

EVELYN T. HONCULADA, COMPLAINANT VS. VICTORIANO S. RAGAY, JR., COURT INTERPRETER, REGIONAL TRIAL COURT, BRANCH 41, DUMAGUETE CITY, RESPONDENT.

A.M. NO. P-05-1945 (FORMERLY A.M. OCA IPI NO. 03-1605-P). January 31, 2005

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PER CURIAM:

The Court has said time and again that all persons serving the Judiciary must at all times be circumspect in their conduct and observe the norms of public accountability to the end that the people's faith in this institution may not diminish. We have not hesitated to impose the ultimate penalty upon those who have fallen short of the standards of responsibility. Such is the case at bar.

In a letter[1] dated March 12, 2003, complainant Evelyn T. Honculada charges respondent, Mr. Victoriano S. Ragay, Jr., Court Interpreter, Regional Trial Court (RTC), Branch 41, Dumaguete City, with Gross Misconduct relative to Civil Case No. 12932 entitled "Erle Dwight Tubat v. Glenda Tubat, et al." for Partition. Attached to the complaint is a letter[2] dated December 17, 2002, addressed to complainant in which respondent allegedly demands money from complainant.

The Office of the Court Administrator (OCA) summarizes the facts as follows:[3]

"Complainant, one of the defendant-heirs in the partition case, alleges that respondent, who was appointed as one of the commissioners to effect the partition, attempted to extort money from him and his other co-heirs in the amount of P3,000.00. This demand was made in a letter dated 17 December 2002 sent to him by respondent where he also acknowledged receipt of the sum of P9,000.00 from Mr. Erle Dwight Tubat, Wilma Sojor and Heirs of Jeseso Tubat. Complainant claims that the receipt by respondent of the amount of P9,000.00 and demanding P3,000.00 from him (sic) and his (sic) co-heirs were done without the express authority of Presiding Judge Araceli Alafriz.

In his comment, respondent explains that Mrs. Sojor, a defendant in the partition case, voluntarily gave the amount of P3,000.00 to the commissioners and a receipt was issued to her. The money was intended for gasoline or transportation expenses, fees in securing the necessary documents and construction expenses in building indicators to determine the boundaries of the involved properties.

Respondent avers that Mrs. Sojor suggested that a letter also be sent to her co-heirs to inform them that she already gave the amount of P3,000.00 to the commissioners and that as co-heirs, they should also share in the cost of carrying out the partition. This was the reason why the 17 December 2002 letter was sent to complainant.

Respondent claims that his designation as the officer-in-charge ceased as early as 15 January 2003 when their Branch Clerk of Court reported back for work. Thus, he is not sure whether Erle Tubat and the heirs of the late Jeseso had given their share in the expenses to the commissioned surveyors.

In this Court's Resolution dated 3 September 2003, the administrative complaint was referred to the Executive Judge of RTC of Dumaguete City for investigation, report and recommendation.

Executive Judge Araceli S. Alafriz reported that during the investigation, respondent admitted that he was not the appointed Chairman of the Commission tasked to partition the properties but merely assumed its chairmanship as then designated OIC of Branch 41. Respondent has been with the court for 28 years, and he is aware that all Commissioners in a partition case are appointed by the court. As the OIC, however, he had to take over the responsibilities and functions of the Branch Clerk of Court who was then on leave of absence.

Respondent also admitted that he sent copies of the 17 December 2002 letter to the defendants in the partition case, but he did not consult the Presiding Judge nor did he attach copies of the letters to the records of the partition case.

Respondent admittedly received the amount of P3,000.00 from Mrs. Sojor, but he alleged that he gave the amount to the surveyors. He could not produce however the receipt which he alleged was with Mrs. Sojor.”

In her Investigation, Report and Recommendation[4] dated January 16, 2004, Judge Alafriz notes that in 1999, she filed Administrative Matter No. 99-769-P (Judge Araceli S. Alafriz v. Victoriano S. Ragay, Jr.) against respondent for a similar offense. However, the case was dismissed for being unsubstantiated.

Perhaps with this previous case in mind, Judge Alafriz asked respondent during the investigation of the case on October 29, 2003 if he would like her to inhibit herself from hearing the case. Respondent replied that he did not.[5]

After due proceedings, Judge Alafriz now recommends that respondent be dismissed from the service based on her findings that respondent was aware that he was not the designated Chairman of the Commission appointed by the Court to partition the properties subject of litigation; he sent copies of the letter dated December 17, 2002 to the defendants in his capacity as OIC/Acting Branch Clerk of Court but did not attach copies thereof to the records of the case; he had not informed the Presiding Judge of Branch 41 of his actions; his allegation that the money was used for laborers, monuments and survey is unsupported by evidence; and no estimated cost of expenses had yet been given by the surveyors to justify the amounts requested by respondent.

Concurring with the findings of Judge Alafriz, the OCA recommends that respondent be dismissed from the service for improper solicitation and grave misconduct in office.

We agree with the OCA and Judge Alafriz that respondent’s actuations constitute grave misconduct and warrant dismissal from the service.

In actions for partition, the court appoints commissioners to make the partition if the parties are unable to agree upon the partition.[6] In the instant case, respondent was not appointed by the court as a commissioner, much less as Chairman of the Commission tasked to partition the litigated properties. He admittedly merely assumed chairmanship of the Commission because the Branch Clerk of Court of Branch 41 was then on leave of absence. This, in itself, is already highly irregular and improper especially as, Judge Alafriz correctly notes, respondent has been with the court for twenty-eight years and is aware that all commissioners in a partition case are appointed by the court.

Respondent testified:

Court: How long have you been working with the Court from the time you were appointed?

Mr. Ragay: 28 years.

Court: And so you were aware that all commissioners are appointed by the Court?

Mr. Ragay: Yes.

Court: And despite of (sic) that you assumed the chairmanship even if there was no order appointing you?

Mr. Ragay: I was of the belief that as Officer-in-Charge or Acting Branch Clerk of Court I also assumed the

responsibility of the Branch Clerk of Court, all its functions and responsibilities.[7]

What compounds respondent's offense is the fact that he "requested" complainant to "share" in the expenses to be incurred in effecting the partition and received the amount of P3,000.00 from one of the parties without authority from the court. According to him, he was only constrained, upon Mrs. Sojor's insistence, to write a letter to the defendants requesting them to contribute to the expenses for partition. He said:

Q: And you also mentioned in your letter to Mrs. Evelyn Honculada that this is pursuant to the Order of the Court dated October 16, 2002?

A: With regard to the sharing of the expenses, I place[d] there the quotation "pro-rata". I have no intention really of forcing them. Actually, as Officer-in-Charge I knew that all the money will be deposited to the Clerk of Court or to the Officer-in-Charge.

Q: How could you know how much the expenses would be when there was no amount given yet by the engineer appointed by the Court?

A: I was not thinking of any amount at that time but because of Mrs. Sojor who insisted that I should write a letter to the defendants, so I was constrained to heed to her request. When we started relocating the properties the surveyor recommended that they will need funding in regard to the relocation of the properties because they will be hiring laborers and they will be constructing or make these monuments so that they can determine the metes and bounds of the properties so that they can place the monuments that is why I was constrained to write to them with regard to that. I was not thinking of the whole expenses, only for the start. We even planned out that every amount that will be given and spent in the operation we will list them.

Q: Alright, the ocular inspection conducted by you with the knowledge of the Court?

A: When we started, Ma'am? No, the Court was not around so because...when we did that, Ma'am, this was not because we want to violate or to disregard the Honorable Court. The purpose of starting the work since they assumed as Commissioner, to be able to direct the questioned properties and so that the surveyor could already make the necessary report before an actual relocation of the property and partition of the property can be done.[8]

Respondent would impress upon this Court that he was just performing his duty out of a desire to speed up the partition. However, his actions speak more of feigned innocence and misplaced zeal. If the transaction was truly above board, respondent would and should have informed the Presiding Judge of his actions as soon as it was possible for him to do so, and attached a copy of his letter dated December 17, 2002 to the records of the case. However, as he himself admitted, respondent did not only fail to inform the Presiding Judge of Branch 41 of his actions, he also did not attach a copy of his solicitation letter to the records of the case. He said:

Court: Were these letters sent by you to the parties attached to the record of the case?

Mr. Ragay: It is personal letter.

Court: If it is personal you are not acting as chairman?

Mr. Ragay: As Officer-in-Charge...I think I have attached a letter. I cannot remember now.

Court: It is not attached to the records of the case. Did you inform the Court that you received the amount as Acting Commissioner?

Mr. Ragay: No, your Honor, because that amount is personal money of Mrs. Sojor. It was her desire to start doing our job.[9]

Moreover, respondent failed to substantiate his claim that he gave this amount to the surveyors. His declaration to the effect that the money was given to the surveyors/engineers is self-serving and unsupported by any evidence despite the opportunity given to him to present the receipt or a photocopy thereof issued by the supposed recipients.

Section 22(k), Rule XIV of the Omnibus Civil Service Rules classifies the act of soliciting anything of monetary value in the course of official duties or in connection with any transaction which may be affected by the functions of an office as a grave offense punishable by dismissal. It provides:

Sec. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

The following are grave offenses with corresponding penalties:

...

(k) Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operations being regulated by, or any transaction which may be affected by the functions of his office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature.

1[st] Offense – Dismissal.... (emphasis in the original)

The penalty of dismissal carries with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in the government service, without prejudice to criminal or civil liability.[10]

In *Rural Bank of Francisco F. Balagtas (Bulacan), Inc. v. Pangilinan*,[11] we dismissed the respondent deputy sheriff for failing to immediately turn over and keeping in his custody the amount of P5,000.00 entrusted to him for remittance to the complainant.

Likewise, in *Re: Report on Audit and Physical Inventory of the Records of Cases in MTC of Peñaranda, Nueva Ecija*,[12] we declared that the Clerk of Court's failure to turn over to the court cash in his possession constitutes gross negligence in the performance of his duty, gross dishonesty and even malversation of funds and accordingly dismissed the respondent from the service.

The Code of Conduct and Ethical Standards for Public Officials and Employees provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge to the lowest clerk, are required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary.[13]

Far from observing this norm of conduct, respondent's actuations in the instant case raise suspicion that he misappropriated the amount of P3,000.00 which he solicited from one of the parties without court authority. The foregoing acts of respondent indubitably establish his guilt and justify his dismissal.

WHEREFORE, the Court finds respondent Victoriano S. Ragay, Jr., Court Interpreter, Regional Trial Court, Branch 41, Dumaguete City, GUILTY of grave misconduct prejudicial to the best interest of the service and improper solicitation, and hereby orders his immediate DISMISSAL from the service with FORFEITURE of all leave credits and retirement benefits due. He is hereby DISQUALIFIED from reemployment in the government service, including government owned and/or controlled corporations.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Callejo, Sr., J., on official leave.

[1] Rollo, pp. 1-3.

[2] Id. at 3, Annex “A” of the letter-complaint.

This is to inform you that, Mr. Erle Dwight Tubat, Mrs. Wilma T. Sojor and the Heirs of Jesesu Tubat, represented by Mrs. Susana Tuble vda. de Tubat, in view of their willingness to have the properties, subject of the herein Civil Case No. 12932, entitled Erle Dwight Tubat vs. Glenda Tubat et al., for Partition, etc., be settled, have initially put-up a partial contribution of P3,000.00 each for the Commissioners to start their duties in finding and making table surveys in regard thereto, thru ocular inspection, in preparation for an actual survey that will be done on each property that belongs to the conjugal partnership of the late spouses Cesario Tubat and Nazaria Diaz.

In connection therewith, the Commissioners are humbly requesting your good self to also share in the expenses that will be incurred during the exercises of their duties relative to the afore-stated purpose/s, this is, however, in pursuant to the order of the court, dated October 16, 2002, the dispositive portion of which reads as follows: “xxx---the expenses to be shouldered by the heirs on pro-rata basis---xxx”.

[3] Id. at 116-118, Memorandum of the OCA dated October 6, 2004.

[4] Id. at 26-28.

[5] Id. at 30.

[6] Sec. 3, Rule 69, 1997 Rules of Civil Procedure.

[7] TSN, November 13, 2003, pp. 5-6; Rollo, pp. 68-69. See also the following testimony in TSN, October 29, 2003, p. 3, Rollo, p. 31:

Q: In what capacity did you receive the amount?

A: As Officer-in-Charge, Ma’am, and likewise as Acting Chairman of the Commission.

Q: Did you have authority to act as Chairman of Commission?

A: As Officer-in-Charge, I believed, because the appointing of the chairman was given to Officer-in-Charge Mrs. Luz Tinsay and it was never revoked, it was carried to the time of Atty. Makahig. As appointed Officer-in-Charge, I had to take the responsibilities and functions of the Branch Clerk of Court at that time.

Q: But how long have you been with the Court?

A: I have been here for 29 years at present.

Q: And so as Interpreter, all throughout?

A: No, Ma’am, as Clerk.

Q: In charge of civil cases? Criminal cases?

A: In charge of civil cases, criminal cases and even cadastral cases and special proceedings.

Q: Are you aware that the Court has to issue an order to appoint a Commissioner?

A: I was aware of that. I was just doing the job as the appointed Officer-in-Charge and at the same time doing the job of the responsibility of the Clerk of Court who was on leave at that time.

[8] TSN, October 29, 2003, pp.5-6; Rollo, pp. 33-34.

[9] TSN, November 13, 2003, p. 6; Rollo, p. 69.

[10] Sec. 9, Rule XIV, Omnibus Civil Service Rules.

[11] 367 Phil. 235 (1999), citing *Bornasal, Jr. vs. Montes*, 280 SCRA 181 (1997), citing *Atty. Wilfredo C. Banogon vs. Felipe T. Arias, Sheriff III, Office of the Clerk of Court, MTCC, Davao City*, AM No. P-97-1240, June 19, 1997, 274 SCRA 17.

[12] 342 Phil. 219 (1997), citing *Lirios vs. Oliveros*, 253 SCRA 258 (1996).

[13] *Cain vs. Neri*, 369 Phil. 465 (1999).

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