

THELMA ARCENIO AND MARGARITA PONTING, COMPLAINANTS, VS. JUDGE VIRGINIA PAGOROGON, RESPONDENT.

A.M. No. MTJ-89-270. July 05, 1993

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PER CURIAM:

These are two (2) administrative complaints commenced by different parties against Municipal Trial Court Judge Virginia Pagorogon of San Jose del Monte, Bulacan. The factual background of these complaints will be treated herein separately, as follows:

A. M. No. MTJ 89-270:

Complainants Arcenio and Ponting were the accused in two criminal complaints filed by one Cipriano de Guzman, Jr. for Illegal Squatting (P.D. 772) before respondent judge Pagorogon.

After a preliminary examination, respondent judge issued warrants for the arrest of the complainants. On January 23, 1989, complainants were apprehended and filed their respective bail bonds. Respondent judge then issued an Order requiring complainants to file their counter-affidavits within ten (10) days from receipt of the Order. Complainants failed to comply with the aforestated Order but instead filed a Motion for Extension of time to file counter-affidavits in the afternoon of February 3, 1989, the last day for compliance. Respondent judge denied the Motion for Extension filed by the accused for being moot and academic. It appears that in the morning of the same day, respondent judge had already issued an Order forwarding the records to the Provincial Fiscal for the filing of the corresponding information on the ground that "accused Ponting failed to submit her witnesses".

The Order of denial however, erroneously referred to the Motion for Extension as a Motion for Reconsideration, which mistake respondent judge attributed to clerical error.

On February 14, 1989 complainants filed their counter-affidavits alleging that they are DAR-identified farmer beneficiaries of the disputed parcel of land which is devoted to agriculture and as such, is beyond the coverage of P.D. 772.

On the same day, the accused filed a Motion for Reconsideration of the Order transmitting the cases to the Provincial Fiscal on the ground that the Motion for Extension filed by them served to suspend the running of the period within which to file their counter-affidavits. Respondent judge allegedly denied the Motion for Reconsideration on the same day that it was filed but the Order itself is missing from the records of the case.

On February 22, 1989 complainants filed the present administrative complaint against respondent judge with the Office of the Court Administrator for gross ignorance of the law, grave abuse of discretion and acting in excess of her jurisdiction, alleging that respondent judge found probable cause only on the basis of the sworn statements of the complainant and his witness, ordered their arrest on the basis of a P.D. that is not applicable to them, and for acting with undue haste in transmitting the records to the Provincial Fiscal without first ruling on their Motion for Extension and Motion for Reconsideration.

In her Comment, respondent judge claimed as erroneous and without basis the complaint filed against her, arguing

that the fact that only one witness was presented does not militate against the existence of probable cause as found by her. Furthermore, she alleged compliance with the requirements of examination in writing and under oath to justify the issuance of the warrants of arrest. On the issue of acting with undue haste, respondent judge claimed that she acted upon the Motion for Extension and the Motion for Reconsideration by denying both motions.

Thereupon, complainants were ordered to file their Reply by way of a Resolution of this Court dated August 7, 1990. However, despite several Resolutions ordering compliance and service of the said Resolutions upon the complainants, no Reply has yet been filed by the complainants. In the meantime, respondent Judge filed a motion for resolution of the complaint.

A. M. No. MTJ-92-637:

This case originated from an anonymous letter-complaint filed by one A.C.B. with the Office of the Ombudsman accusing respondent judge of abuse of authority and irregularity in connection with a motor vehicle in custodia legis alleged to have been used in connection with a robbery case filed with respondent's court. In turn, the Office of the Ombudsman referred the undated letter to this Court for administrative investigation.

Per Resolution dated August 29, 1991, the Court directed the Court Administrator to file a formal complaint for misconduct against respondent judge and thereafter, to refer the complaint to Executive Judge Natividad G. Dizon of the Regional Trial Court of Malolos, Bulacan for investigation, report and recommendation.

The report of the Executive Judge disclosed that respondent judge conducted a preliminary examination of a robbery (hold-up) case entitled "People of the Philippines vs. Robert Geroy, et al." on August 26, 1988. Part of the evidence in the aforementioned case was a black and white renegade type jeepney. On September 19, 1988, the robbery case was endorsed to the Office of the Provincial Fiscal of Malolos, Bulacan, for filing of the information inasmuch as three (3) of the accused were detained.

However, the jeep was not turned over to the Provincial Fiscal because the Clerk of Court had no available funds to tow said jeep. The subject vehicle, therefore, remained in the premises of the municipal building of San Jose del Monte, Bulacan.

In March 1989, the Station Commander of San Jose del Monte requested respondent judge to remove the jeep from the premises of the municipal building as it was becoming an eyesore. Respondent judge then sought the opinion of then Acting RTC Executive Judge Benjamin de Vega and Provincial Fiscal Liberato L. Reyes and was allegedly advised that since the RTC of Malolos has no impounding area, she should keep and maintain the jeep herself. In their sworn affidavits, however, the Executive Judge merely remembered disclaiming control over the jeep until the Provincial Fiscal files the criminal case with the RTC; the Provincial Fiscal, on the other hand, had a vague recollection of the conversation and remembered only his hesitation to accept the turnover of the jeep to his office. Neither one of the officials confirmed having advised respondent judge to have custody of the subject vehicle.

On March 31, 1989 respondent Judge took possession of the jeep and had an auto mechanic tow it to his (the auto mechanic's) shop in Marilao, Bulacan, repair it and repaint the same from black and white to red. Respondent judge even provided new batteries for the jeep and initially spent P1,500.00 to put the jeep in good running condition. Her brother volunteered "to take care of the jeep" as she "could not afford to hire a driver." In addition, her brother shouldered additional expenses for the further repair and maintenance of the jeep. It is for these expenses that respondent judge is seeking reimbursement from the anonymous owner with the threat that unless she is reimbursed "she is to return the jeep to its original condition."

The anonymous letter-complaint further alleged that the respondent judge even had the vehicle registered in her

brother's name but respondent judge denied the same nor is there any evidence to support such allegation. However, the investigation of Executive Judge Dizon revealed that on the basis of the report from the Land Transportation Office, the sticker attached to the vehicle appears to be falsified.

To all these accusations, respondent judge maintains the defense of having acted in good faith. In fact to show her alleged good faith, respondent judge officially turned over the jeep to the office of the Provincial Fiscal on February 25, 1992, three (3) years after having received custody thereof in March 1989. She did so only after this case was referred to the Executive Judge of Bulacan for investigation, report and recommendation.

On the basis of the documentary evidence obtaining in the present case, the investigating Executive Judge found respondent judge guilty of misconduct in that she "exerted undue interest" over the vehicle by spending for its repair and maintenance over and beyond what the circumstances and the duties of her office called for. Moreover, by having the jeep repainted from its original color of black and white to red, with full knowledge that the jeep constitutes vital evidence in a Robbery case, respondent judge tampered with the evidence in a criminal case for which she should be held answerable. In view of her findings, the investigating judge recommended the imposition of the appropriate penalty upon respondent judge.

On the first administrative complaint for gross ignorance, grave abuse of discretion and acting in excess of her jurisdiction, this Court believes and so holds that respondent judge is not guilty of the acts complained of as to warrant an administrative sanction. From the aforestated facts, it appears that respondent judge faithfully complied with the procedure for preliminary examination outlined in Rule 112 sections 9(b) and 6(b) of the Rules on Criminal Procedure. She did not base her finding of probable cause solely on the sworn statements of the complainant therein and his witness as alleged by the complainants. Instead she propounded her own searching questions to the aforestated parties during the preliminary examination, consistently with the Rules. Apparently however, such "searching" questions (and answers thereto) proved insufficient to elicit the nature of the property subject matter of the complaint as to justify the application of P.D. 772 against the accused. However such fact alone is not sufficient to justify a charge of gross ignorance of the law against respondent judge.

Not every error or mistake of a judge in the performance of her duties makes her liable administratively. To hold a judge accountable for every erroneous ruling or decision that he renders, would be nothing short of harassment and would make his position unbearable. For after all, no judge, in the process of administering justice, can be infallible in his judgment (*Gallardo vs. Judge Quintos*, Adm. Mat. No. RTJ-90-577, 2 July 1991 En Banc, Minute Resolution).

Even the allegation that respondent judge acted with undue haste in forwarding the case to the Provincial Fiscal is devoid of merit. Complainants had no right to assume that respondent judge will grant their Motion for Extension, especially in the present case where the motion was filed on the very last day for filing of the counter-affidavits and more so, where the respondent judge had already issued an order of transmittal of the records to the Provincial Fiscal, thereby rendering the motion moot and academic. Neither do complainants have the right to assume that by the mere act of filing a motion for an extension, the period for compliance with the Order will be automatically "suspended". Nowhere in the Rules is such automatic suspension sanctioned. The fact that respondent judge denied their motion for extension cannot be deemed as an abuse of discretion inasmuch as the decision on whether to grant motions or not rest entirely upon the discretion of the judge.

There being no merit in the charges against respondent judge, the Court resolved to dismiss the first administrative case against her.

However, as to the second administrative complaint involving the vehicle in custodia legis, there is sufficient evidence on record to warrant a finding that respondent judge committed gross misconduct in office deserving the

imposition of the most stringent of penalties possible. The intention of respondent judge to make use of and benefit from the vehicle, a property in custodia legis, was manifest. Respondent judge had no reason to go overboard in spending for the repair of the jeep. The most she should have done, if her real intention was the preservation of evidence and her goal was to turn over the same to the office of the Provincial Fiscal, was simply to have the jeep, then already in a dilapidated condition owing to its prolonged exposure to the elements, towed to the premises of the RTC of Malolos, Bulacan. From that moment on, the vehicle would have been out of her hands, which was how it should be considering that the robbery case had already been endorsed by her to the office of the Provincial Fiscal. Had she effected the delivery of the vehicle, then her insistence on being reimbursed, this time only for the towing expenses, would have been reasonable. But instead, respondent judge engaged the services of a mechanic, not only to tow the jeep but also to place the jeep in good running condition, spending in the process P1,500.00 of her own money. No other logical inference could be deduced from such an action other than respondent judge's desire to use and enjoy the jeep for her own benefit and convenience. Quite obviously, respondent judge exhibited manifest intent to gain.

The act of respondent judge is not unlike the prohibited acquisition by purchase described in Article 1491 of the New Civil Code and is in fact, even worse. In Article 1491 paragraphs 4 and 5, public officers and employees, justices, judges, lawyers and similar persons charged with the administration of justice are prohibited from acquiring by purchase property the administration of which has been entrusted to them or any other property which is the object of litigation. Here, respondent judge did not even offer to purchase the jeep from the owner but by the mere fact of having whimsically spent for its repairs, automatically appropriated the jeep for her own use and benefit.

Assuming, *arguendo*, that respondent judge was indeed acting in good faith, i.e. she was acting upon the "advise" of the Executive Judge of Malolos and the Provincial Fiscal, still the fact that she and her brother regularly used the subject vehicle as if it were their own destroys her pretensions of good intentions.

Furthermore, respondent judge had absolutely no right and/or authority to change the color of the jeep from black and white to red. She knew very well that the jeep was vital evidence in a robbery case since in fact, she was even the one who conducted the preliminary examination in said case. Her act of having the jeep repainted to a different color clearly amounted to tampering with evidence in a criminal case. The fact that the person who committed the act of tampering is a member of the judiciary makes the act even more deplorable, and sad to say, leaves a bitter taste.

In addition to the foregoing irregularities, the investigating Judge also discovered, in the process of investigating whether the jeep was actually registered in the name of respondent judge's brother, that the sticker attached to the jeep appears to be falsified inasmuch as the control numbers in the sticker remain unissued and are in fact, still in the possession of the Land Transportation Office. Whether the sticker was already attached to the jeep when it was used in the robbery or whether the same was attached by respondent judge in the course of her use of the jeep, does not appear on record. Nevertheless, the mere fact of suspicion tips the scale against herein respondent judge who, as a member of the judiciary, should be beyond reproach at all times.

There is indeed no doubt that respondent judge took advantage of the powers vested in her office in committing the acts complained of herein. For, had she not been the judge who conducted the preliminary examination in the robbery case, she would not have acquired jurisdiction over the subject vehicle and consequently, she could not have taken possession of the said vehicle and used the same for her personal benefit.

Undoubtedly, respondent judge committed gross misconduct in her office. Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public

officer" (Amasco v. Magro, 73 SCRA 107 [1976]). It is this kind of gross and flaunting misconduct on the part of those who are charged with the responsibility of administering the law and rendering justice that so quickly and surely corrodes the respect for law and the courts without which the government cannot continue and that tears apart the very bonds of our polity (Ompoc vs. Judge Torres, A.M. No. MTJ-86-11, 17 Sept. 1989 En Banc, Per Curiam).

Respondent judge utterly failed to conduct herself in the manner prescribed by Canon 2 of the Code of Judicial Conduct which is to "avoid impropriety and the appearance of impropriety in all activities." The case at bar presents an occasion to again remind the members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and be free from any appearance of impropriety in their personal behavior not only in the discharge of their official duties but also in their private capacities (National Intelligence and Security Authority vs. Tablang, 199 SCRA 766 [1991]). For, as we have often stated, "(a)lthough every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. A magistrate of the law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice" (Dia-Anonuevo vs. Bercacio, 68 SCRA 81, 89 [1975]).

In the case at bar, respondent judge has shown herself unfit to be a member of the Judiciary and must therefore be removed from office.

WHEREFORE, the Court finds respondent judge Virginia Pagorogon guilty of gross misconduct in A.M. No. 92-637 and she is hereby ordered DISMISSED from the service with forfeiture of all benefits except accrued leave credits with prejudice to reinstatement or reappointment to any public office including government-owned or controlled corporations.

The complaint against respondent Judge in A.M. No. MTJ 89-270 is DISMISSED for lack of merit.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo, and Quiason, JJ., concur.

Bellosillo, J., No part. Court administrator when the case was evaluated.

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