

ARNALDO R. BORRE, COMPLAINANT, VS. CFI JUDGE FELIX L. MOYA OF TAGUM, DAVAO DEL NORTE AND CITY JUDGE GUMERSINDO ARCILLA, BRANCH III, DAVAO CITY, RESPONDENTS.

Adm. Matter No. 1765-CFI. October 17, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Arnaldo R. Borre in his verified complaint of November 27, 1977 charged with serious misconduct and grave abuse of discretion Judge Felix L. Moya of the Court of First Instance of Davao del Norte, Tagum Branch IX and Judge Gumersindo Arcilla of the city court of Davao City, both Bicolanos and alleged to be cronies.

Borre specifically charged Judge Arcilla, his second cousin, with having engaged in business and having collected P1,400 as professional and notarial fees while acting as ex officio notary.

A referral of this case to an investigator is not necessary because the ultimate facts, on which the decision can be based, may be gleaned from the complain and respondents' comments.

Judge Moya's case. - On September 8, 1977, Calvin R. Borre filed with the Court of First Instance at Tagum, Davao del Norte a complaint against his brother Arnaldo, Inapsa Obon Prieto (an illiterate member of a cultural minority) and the register of deeds of Davao (Civil Case No. 886).

In that complaint, Galvin prayed that a certain deed of sale covering a parcel of land which deed was executed by Mrs. Prieto in favor of Arnaldo, be declared void (because the land had previously been sold to Calvin) and that the registration of that deed of sale be enjoined. Calvin asked for a writ of preliminary injunction or a restraining order (pp.88-95, Rollo).

On that same day, September 8, 1977, when the complaint was filed, Executive Judge Felix R. Moya, without raffling case, issued an order wherein he (1) directed the service of summons, (2) set on September 16, 1977 the hearing on the preliminary injunction and (3) issued a restraining order which reads:

"Instead of granting a writ (of preliminary injunction) ex parte, said defendants are restrained from performing the acts sought to be enjoined in the complaint, while the motion for preliminary injunction is pending unresolved"(p. 106, Rollo).

The next day, September 9, 1977, the case was allegedly assigned to Judge Moya who was presiding over Branch IX. The only other Judge, assigned to Branch VIII, was Judge Alejandro C. Sipalan.

After hearing, Judge Moya issued an order of injunction dated November 2, 1977. The writ was issued on November 28, 1977. The next day, November 29, Judge Moya inhibited himself from the case in order that "the court should be above suspicion." The case was re-assigned to Judge Sipalan who, on February 2, 1978, rendered a decision approving the compromise settlement between the brothers Calvin and Arnaldo. Hence the case was terminated.

Arnaldo's charge against Judge Moya is that by issuing, before the raffle, the said order of September 8, 1977, he violated Circular No. 7 of the Supreme Court dated September 23, 1974 which prohibits an Executive Judge from acting on any incidental or interlocutory matter in any case not yet assigned of any branch by raffle. The pertinent provisions of the circular read (paragraphing supplied):

"IV. IN CASE OF URGENT OR INTER-LOCUTORY MATTERS

"Whenever an incidental or interlocutory matter in a case is of such urgent nature that it may not wait for the regular raffle, the interested party may request the Executive Judge in writing for a special raffle.

"If the request is granted and the special raffle is conducted, the case shall immediately be referred to the branch to which it corresponds.

"The Executive Judge shall have no authority to act on any incidental or interlocutory matter in any case not yet assigned to any branch by raffle."

Judge Moya's repeated disclaimer that he did not issue a restraining order but merely ordered the preservation of the status quo and that he did not violate the circular is belied by his own order.

His pretension that he thought that the case was raffled to him because it was placed on is table by his clerk does not justify his negligence in not ascertaining, as he could have easily ascertained, from the expediente itself that the case was not yet raffled to him.

His pretext that, to avoid irreparable injury, he had to order the preservation of the status quo so as to prevent Arnaldo R. Borre from registering the questioned deed of sale, is not an excuse for not holding a special raffle before acting on the case. He could not be mistaken as to the fact that the case was new and that under the circular he could not act on it, even as Executive Judge, without first holding a special raffle.

He could have known that the alleged irreparable injury could be prevented by Calvin R. Borre through the simple expedient of registering a notice of lis pendens which would render futile any registration to be made by Arnaldo R. Borre.

Arnaldo R. Borre also charged that it was not by coincidence that the case was assigned to judge Moya and that, because there were no stenographic notes of the raffle and the expediente of the case did not bear the signature of the Executive Judge, the requirements of Circular No. 7 were not complied with. The circular provides (paragraphing supplied):

"III. MANNER OF RAFFLING

"xxx The raffle proceedings should be stenographically recorded, and minutes thereof shall be prepared and signed by the Judges (or their representatives) and the Clerk of Court in attendance.

"Immediately after the raffle on any particular day the Executive Judge shall indicate the particular branch which the case is assigned, the same to be written in words and in figures on the cover of the Rollo and on the first page of the original complaint or information and initialed by the Executive Judge and the other two officers who attended said raffle."

Judge Moya admits that no stenographic notes were taken of the raffle and that he did not initial the assignment of that case to his sala.

His explanation was that his failure to comply with those requirements was due to the oversight of his clerk who did not follow his instructions.

We are not satisfied with Judge Moya's artful and disingenuous comment on the charges, which comment does

not do him honor nor enhance his image as a presumably honest, competent and diligent Judge.

He should be censured for his failure to comply with the circular and required to pay a fine equivalent to his compensation for ten (10) days.

Case of Judge Arcilla. - Arnaldo R. Borre alleged that Judge Arcilla notarized the deed of sale executed by Mrs. Prieto in favor of Calvin R. Borre covering a parcel of land which Mrs. Prieto already sold to Arnaldo and of which prior sale Judge Arcilla was cognizant.

Arnaldo alleged that Judge Arcilla wanted to have a share in the water project which he (Arnaldo) had established on the land and that, as previously stated, the judge collected P1,400 for his legal and notarial services and as treasurer of the Mindanao Water Spring Supplier Corporation (Annex H, p. 26, Rollo). He was an incorporator of the Mindanao Spring Water Supplier, Inc. (p. 22, Rollo).

On the other hand, Judge Arcilla in his comment pointed out that Arnaldo's administrative complaint was induced by the fact that an assistant fiscal of Davao City gave due course to the charges of estafa and falsification filed against Arnaldo by his brother Calvin in connection with the disputed land and that on November 29, 1977, informations for estafa and falsification were filed in court against Arnaldo.

Judge Arcilla said that Arnaldo's suspicion that the judge sided with Calvin was baseless. He (Judge Arcilla) endeavored to effect an amicable settlement between the two brothers but his efforts were fruitless. He even wrote to the father of the brothers in Catanduanes to go to Davao to make them come to terms but the father was not able to patch up their controversy.

Judge Arcilla revealed that he was the legal adviser of his cousins, Arnaldo and Calvin. He gave them advice free of charge. He prepared and notarized several documents for Arnaldo. He denied having received P1,400 from Arnaldo.

He said that the Borre brothers did not honor their written commitment to pay him five percent of the net income from their water supply business. He admitted that he was later given a 2.5% equity in the corporation organized by the Borre brothers and Mariano Nasser for supplying water.

Judge Arcilla said that there is no law prohibiting him from involving himself as legal consultant and notary in the business of the Borre brothers operated outside the limits of Davao City.

He denied that he was close to Judge Moya and that in behalf of Calvin he talked with the Judge regarding Civil Case No. 886. His impression was that Arnaldo wanted to use the instant administrative complaint to bring about the dismissal of Civil Case No. 886 and the criminal cases against him.

Judge Arcilla concluded that Arnaldo's complaint against him, made after he had gratuitously rendered legal and notarial services to Arnaldo for more than ten years, is an illustration of the saying that "ingratitude is stronger than a traitor's arm."

In a letter dated January 27, 1978 or after respondents' comments were submitted, which letter was under oath, Arnaldo requested that his complaint against Judge Arcilla be considered withdrawn or dropped because it was spawned by a misunderstanding. He said that he was no longer willing to testify against Judge Arcilla.

He reiterated the same request in his letter, also under oath, dated July 15, 1980 wherein he said that his complaint had become moot because the parties in Civil Case No. 886 had entered into compromise which, as already noted, was approved by Judge Sipalan in his decision of February 2, 1978. Arnaldo did not withdraw his complaint against Judge Moya.

Arnaldo's desistance implies that he has no proofs to substantiate his charge that Judge Arcilla committed a serious misconduct by exerting pressure on Judge Moya to favor Calvin. (See *Maravilla vs. Arcilla*, Adm. Matter No. 401-CJ, August 31, 1976, 72 SCRA 485.)

Judge Arcilla listed in his comment twenty-three documents which he notarized at the behest of Arnaldo during the period from June 4, 1968 to January 30, 1977.

Deputy Court Administrator Leo D. Medialdea believes that Judge Arcilla's engaging in private business and acting as legal consultant of the Borre brothers are prejudicial to the public service because he (Judge Arcilla) should devote his full time to the performance of his official duties.

We hold that respondent city judge was not empowered to act as notary public *ex officio*. A city judge is not among the *ex officio* notaries enumerated in Section 242 of the Revised Administrative Code. Neither the charter of Davao City (Republic Act No. 4354) nor the Judiciary Law allows a city judge to act as notary *ex officio*.

In contrast, there is statutory authorization for a justice of the peace, now municipal judge, to act as notary *ex officio* (Sec. 76 Judiciary Law and Sec. 235, Revised Administrative Code.) It should be noted that the fees collected by a municipal judge acting as *ex officio* notary accrue to the government funds.

A notary *ex officio* should notarize only documents connected with the exercise of his official duties. That is the reason why he is designated as a notary *ex officio*. He should not compete with private law practitioners or regular notaries in transacting legal conveyancing business.

In the instant case, it was not proper that a city judge should notarize documents involving private transactions and sign the document in this wise: "GUMERSINDO ARCILLA, Notary Public Ex-Oficio, City Judge" (p. 16, Rollo, Annex D of Complaint). In doing so, he obliterated the distinction between a regular notary and a notary *ex officio*.

As to engaging in business as a sideline, there is no compelling reason for a city judge to engage in private business, considering that under Letter of Implementation No. 93, dated August 9, 1979, a city Judge of Davao City is entitled to receive P43,332 as annual compensation excluding allowances. Indeed, the public expects him to devote full time to his judicial work.

Moreover, as a Civil Service employee he cannot engage in private business without the written permission of this Court (See Par. 5, Rule XIII, Civil Service Rules found in Executive Order No. 5, dated January 9, 1909 in relation to Executive Order No. 103, Series of 1913, quoted, in the *Tenure of Civil Service Officers*, by Abelardo Subido, pp. 164-165; See *Disciplinary Rules and Procedures in the Philippine Civil Service* by Commissioner Abelardo Subido, 1976, pp. 235-236).

It is noteworthy that one of the grounds for disciplinary action against a Civil Service employee is the pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations (Par. 24, Sec. 36, Civil Service Decree of the Philippines, P.D. No. 807 dated October 6, 1975).

However, before this decision can be promulgated, Providence terminated this case against Judge Arcilla. He died on August 29, 1980.

WHEREFORE, Judge Moya is censured and ordered to pay a fine equivalent to his salary for ten (10) days for having violated Circular No. 7 of this Court. The case against Judge Arcilla is dismissed for having become moot. A copy of this decision should be attached to the personal record of Judge Moya.

SO ORDERED.

Barredo (Chairman), Fernandez,[*] Abad Santos, and De Castro, JJ., concur.
Concepcion Jr., J., is abroad.

[*] Fernandez, J., was designated to sit in the Second Division.

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