

LUPO ALMODIEL ATIENZA, COMPLAINANT, VS. JUDGE FRANCISCO F. BRILLANTES, JR., METROPOLITAN TRIAL COURT, BRANCH 20, MANILA, RESPONDENT.

A.M. No. MTJ-92-706. March 29, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a complaint by Lupo A. Atienza for Gross Immorality and Appearance of Impropriety against Judge Francisco Brillantes, Jr., Presiding Judge of the Metropolitan Trial Court, Branch 20, Manila.

Complainant alleges that he has two children with Yolanda De Castro, who are living together at No. 34 Galaxy Street, Bel-Air Subdivision, Makati, Metro Manila. He stays in said house, which he purchased in 1987, whenever he is in Manila.

In December 1991, upon opening the door to his bedroom, he saw respondent sleeping on his (complainant's) bed. Upon inquiry, he was told by the houseboy that respondent had been cohabiting with De Castro. Complainant did not bother to wake up respondent and instead left the house after giving instructions to his houseboy to take care of his children.

Thereafter, respondent prevented him from visiting his children and even alienated the affection of his children for him.

Complainant claims that respondent is married to one Zenaida Ongkiko with whom he has five children, as appearing in his 1986 and 1991 sworn statements of assets and liabilities. Furthermore, he alleges that respondent caused his arrest on January 13, 1992, after he had a heated argument with De Castro inside the latter's office.

For his part, respondent alleges that complainant was not married to De Castro and that the filing of the administrative action was related to complainant's claim on the Bel-Air residence, which was disputed by De Castro.

Respondent denies that he caused complainant's arrest and claims that he was even a witness to the withdrawal of the complaint for Grave Slander filed by De Castro against complainant. According to him, it was the sister of De Castro who called the police to arrest complainant.

Respondent also denies having been married to Ongkiko, although he admits having five children with her. He alleges that while he and Ongkiko went through a marriage ceremony before a Nueva Ecija town mayor on April 25, 1965, the same was not a valid marriage for lack of a marriage license. Upon the request of the parents of Ongkiko, respondent went through another marriage ceremony with her in Manila on June 5, 1965. Again, neither party applied for a marriage license. Ongkiko abandoned respondent 19 years ago, leaving their children to his care and custody as a single parent.

Respondent claims that when he married De Castro in civil rites in Los Angeles, California on December 4, 1991,

he believed, in all good faith and for all legal intents and purposes, that he was single because his first marriage was solemnized without a license.

Under the Family Code, there must be a judicial declaration of the nullity of a previous marriage before a party thereto can enter into a second marriage. Article 40 of said Code provides:

"The absolute nullity of a previous marriage may be invoked for the purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void."

Respondent argues that the provision of Article 40 of the Family Code does not apply to him considering that his first marriage took place in 1965 and was governed by the Civil Code of the Philippines; while the second marriage took place in 1991 and governed by the Family Code.

Article 40 is applicable to remarriages entered into after the effectivity of the Family Code on August 3, 1988 regardless of the date of the first marriage. Besides, under Article 256 of the Family Code, said Article is given "retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws." This is particularly true with Article 40, which is a rule of procedure. Respondent has not shown any vested right that was impaired by the application of Article 40 to his case.

The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected (*Gregorio v. Court of Appeals*, 26 SCRA 229 [1968]). The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws (*Billones v. Court of Industrial Relations*, 14 SCRA 674 [1965]).

Respondent is the last person allowed to invoke good faith. He made a mockery of the institution of marriage and employed deceit to be able to cohabit with a woman, who begot him five children.

Respondent passed the Bar examinations in 1962 and was admitted to the practice of law in 1963. At the time he went through the two marriage ceremonies with Ongkiko, he was already a lawyer. Yet, he never secured any marriage license. Any law student would know that a marriage license is necessary before one can get married. Respondent was given an opportunity to correct the flaw in his first marriage when he and Ongkiko were married for the second time. His failure to secure a marriage license on these two occasions betrays his sinister motives and bad faith.

It is evident that respondent failed to meet the standard of moral fitness for membership in the legal profession.

While the deceit employed by respondent existed prior to his appointment as a Metropolitan Trial Judge, his immoral and illegal act of cohabiting with De Castro began and continued when he was already in the judiciary.

The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety, not only with respect to his performance of his judicial duties but also as to his behavior as a private individual. There is no duality of morality. A public figure is also judged by his private life. A judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times, in the performance of his judicial duties and in his everyday life. These are judicial guideposts too self-evident to be overlooked. No position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary (*Imbing v. Tiongzon* 229 SCRA 690 [1994]).

WHEREFORE, respondent is **DISMISSED** from the service with forfeiture of all leave and retirement benefits and with prejudice to reappointment in any branch, instrumentality, or agency of the government, including government-owned and controlled corporations. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

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