VALERIANO F. NUÑEZ, COMPLAINANT, VS. JUDGE FRANCISCO B. IBAY, REGIONAL TRIAL COURT, BRANCH 135, MAKATI CITY, RESPONDENT.

A.M. NO. RTJ-06-1984 (FORMERLY OCA IPI NO. 05-2255-RTJ). June 30, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Sinumpaang Salaysay[1] dated April 22, 2005 filed by complainant Valeriano F. Nuñez with the Office of the Court Administrator (OCA) against respondent Judge Francisco B. Ibay of Branch 135 of the Regional Trial Court (RTC) of Makati City, charging the latter with grave abuse of authority.

Complainant alleged the following in his complaint:

Complainant was a driver at the Engineering Department of the Makati City Hall. On April 1, 2005, at around five o'clock in the afternoon, he parked the government vehicle which he was driving, an L-300 van with plate number SFN-767, at the basement of the Makati City Hall and left the key in their office because drivers were not allowed to bring such vehicles home. After the flag ceremony on April 4, 2005, complainant went to the Office of the Engineering Department where he received an Order[2] from respondent Judge, directing the former to appear before the latter on that same day at ten o'clock in the morning and to explain why he occupied the parking space allotted for respondent Judge.

When complainant appeared before respondent Judge, the latter asked him if he had a lawyer. Although complainant replied in the negative, respondent Judge still further questioned the complainant. Complainant apologized and explained that he did not intend to park in respondent Judge's space, and that he did not know that such space was reserved for respondent Judge.

However, respondent Judge refused to accept complainant's apology and, instead, found the latter guilty of direct contempt of court for using the former's parking space, sentencing complainant to five (5) days imprisonment and a fine of one thousand pesos (P1,000.00).[3] Respondent then ordered the jail guard to bring complainant to the City Jail in Fort Bonifacio, where the latter was incarcerated for two days. On April 5, 2005, complainant was released after filing a Motion for Reconsideration[4] and paying the fine of P1,000.00.

In his Comment[5] dated June 27, 2005, respondent Judge alleged that judges were assigned their respective parking spaces in the basement of the City Hall of Makati City. Respondent Judge, in particular, placed a marker with his name at the space allotted to him, facilitating the orderly parking which allowed him to work as early as seven o'clock in the morning, almost daily. He stated that he already programmed his activities to maintain and/or improve his present position as the third ranking judge for the year 2004 among the RTC judges of Makati City.

Respondent Judge claimed that on the date and time in question, he was set to dispose a criminal case, and over the weekend, had even conceptualized the matter on how to administer the proceedings to accomplish the requirements of that criminal case. However, the inconsiderate and improper parking of complainant disturbed his

train of thought as to the intended disposition of his cases.

In addition, respondent Judge recounted that there were similar incidents which happened to him. Sometime in August 2002, Allan Macrohon, Rodrigo Gonzales, and Redeem Ongtinco caused an overflow of water into the chambers of respondent Judge, damaging his computer system at the old RTC. On March 18, 2005, Venancio P. Inonog, security-driver of the Chief of the Business Permit Section of Makati City, also parked his vehicle at respondent's parking slot. On April 12, 2005, John Panaligan, electrician of the Makati City Hall, erroneously switched off the electrical outlets of respondent Judge's sala.

Respondent Judge cited Macrohon, Gonzales, Ongtinco, Inonog, and Panaligan in contempt on the ground that they disrupted respondent Judge's performance of official duties. In turn, Macrohon et al., Inonog, and Panaligan all filed their respective administrative complaints[6] against respondent Judge.

On November 25, 2005, the OCA recommended that the instant complaint be redocketed as a regular administrative matter, and that respondent Judge be fined ten thousand pesos (P10,000.00) for grave abuse of authority.[7]

In its Resolution[8] dated March 15, 2006, the Court referred the administrative case to Associate Justice Renato Dacudao of the Court of Appeals for investigation, report and recommendation within ninety (90) days from receipt of the records. On June 22, 2006, the Investigating Justice issued an Order setting the said case for hearing.

The Investigating Justice submitted a Partial Report on September 6, 2006 in which he stated that he had just finished receiving the evidence for the parties and required them to submit their respective memorandum. He also asked for an extension of two months from September 20, 2006, or until November 20, 2006, within which to submit his Final Investigation, Report and Recommendation.

In his Investigation, Report and Recommendation dated September 22, 2006, the Investigating Justice concluded:

> Based on the testimonies of both parties and their witnesses, the undersigned Investigating Justice believes that the complainant was not the person who parked the van on respondent judge's parking slot, but rather that it was Oscar de los Reyes. Complainant during the hearing maintained that he parked the L-300 van in the middle, and not on the side, which was the parking slot assigned to respondent judge. Although the witness, Oscar de los Reyes testified that, after buying "merienda" (on April 2, 2005), he parked the van at the same place, he failed to explain where exactly he parked the van. Thus, we cannot discount the possibility that De los Reyes might have parked the van at the same place, meaning the basement parking, but not necessarily on the very same spot or slot.
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> But whether it was complainant or it was Oscar de los Reyes who parked the van, it would not change or alter the fact that respondent judge committed grave abuse of authority in holding the complainant in contempt of court for parking on his slot. Respondent judge himself declared that had he known that it was De los Reyes who parked the van he would not have asked complainant to explain, but instead De los Reyes. x x x In addition, why still subject complainant to further humiliation by having him handcuffed, like a common criminal, after citing him for contempt of court? Obviously, respondent judge was really bent on citing for contempt of court the person responsible for doing the parking in the parking slot which he believed, (perhaps erroneously), was his assigned parking slot. Obviously, too, there is a streak of cruel sadism, of pettiness or meanness, in respondent judge's character, as it would seem that he could not refrain from exhibiting such excesses as causing the manacling (apparently in open court at that), of an unintentional offender like the complainant herein, who had the misfortune to injure, if innocuously, his wounded pride and ego as a judge.
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> x x x x

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In this case, the undersigned Investigating Justice finds no reason why complainant's act of parking on the parking slot of respondent judge would constitute contempt of court. It may have caused respondent judge some delay in immediately parking his car that morning of April 4, 2005, but to say that the "one-hour disruption" delayed the administration of justice would be stretching the logic of the situation too much. According to respondent judge, "time is of the essence" in his decision-making program. But the irony of it is that the amount of time respondent judge allotted in hearing the explanation as well as the motion for reconsideration of complainant in this case must have cost him more than the one hour he claimed he lost.

As justification for his actions, respondent judge said that because of the "prior or previous incidents" he was convinced that the particular incident was intentional and deliberate. Such reasoning is unacceptable. There was no showing that complainant or Oscar de los Reyes intentionally or deliberately parked the van on respondent judge's slot in order to purposely annoy or irk him. And, even if it did annoy or irk respondent judge, he should remember that, the power to cite persons in contempt is at his disposal for purposes that are strictly impersonal, because that power is intended as a safeguard not for the judges as persons, but for the official functions that they exercise or perform.

Besides, it was unfair for respondent judge to assume that complainant knew of the prior or previous incident, where respondent judge cited a driver for contempt of court for parking on his parking slot, just because both drivers are employees of the Makati City Hall; this is clearly a non-sequitur. And, assuming that complainant knew of the said incident, this alone would not prove that what he did was intentional or deliberate.

Neither would respondent judge's allegation, that someone, "an unknown person inside," is orchestrating the filing of these cases against him for the chief or sole purpose of harassing him, exonerate him of the charge. To begin with, he failed to present any proof to substantiate this allegation. All he could point to are mere coincidences or speculations. What is more, respondent judge seemed to have taken some kind of pleasurable satisfaction in citing these complainants in contempt of court simply for parking on the slot which he assumed was allot(t)ed to him; or for switching the lights off in his office; or for accidentally drenching his computers. He, in fact, even admitted having issued all these Orders to punish the complainants in these cases for disrupting or disturbing him in performing his duties; hence, he cannot blame these persons for filing a case or cases against him, as these persons must have felt aggrieved by his actuations in precipitately citing them for contempt. Nor can he accuse "an unknown person" of orchestrating all of these. All the cases or incidents he mentioned only strengthened the undersigned Investigating Justice's perception that respondent judge has an unseemly propensity for abusing the power granted to him by law.

Respondent judge ought to be reminded that as a member of the bench, he is expected to take recourse to the contempt power only as a last resort, when all other alternative courses of action are exhausted in the pursuit of maintaining respect for the court and its processes; and that when a less harsh remedy can be availed of by the judge, he should at all times hesitate to use his contempt power, and instead opt for the less harsh remedy.

Thus, if respondent judge wanted to "teach complainant a lesson," he could have done so by merely reprimanding or admonishing him considering that when complainant appeared before respondent judge he immediately begged for forgiveness.

Respondent judge's act of citing complainant in contempt of court for parking on his slot is a violation of Rule 2.01 of the Code of Judicial Conduct, which provides that "A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

x x x x

For the reasons heretofore stated, the undersigned Investigating Justice finds respondent judge guilty of grave abuse of authority for using contempt as a retaliatory measure - aggravated in this case by a streak of cruel sadism, of pettiness or meanness, in respondent's character, as elsewhere indicated.

> RECOMMENDATIONS
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> Notwithstanding the finding of guilt of the respondent judge, the undersigned Investigating Justice deems that certain circumstances must be considered in imposing the proper penalty.
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> It must be noted that respondent judge has a very good performance record. His strong adherence to the Supreme Court's reminder that, "members of the judicial branch - judges and judicial personnel alike - to be conscientious, diligent and thorough in the performance of their functions. At all time(s) they must observe the high standard of public service required of them." is quite admirable and commendable. Also, he already admitted his error in declaring complainant in contempt of court. All these may be taken as mitigating circumstances which could alleviate his culpability.
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> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the undersigned Investigating Justice hereby recommends that the respondent Judge be fined in the amount of PESOS: FIVE THOUSAND (Php5,000.00) with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

In a Resolution dated February 7, 2007, the Court referred the administrative matter to the OCA for evaluation, report and recommendation, within thirty (30) days from notice, on the propriety of consolidating the instant case with the other administrative cases filed against respondent Judge.

In its Memorandum dated March 30, 2007, the OCA observed that:

> After a cautious evaluation of the entire records of the instant case, this Office agrees with the Investigating Justice's findings that respondent committed grave abuse of authority in citing complainant in contempt of court. Respondent wrongly argues that complainant delayed the administration of justice when he improperly parked the van on respondent's assigned slot which disrupted his scheduled disposition of cases. Respondent's reaction to the complainant's mistake is exaggerated. The complainant's act may have caused inconvenience to the respondent but it could not delay the administration of justice.
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> There is no evidence to show that complainant Nuñez parked the van at respondent's slot purposely to annoy him or he was aware of the previous similar incident which involved Venancio Inonog. In fact, complainant explained that his mistake was not deliberate and he asked for respondent's forgiveness. Respondent likewise failed to substantiate his allegation that someone is orchestrating the filing of administrative cases against him for the sole purpose of harassing him. The other complainants cannot be faulted for filing the said cases as they may have felt aggrieved by respondent's actuations in citing them for contempt for flimsy and personal reasons.
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> Respondent's order dated April 4, 2005 citing complainant Nuñez in contempt of court betrays not only his ignorance as regards the Rule on Contempt of Court, but it also shows his despotic nature. The fact that respondent had also declared Inonog, Panaligan, Macrohon and two others in contempt of court shows that he does not possess the judicial temperament which a judge should possess. x x x
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> The power to punish for contempt must be used sparingly with due regard to the provisions of the law and the constitutional rights of the individual. It should be exercised strictly for the preservation of the dignity of the court and its proceedings. In the instant complaint, respondent exercised the said power in an arbitrary and oppressive manner and for purposes that are purely personal.
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> The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary. When the judge himself becomes the transgressor of the law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the judiciary itself.

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> After a cautious evaluation of the entire records of the instant case, this Office finds the recommended penalty not commensurate to respondent's offense. This is not respondent's first offense. He had been administratively sanctioned for grave abuse of authority and was ordered by the Court to pay a fine on June 21, 2006 in the case of Panaligan v. Ibay docketed as A.M. No. RTJ-06-1972. In the case filed by Allan Macrohon, et al., docketed as A.M. No. RTJ-06-1970, respondent was ordered by the Court to pay a fine of P25,000.00 for gravely abusing his authority and was also warned that a repetition of the same or similar offense shall be dealt with more severely. Respondent has another pending case filed by Venancio Inonog for the same charge. In the said case of Allan Macrohon, et al. against respondent, the Court stated that "the similarity of the charges in these administrative complaints against him betrays a deplorable proclivity for the use of contempt powers at the slightest provocation."
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> Taking into consideration that the instant complaint is a third transgression of a similar offense, this Office recommends that respondent Judge Francisco B. Ibay be SUSPENDED for FOUR (4) MONTHS with STERN WARNING that a repetition of similar act shall be dealt with more severely.

In its Resolution dated July 25, 2007, the Court required the parties to manifest whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted within 30 days from notice.

In its Resolution dated November 21, 2007, the Court deemed as served upon the complainant the copy of the Resolution dated July 25, 2007 which was sent to complainant, but was returned unserved with postman's notation "RTS-Unknown."

In its Resolution dated March 3, 2008, after failure of respondent Judge to manifest whether he was willing to submit the case for decision on the basis of the pleadings/records already filed and submitted as required in the Resolution dated July 25, 2007, the Court deemed the case for decision.

The issue which lies before this Court is whether respondent Judge can be held administratively liable for grave abuse of authority in citing complainant for contempt of court.

The power to hold a person in direct contempt is provided for under Section 1, Rule 71 of the Rules of Court, which reads:

> SECTION 1. Direct contempt punished summarily. - A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day or both, if it be a lower court.

In Sison v. Caoibes, Jr.,[9] the Court held that the power to declare a person in contempt of court, however plenary as it may seem, must be exercised judiciously and sparingly. A judge should never allow himself to be moved by pride, prejudice, passion or pettiness in the performance of his duties.

Respondent Judge averred that someone was out to harass and embarrass him, which was why six different complaints were simultaneously filed against him, prompting him to cite the complainants for contempt of court. He explained that the individual acts of the complainants were contemptuous, including herein complainant's improper parking, because they disrupted the speedy administration of justice.

The Court disagrees. Aside from the fact that respondent Judge failed to substantiate his allegation, the Court does not see how the improper parking by complainant, or by a certain Oscar dela Cruz, could, even in the remotest

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manner, disrupt the speedy administration of justice. At most, it would cause respondent Judge inconvenience or annoyance, but still, this does not fall under any of the aforementioned acts for which a person could be cited for contempt. Neither does it appear from the records, nor from the evidence presented, that complainant intended any disrespect toward respondent Judge. In fact, upon being summoned, complainant immediately apologized for his mistake.

In Oclarit v. Paderanga,[10] the Court held that the power to punish for contempt must be exercised on the preservative, not vindicative, principle and on the corrective and not retaliatory idea of punishment. Courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons, but for the functions that they exercise.

By the time the instant complaint was filed, respondent Judge had already cited six persons for contempt, including herein complainant. Worse, respondent Judge immediately detained complainant, thereby preventing him from resorting to the remedies provided under Section 2, Rule 71 of the Rules of Court, cited as follows:

> SEC.2. Remedy therefrom. - The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of certiorari or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

Such abusive behavior on the part of respondent Judge fails to show his integrity, which is essential not only to the proper discharge of the judicial office, but also to his personal demeanor.[11] In addition, Sections 1 and 2, Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary[12] state that:

> SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
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> SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

The Court believes that the frequency of his offenses already constitutes gross misconduct. "Gross" has been defined as flagrant and shameful, while "misconduct" means a transgression of some established and definite rule of action, willful in character, improper or wrong behavior.[13] Under Section 8(3), Rule 140 of the Rules of Court, gross misconduct is classified as a serious offense punishable under the sanctions enumerated under the same Rule, Section 11 of which provides that:

> SEC. 11. Sanctions. - If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
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> - Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
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> - Suspension from office with salary and other benefits for more than three (3), but not exceeding six (6) months; or
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> - A fine of more than P20,000.00, but not exceeding P40,000.00.

In previous cases wherein judges cited persons for contempt without legal basis, the Court has found respondents guilty of grave abuse of authority and usually imposed a penalty of reprimand with a warning, or a fine of P5,000.00 with a warning.[14]

However, respondent Judge has been twice administratively sanctioned by the Court for the same offense. In Panaligan v. Ibay,[15] respondent Judge was found to have abused his authority in citing a person for contempt without sufficient legal basis, for which he was sentenced to pay a fine of P5,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely. In Macrohon v. Ibay,[16] he was again found liable for the same offense and sentenced to pay a fine of P25,000.00, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.

In view of respondent Judge's penchant for citing persons for contempt even without legal basis, the Investigating Justice recommended that he be ordered to pay a fine of P5,000.00 with a stern warning, while the OCA recommended that he be suspended for four (4) months with a stern warning. Considering that respondent Judge had opted to avail himself of the Optional Retirement under Republic Act (R.A.) No. 910, as amended by R.A. No. 5095 and Presidential Decree (P.D.) No. 1438, effective at the close of office hours of August 18, 2007, which was approved by the Court (First Division) per Resolution dated November 14, 2007,[17] provided that the amount of Four Hundred Thousand (P400,000.00) Pesos shall be retained/withheld from his retirement benefits to answer for whatever adverse decision the Court may later impose upon him in A.M. No. RTJ-06-1984 (herein case) and OCA IPI No. 05-2248-RTJ, the Court, therefore, deems it appropriate to impose a fine of P40,000.00, with a stern warning that a repetition of the same or similar acts in the future would be dealt with more severely.

WHEREFORE, respondent Judge Francisco B. Ibay is found GUILTY of grave abuse of authority for citing complainant Valeriano F. Nuñez for contempt without legal basis, and is ORDERED to PAY a FINE of Forty Thousand Pesos (P40,000.00), to be deducted from his retirement benefits, which in this case shall be deductible from the Four Hundred Thousand Pesos (P400,000.00) withheld from his retirement benefits, per Resolution dated November 14, 2007.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Bersamin, JJ., concur.
Carpio Morales, J., on leave.

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[1] Rollo, pp. 1-3.

[2] Id. at 4.

[3] Id. at 5.

[4] Id. at 6-7.

[5] Id. at 14-18.

[6] Docketed as OCA-IPI No. 05-2246-RTJ, OCA-IPI No. 2248-RTJ, and OCA-IPI No. 05-2247-RTJ, respectively.

[7] Rollo, pp. 19-22.

[8] Id. at 23-24.

[9] A.M. No. RTJ-03-1771, May 27, 2004, 429 SCRA 258.

[10] 403 Phil. 146 (2001).

[11] New Code of Judicial Conduct for the Philippine Judiciary, Canon 2.

[12] A. M. No. 03-05-01-SC, effective June 1, 2004.

[13] Black's Law Dictionary Abridged Fifth Ed., pp. 359 and 517.

[14] Panaligan v. Ibay, A.M. No. RTJ-06-1972, June 21, 2006, 491 SCRA 545; Office of the Court Administrator v. Paderanga, A.M. No. RTJ-01-1660, August 25, 2005, 468 SCRA 21; Ruiz v. How, 459 Phil. 728 (2003).

[15] Supra note 13.

[16] Macrohon v. Ibay, A.M. No. RTJ-06-1970, November 30, 2006, 509 SCRA 75.

[17] A.M. No. 12796-Ret. (Re: Application for Optional Retirement under R.A. 910, as amended by R.A. 5095 and PD 1438, of Hon. Francisco B. Ibay (Judge, Regional Trial Court, Branch 135, Makati City).

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