perello issued an order dated November 27, 2003, copy here attached as Annex C, for the execution of the decision of the Court of Appeals dated December 12, 2001, giving defendants ninety (90) days within which to pay their loan, otherwise, the mortgaged properties will be foreclosed pursuant to section 2, Rule 68 of the Rules of Court. Since the Supreme Court resolution, Annex B, has become final and executory on September 5, 2003 the mortgaged properties may be foreclosed on December 5, 2003 or after the expiration of the ninety-day period on December 4, 2003.

I immediately coordinated with the branch sheriff of Judge Perello for the foreclosure of the real estate mortgages. But, the sheriff claimed, he could not proceed with the sale until after Judge Perello shall have signed a writ of execution. Since writs of execution are only pro forma documents that court's [sic] issue pursuant to the order of execution, I expected Judge Perello to issue it as a matter of course. But Judge Perello did not issue any writ despite persistent follow ups, compelling me to file on January 15, 2004 an ex parte motion for the issuance of writ of execution, copy here attached as Annex D. Surely, this motion is already unnecessary.

Until now, despite the lapse of almost two months from the issuance of the order of execution, Judge Perello had not issued any writ of execution that delays the execution of the final and executory judgment to my damage and prejudice. This is a defiance of the Supreme Court's resolution in Administrative Case No. OCA

IPI-00-990-RTJ, admonishing Judge Perello to resolve with dispatch pending incidents before her. At any rate, Judge Perello is expected to dispose of her court's business promptly.[1]

In her Comment dated February 6, 2004, the respondent Judge invoked Section 2,[2] Rule 68 of the Rules of Court which, according to her, is very emphatic on the matter. She thus directed the defendants to pay the loan within 90 days in compliance with this rule.

In its Report dated April 27, 2005, the Office of the Court Administrator (OCA) opined that the allegations raised by the complainant pertain to issues that are judicial in nature, which cannot be solved by way of an administrative complaint. Thus:

If complainant ardently believed that respondent erred in granting the 90-day period suspension of payment of the mortgage debt provided under Section 1, Rule 68 of the Rules commencing from the date of the issuance of her 27 November 2003 order and not from 5 September 2003, the date of entry of judgment; and that respondent committed grave abuse of authority in not issuing a writ of execution despite termination of the 90-day period because of her alleged erroneous interpretation of the aforementioned Rule, she could have raised her concerns by availing herself of the remedies provided under the Rules of Court instead of filing the instant complaint.

It is also a well-established rule that "in the absence of malice, fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action, even if such acts are erroneous" (Sanlakas ng Barangay Julo, San Antonio, Inc. vs. Empaynado, Jr., 31 SCRA 201).

However, the OCA took exception to the language used by the respondent Judge, stating that while the filing of the complaint may have enraged her, it did not give her the license to use intemperate language and call the complainant or her counsel names. Citing Rule 2.01 of the Code of Judicial Conduct which mandated that a judge behave at all times as to promote public confidence in the integrity and impartiality of the Judiciary, the OCA reported that the respondent Judge should be admonished for using intemperate and insulting language amounting to conduct unbecoming of a judge. Thus, the OCA made the following recommendation:

RECOMMENDATION: We respectfully recommend that the instant administrative complaint be DISMISSED for being judicial in nature and for failure to comply with the provision of Section 1, Rule 140, as amended. However, respondent Judge Norma C. Perello should be ADMONISHED for exhibiting conduct unbecoming of a judge and be sternly warned that a repetition of the same shall be dealt with more severely.[3]

The findings of the OCA are well-taken.

Indeed, as a matter of policy, in the absence of fraud, dishonesty and corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action.[4] He cannot be subjected to liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous, as long as he acts in good faith.[5] Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned.[6] There is no showing that the respondent Judge acted in bad faith in the proceedings in the instant case. The Court also notes that the complainant did not even heed the OCA's directive[7] to comply with Section 1, Rule 140[8] of the Rules of Court to signify her interest in pursuing the case, and instead merely submitted a Letter[9] dated June 10, 2004 stating that she stood by her Letter-Complaint dated January 26, 2004 and April 13, 2004.

The Court also agrees that the respondent Judge should be admonished for the improper language in her Comment.[10] As observed by the OCA,[11] calling the complainant a "greedy and usurer Chinese woman," tagging her lawyer as "lazy and negligent" while branding her own clerk of court as "equally lazy and incompetent" is not language befitting the esteemed position of a magistrate of the law. A judge's personal

behavior, not only while in the performance of official duties, must be beyond reproach, being the visible personification of law and of justice.[12] Indeed, a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[13] Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.[14] As such, the esteemed position of a magistrate of the law demands temperance, patience and courtesy both in conduct and in language.[15] As subjects of constant public scrutiny, personal restrictions that might be viewed as burdensome by the ordinary citizen should be freely and willingly accepted by a judge. In particular, he or she must exhibit conduct consistent with the dignity of the judicial office.[16] Thus, judges must bear in mind that their behavior must reaffirm the people's faith in the integrity of the judiciary, and that justice must not merely be done but must also be seen to be done.[17]

CONSIDERING THE FOREGOING, the complaint against respondent Judge Norma C. Perello is DISMISSED for lack of merit. She is, however, ADMONISHED for conduct unbecoming a judge and STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Rollo, pp. 6-8.

[2] Section 2. Judgment on foreclosure for payment or sale. – If upon trial such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found and orders that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

[3] Rollo, p. 55.

[4] *Pitney v. Abrogar*, A.M. No. RTJ-03-1748, 11 November 2003, 415 SCRA 377; *Balsamo v. Suan*, A.M. No. RTJ-01-1656, 17 September 2003, 411 SCRA 189.

[5] *Castañón v. Escaño, Jr.*, A.M. No. RTJ-93-955, 12 December 1995, 251 SCRA 174.

[6] *Cruz v. Iturralde*, A.M. No. 03-1775, 30 April 2003, 402 SCRA 65.

[7] Letter dated June 1, 2004; Rollo, p. 3.

[8] As amended by A.M. No. 01-8-10-SC dated September 11, 2001. The provision reads:

Section 1. How instituted. – Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

[9] Rollo, p. 1.

[10] The respondent's allegations in her Comment are as follows:

... The 90-day period started on 27 November 2003, when this decision was received by the [court], and will expire on February 27, 2004. Therefore, until the 90-day period expires the court honestly believes and so ordered that foreclosure proceedings should be deferred. If defendant is able to pay within this period, then foreclosure is not necessary or mandated by the said Rule. But the greed of this usurer of a Chinese woman, who is so in a hurry to get the house and lot of defendant borrower, that she cannot and would not wait for the 90-day period, and now imposes on this court to violate these specific requirements of law; hence, this COMPLAINT. In fact, even Plaintiff/complainant herself knows that foreclosure is the next remedy and coordinated with the Sheriff for this purpose insisting that the property be NOW bid (sic). But since the rule imposes a 90-day period before payment may be imposed, the Court ordered and censured the Sheriff accordingly. The 90-day suspension is as the rule require [sic], and NOT as N.C. PERELLO WANTS!

Undersigned has NEVER ONCE defied any resolution of a higher tribunal, both the Court of Appeals and the Supreme Court, and she has NO INTENTION of beginning with this case, especially for the order of a loan shark! Particularly, this Judge wants this case retired from her docket immediately, with this trouble maker, Cua Shuk Yin; hence, she will NEVER DELAY its disposition intentionally but for the imposition of the Rules. This [court] desires very much to be rid of this woman and the case, after going [through] the malicious accusations she previously lobbed at her. This brings undersigned to this administrative case this loan shark of a complainant, cited. Cua Shuk Yin conveniently omitted to mention that that case was dismissed because this Court was NOT IN ERROR nor abusive.

The lazy and negligent lawyer of Cua Shuk Yin, after her evidence was then taken ex-parte, submitted a FORMAL OFFER of her EXHIBITS in writing, but neglected to attach a single exhibit or document, to the offer! This was received as such, by the equally lazy and incompetent clerk of this branch, but who on realizing her mistake, of receiving the OFFER OF EXHIBITS without the documents being offered, started burning the telephone lines, calling the negligent lawyer and Plaintiff Cua Shuk Yin, to submit the needed documents. In the meantime, the 90-day period for the Judge to decide the case was tolling without her knowing what was happening, since this fact was NEVER brought to her knowledge. The clerk knew what the Judge will do to her, on account of her incompetence. It was only when the letter of Cua Shuk Yin arrived and the Judge required to explain that she came to know the problem. The Supreme Court saw clearly where the fault should be laid; hence, dismissed the charge. This Judge never had, and never has, any reason to delay the decision, if only she knew of what was happening especially as the proceedings were taken ex-parte before the Clerk of Court. It was, in fact, one of the reasons, that the exhibits were NOT formally offered, that this Court decided against Cua Shuk Yin.

Evidently, this Court is very well aware of the propensity and malicious wont of this Chinese woman to make trouble, hence will NEVER invite or do anything where this Judge will cross her wrath. Cua Shuk Yin is just very covetous that she would impose on this Court to violate the Rule to grab the property. She cannot wait until the end of February 2004 to seize the mortgaged house and lot of Defendant. Your Respondent will never oblige so (Rollo, pp. 21-23).

[11] Rollo, pp. 54-55.

[12] *Alday v. Cruz, Jr.*, A.M. No. RTJ-00-1530, 14 March 2001, 354 SCRA 322.

[13] Rule 2.01, Code of Judicial Conduct.

[14] Canon 4, New Code of Judicial Conduct for the Philippine Judiciary.

[15] *Fidel v. Caraos*, A.M. No. MTJ-99-1224, 12 December 2002, 394 SCRA 47.

[16] Section 2, Canon 4, New Code of Judicial Conduct for the Philippine Judiciary.

[17] Section 2, Canon 2, New Code of Judicial Conduct for the Philippine Judiciary, which took effect on June 1, 2004.

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