

GLANIE FLORES, SYLVIA FLORES, RICHARD FLORES, TIMOTEO FLORES, LEONARDO FLORES, VIRGILIO FLORES, and DANNY FLORES, Complainants, VS. MYRNA S. LOFRANCO, Clerk III, RTC, Br. 20, Digo...

A.M. No. P-04-1914. April 30, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Myrna S. Lofranco (Lofranco), Clerk III of the Regional Trial Court (RTC), Branch 20, Digos City, stands administratively charged with immorality, misconduct and violation of Republic Act (R.A.) No. 6713 (The Code of Conduct and Ethical Standards) by complainants-brothers Richard, Danny, Virgilio, Timoteo, and Leonardo, all surnamed Flores, along with Leonardo and Timoteo's respective wives Glanie and Sylvia.

In their Affidavit-Complaint^[1] dated November 15, 2002 filed before the Ombudsman for Mindanao which endorsed it to the Office of the Court Administrator (OCA) for appropriate action,^[2] complainants alleged that respondent, whose marriage to one Venanie Lofranco, Jr. remains subsisting, is illicitly living with Sabino Flores (Sabino), a brother of the gentlemen complainants, at Emily Subdivision, Digos City.

Complainants attached to their Affidavit-Complaint, the Affidavit of Sabino's son Jestoni Flores (Jestoni),^[3] a certified true copy of the barangay blotter^[4] containing the alleged admission of Sabino that he was living with respondent at the abovementioned address, and a private document denominated as "Kasabutan"^[5] upon which respondent had signed as "Myrna Soledad Flores."

Complainants further alleged that on September 28, 2002, respondent destroyed the fence that they had erected on their late father's lot at Tanwalang, Sulop, Davao del Sur, which incident was duly reported to the barangay captain the next day as shown by the barangay blotter also attached to their Affidavit-Complaint; that while they were with their mother repairing the fence on October 5, 2002, respondent, together with Sabino and three hired persons who appeared to be armed, started taking their photographs; that respondent, who was enraged when their mother asked Sabino why he had brought other persons to the lot, proceeded to destroy the work already done thereon; and that respondent threatened them that if complainants set foot on the lot again, somebody would die.

Finally, complainants alleged that respondent turned the tables on them by filing cases against them upon the claim that they had threatened to kill, and uttered defamatory words against her, and that respondent is the same Myrna Lofranco who was reprimanded by this Court, by Resolution dated March 26, 2001, for discourtesy in the performance of official duty in A.M. No. P-01-1469.

In her Counter-Affidavit^[6] submitted to the OCA, respondent denied having any amorous relationship with Sabino, she claiming that her relationship with him was purely professional as she was the financier in their joint business venture "of inducing [sic] the mangoes planted in the two-hectare parcel of land constituting [sic] the share of Sabino Flores to bear fruits."

Admitting that she maintains her residence at Emily Homes, Digos City, respondent claimed, however, that Sabino lives at Lim Extension, Digos City.

Respondent further claimed that her marriage to Venanie Flores had failed after 14 years and that he is now living with his new family, leaving her to care for, support and send her three children to school.

Respondent's claims were corroborated by her daughter, Therese Jade S. Lofranco, in an Affidavit[7] respondent annexed to her Counter-Affidavit.

On Sabino's son Jestoni's claim in his Affidavit that she and Sabino were living together, respondent proffered that Jestoni was merely prevailed upon by his grandmother and uncles to falsely allege the same, but that, anyway, Jestoni had recanted his claim in an Affidavit of Recantation,[8] which she also attached to her Comment.

Respondent maintained that contrary to their assertion, complainants were trying to force Sabino out of his share of the property which he had planted to mangoes-subject of their joint venture. Complainants, she added, had twice destroyed the fence around the property - first, on September 28, 2002 and later on October 5, 2002 -, replacing it with theirs, thereby evicting Sabino in the process; and that between October 15 and October 17, 2002, complainants destroyed the fruits and other improvements on the property and put up a "NO TRESPASSING" sign. These acts of complainants, she claimed, resulted in financial losses to her investment.

Respondent admitted having taken photographs of complainants, but explained that that was only to protect her and the three men she had hired to spray the mangoes with chemicals.

Respondent furthermore claimed that it was in fact complainants who threatened her and her companions with harm to thus draw her to file criminal complaints against them for grave threats, grave oral defamation and grave coercion.[9]

Respecting the police blotter allegedly showing Sabino's admission that they were living together, respondent submitted that "it is a mere typographical error on the part of the desk officer taking down the report of the crime complained of."

On the "Kasabutan" adverted to by complainants, she claimed that it was prepared by armed members of the Moro National Liberation Front during a very volatile situation in which she was unaware that she was mistaken as the wife of Sabino.

On recommendation of the OCA,[10] the Court, by Resolution of November 8, 2004,[11] re-docketed the complaint as a regular administrative case and referred it to the Executive Judge of the RTC of Digos City for investigation, report and recommendation.

In her Report and Recommendation,[12] Executive Judge Marivic Trabajo Daray reported that complainants did not show up, despite notice,[13] during the preliminary conference, hence, they were declared to have waived their right to present evidence; and that respondent was accordingly allowed to present her evidence[14] which consisted of her testimony and those of her witnesses[15] and a Joint Affidavit of Desistance dated February 9, 2005 executed by complainants.

On the charge of immorality, the investigating judge found that the only evidence to prove the same was the Affidavit of Sabino's son Jestoni who, however, was not presented to affirm the affidavit and in fact he executed an affidavit of recantation.

As for the charges of misconduct and violation of R.A. No. 6713, the investigating judge found the same wanting in support.

Judge Daray thus recommended the dismissal of the present complaint.

The findings and recommendations of the Investigating Judge vis-à-vis the documentary and testimonial evidence of respondent are well taken.

It is well settled that in administrative cases, the complainant has the burden of proving the allegations in the complaint with substantial evidence.[16]

It bears stressing that Jestoni's original affidavit had not been identified by him.[17] It thus remains hearsay, bereft of substantial evidentiary value.[18]

The failure of the petitioner's counsel to put [the affiant] on the stand is fatal to the case of petitioner and renders the affidavit . . . inadmissible under the hearsay rule. Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiants statements, which may thus be either omitted or misunderstood by he one writing them. Moreover, the adverse party is deprived of the opportunity to cross examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify theteon.[19]

WHEREFORE, the administrative case against respondent, Myrna S. Lofranco is **DISMISSED**.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Nachura, and Brion, JJ.,

[*] Additional member per Raffle dated April 21, 2008.

[1] Rollo, Vol. 1, pp. 5-7.

[2] Id. at 1. The Affidavit-Complaint was endorsed by Deputy Ombudsman for Mindanao to the OCA on February 12, 2003.

[3] Id. at 13. The Affidavit of Jestoni Flores dated November 11, 2002 was appended to the Affidavit- Complaint as Annex "D."

[4] Id. at 14-15.

[5] Id. at 16-18.

[6] Id. at 38-40.

[7] Id. at 49. The Affidavit was appended as Annex "I" to the Comment.

[8] Id. at 48.

[9] Id. at 44-47.

[10] Id.at 50-53.

[11] Id.at 54.

[12] Rollo, Vol. 2, pp. 127- 132.

[13] Id. at 57. Order of Executive Judge Daray dated December 15, 2004.

[14] Id. at 59. Order dated March 1, 2005, Records, p. 63.

[15] Aside from respondent, three other witnesses were presented. Therese Jade S. Lofranco, 17, identified the Affidavit she had executed on September 26, 2003 and marked as Exhibit "9", in which she had stated that: (1) she is a daughter of the respondent, (2) her parents were separated since 1989, (3) from the time of such separation, she and her two brothers were living with respondent, and (4) she has no knowledge that her mother was living with another man other than her father.

On the other hand, Sabino Flores, 41, single, identified the Affidavit he executed on October 7, 2002 (Exhibit "10"), stating that: (1) he was with his son Jestoni Flores when the latter executed an Affidavit dated November 13, 2002 recanting a previous Affidavit in which he had stated that his father was living with respondent, that affidavit having been executed by Jestoni under duress. Sabino also identified the barangay and police blotters of the incidents involving complainants as well as the criminal complaint he had filed against complainants.

The third witness for respondent, Remedios Flores, testified that she executed an affidavit dated April 29, 2005 (Exhibit "12") in which she stated that she was present when Jestoni Flores executed his Affidavit of Recantation before City Prosecutor Norma Calatrava, and that Jestoni was living with her from 2001 to 2004 as she was exercising parental care and custody over him.

[16] Re: Dishonesty and/or Falsification of Official Document of Mr. Rogelio M. Valdezco, Jr., A.M. No. 2005-22-SC, May 31, 2006, 490 SCRA 27, 35; Adajar v. Develos, A.M. No. P-05-2056, November 18, 2005, 475 SCRA 361, 376-377; Go v. Achas, A.M. No. MTJ-04-1564, March 11, 2005, 453 SCRA 189, 195; Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 483.

[17] Vide Atty. Osias v. CA, 326 Phil. 107, 128-129 (1996); People's Bank and Trust Company v. Leonidas, G.R. No. 47815, March 11, 1992, 207 SCRA 164, 166.

[18] People v. Santos, G.R. No. L-62072, November 11, 1985, 139 SCRA 583, 586; People v. Lavarias, G.R. No. L-24339, June 29, 1968, 23 SCRA 1301, 1306-1307.

[19] People's Trust Company v. Leonidas, G.R. No. 47815, March 11, 1992, 207 SCRA 164, 166.

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