

FRANCISCO PAGUIRIGAN AND ADOLFO PAGUIRIGAN, COMPLAINANTS, VS. CITY JUDGE NICHOLAS CLAVANO OF OROQUIETA CITY, RESPONDENT.

Adm. Matter No. 537-CJ. December 19, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Respondent Nicholas Clavano, City Judge of Oroquieta City, is charged by Messrs. Francisco and Adolfo, both surnamed Paguirigan, with abuse of authority and/or conduct unbecoming of a judge. It is asserted that on the afternoon of August 28, 1972, after overtaking a motorcab driven by Adolfo Paguirigan, respondent shouted at the driver to surrender his license and pointed a revolver at him, and after having confiscated said license, failed to return it to the driver as it was later on lost by respondent. After receiving the comment of the respondent on the aforesaid charges, the matter was referred to the Executive Judge of the Court of First Instance of Misamis Occidental for investigation, report and recommendation.

On July 13, 1974, Hon. Melecio A. Genato, Executive Judge of the Court of First Instance of Misamis Occidental, Branch I, Oroquieta City, transmitted his report and recommendation, as follows:

"In the hearing of June 10, 1974, the complainants orally petitioned this Court that in view of the fact that they have no lawyer, the case be called the next day, to which the respondent did not object. In the hearing of June 11, 1974, complainants appeared but again without counsel. Respondent's counsels submitted to this Court the affidavits of Francisco Paguirigan, Exhibit '1', and Adolfo Paguirigan, Exhibit '2'. In said affidavits, complainants stated that they have lost interest in the further prosecution of this case because their witnesses have turned hostile to them and that their case is without any merit both in law and in fact as they discovered the truth of the incident (Par. 4, Exhibit '1' and Pars. 3 and 4, Exhibit '2'). Not satisfied of the contents of the said affidavits, this Court interrogated the complainants Francisco and Adolfo Paguirigan by placing them on the witness stand. While testifying on the witness stand, this Court asked several questions to the said complainants as shown in the transcript of the stenotype notes from pages 4 to 6 (Transcript of Stenotype notes of the hearing on June 11, 1974 by Stenographer Rodolfo N. Napigkit). As can be deduced from the testimony of both complainants Francisco and Adolfo Paguirigan, their affidavits of desistance, Exhibits '1' and '2', were executed by each of them voluntarily and freely, well knowing that by its execution the case they had filed against Judge Clavano would somehow be dismissed. Be that as it may, respondent City Judge Nicholas Clavano petitioned this Court that he be allowed to present witnesses to refute the charges alleged in the complaint and likewise to explain his side on the case which this Court granted. In the hearing of June 22, 1974, respondent City Judge Clavano appeared assisted by his counsels and presented five (5) witnesses including himself.

"Testifying on his behalf, Judge Nicolas Clavano declared before this Court that as a cooperation and in compliance with a request made by City Mayor Ciriaco Pastrano of the City of Oroquieta, that he, the City Judge, would help the city officials in their drive to curb traffic violations and infractions of City ordinances by pedicab drivers doing business in the City by advising and lecturing to the said pedicab drivers of their

respective rights and obligations under the law for the protection of the life and limb of the riding public, in order to minimize, if not eradicate, crimes relating to rampant violations of City ordinances by pedicab drivers. Respondent declared further that he had in fact lectured and advised several pedicab drivers of their duties as such pertaining to traffic rules and the proper observance of City ordinances concerning the protection of the riding public in motorcabs, and the case of herein complainants is one of them. The City Judge vehemently denied that he levelled a revolver to Adolfo Paguirigan because at the time of the alleged incident he did not have any revolver but only a licensed pistol. The non-appearance of witness Mrs. Paulina Abuton for the complainants is very understandable because in the certification issued by the Public Schools Supervisor for the District where Mrs. Paulina Abuton is teaching, it appears that she was present in her station on that date (Exhibit "2-A"). It would, therefore, be highly impossible for her to be riding the pedicab driven by complainant Adolfo Paguirigan going and be in the place of the incident in question without falsifying her daily time record and if she does testify, she would be testifying against the truth stated in her daily time record which is Civil Service Form No. 48, Exhibit "2-B".

"The City Mayor testified before this Court that he actually requested the two city judges of the City, Hon. Malcolm S. Enerio and Hon. Nicholas Clavano, to help him in his campaign against violation of traffic rules and regulations by pedicab drivers and requested the judges to advise and lecture pedicab drivers of their respective duties and responsibilities in order to protect the life and limb of the riding public.

"Mr. Florencio Calugcug, the Officer-in-Charge of the Local Transportation office, also testified that City Judge Nicholas Clavano, respondent in this case, came to his office to consult whether he can possibly comply and cooperate with the said request of the Honorable City Mayor and that the former advised that he, the City Judge, could do it lawfully as a cooperation in the campaign against violators of traffic rules and regulations.

"The other witnesses are pedicab drivers who testified that they were among those who were advised and lectured by respondent Judge on their respective duties and obligations as pedicab drivers so that they could not violate traffic rules and regulations for the protection of the riding public.

"In view of the desistance of complainants, the charges contained in the letter-complaint of complainants Francisco Paguirigan and Adolfo Paguirigan were not sufficiently substantiated by evidence. However, City judge Nicholas Clavano, being a lawyer, should have known that he was without power or authority to confiscate the driver's license of complainant Adolfo Paguirigan; if he was complying with the request of the City Mayor, it would have been proper on his part to politely advise said pedicab driver not to violate the traffic rules of the City of Oroquieta instead of confiscating the driver's license of said pedicab driver. By confiscating said pedicab driver's license without issuing any TVR and losing the same in his possession, Judge Clavano was arrogating unto himself the power not vested upon a City Judge bordering, as it is, on abuse of authority and conduct unbecoming of a Judge. The proper action, if Judge Clavano was really serious in helping the city government in eradicating the crimes arising from traffic violations, was to call a seminar or conference of all pedicab drivers of the City but not to confiscate licenses.

"Under these circumstances, it is most respectfully recommended that corresponding, yet lenient, appropriate action be handed down by the Honorable Supreme Court."

The Judicial Consultant recommends that respondent be severely reprimanded, considering that respondent was "without authority to confiscate the driver's license of the complainant, just to lose it while in his possession. . ."

Complainants having failed to substantiate their charges in view of their desistance, what remains in the record are the admissions of respondent. According to respondent, in compliance with the request of the City Mayor that he assist the city officials in their campaign to curb traffic violations and infractions of city ordinances, he had counseled and given lectures to motorcab drivers in the City of Oroquieta on traffic regulations and on their duty to protect the life and limb of the riding public. He also admits that on August 28, 1972, upon seeing motorcab

driver Adolfo Paguirigan overloading and overspeeding, he gave chase and after overtaking him, told him to stop, after which the respondent judge warned said driver of the latter's traffic violations. As a deterrent, the respondent judge confiscated the driver's license with the advice that the latter could get it the following morning in the former's office after the erring driver shall have received the corresponding admonition. Due to the driver's failure to claim his license the next day, the respondent judge subsequently misplaced the aforesaid license and was not able to return the same.

While respondent might have been motivated by a spirit of civicism in cooperating with the city authorities in the enforcement of traffic laws, it is obvious that the investigation of violations of traffic rules and regulations, the arrest of errant motor vehicle drivers and the confiscation of their licenses are essentially police functions which are specifically vested by law upon law enforcement officers of the government. Respondent as Judge of the City Court will necessarily hear and decide all cases filed in his court regarding such violations and infractions of the Motor Vehicle Law or traffic regulations by the law enforcement officers. It is patent, therefore, that respondent should not have taken upon himself the responsibility of confiscating the license of the motorcab driver but he should have referred the matter to the police. We deem it relevant to emphasize that the official conduct of a judge should be free from impropriety or any appearance thereof. His personal behavior in the performance of his official duties and in his everyday life should be beyond reproach. By confiscating the complainant's driver's license without issuing any Traffic Violation Report (TVR) and losing the same while in his possession, respondent judge has acted in a manner unbecoming his high judicial office.

ACCORDINGLY, respondent City Judge Nicholas Clavano of Oroquieta City is hereby reprimanded, with the warning that similar acts of impropriety may be dealt with more severely.

Fernando, Chairman, Barredo, Fernandez, and Aquino, JJ., concur.

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