ANG KEK CHEN, COMPLAINANT, VS. JUDGE AMALIA R. ANDRADE, BRANCH 5, REGIONAL TRIAL COURT, MANILA, RESPONDENT.

A.M. No. RTJ-99-1504. November 16, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an administrative case filed by Ang Kek Chen against respondent Judge Amalia R. Andrade of the Regional Trial Court, Branch 5, Manila, for serious misconduct, gross inefficiency, and extreme bias and partiality. The complaints, four (4) in all, have been filed against respondent judge in connection with her handling of Civil Case No. 90-52142, entitled "Visayan Surety and Insurance Company v. Estate of Choi Chee Ten, et al.," of which complainant Ang Kek Chen is one of the defendants.

The complaints were referred to the Office of the Court Administrator, which on January 25, 1999, submitted a report, the pertinent parts of which read:

> In a VERIFIED COMPLAINT dated June 2, 1997, complainant charged respondent Judge Amalia R. Andrade, RTC, Branch 25, Manila with serious misconduct relative to Civil Case No. 90-52142 entitled "Visayan Surety and Insurance Company vs. Estate of Choi Chee Tin, et al."
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> Complainant, who is one of the defendants in the aforecited civil case, alleges that on May 20, 1997, he went to respondent court to look into the case records and discovered that the Order dated April 22, 1997 denying his Motion for Disqualification was not mailed to him nor to his counsel allegedly upon instruction of respondent Judge. He asserts that upon verification of the case records, he noticed that no proof of service was attached to the record to show that the aforesaid Order was also mailed to plaintiff's counsel, Atty. Parungao. Upon inquiry, he was informed that Atty. Parungao personally received said Order when the latter attended the hearing on April 22, 1997. However, when he requested for proof of service thereof, none was shown him. He argues that respondent Judge's concealment of the said Order shows her extreme bias and hostility against him and his counsel. In this complaint, he therefore prays for the disqualification of respondent Judge.
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> On June 30, 1997, another VERIFIED COMPLAINT was again filed by complainant against respondent Judge for serious inefficiency relative to the care and custody of the records of Civil Case No. 90-52142. He claims that sometime in June 1997, he inspected the records of the case and found the same in disheveled/dilapidated condition, with no cover, with the papers merely stapled, and worse with a considerable number of pages missing. Consequently, on July 3, 1997, he filed a supplement to his complaints captioned "Motion to Act and Motion to Order Disqualification" on ground of shabby record-keeping.
>
> In a VERIFIED COMPLAINT dated January 9, 1998, complainant charged respondent Judge with serious inefficiency and serious misconduct for violation of Canon 18 of the Canons of Judicial Ethics (Influence of decisions upon the development of the law), and violation of Canon 1 (A Judge should uphold the integrity and independence of the judiciary), Canon 2 (A Judge should avoid impropriety and the appearance of impropriety in all activities) and Canon 3 (A Judge should perform official duties honestly, and with impartiality and diligence) of the Code of Judicial Conduct claiming that during one of the hearings of the case, plaintiff's counsel manifested before the Court that the other defendant, Mr. Tui Hok, died on January 5, 1990. Despite

admission of plaintiff's counsel of the fact of death of Mr. Tui Hok, respondent court kept on sending orders and notices to the deceased at 114 West Riverside St., Quezon City, which, according to complainant, is in violation of the Rule that no court can acquire jurisdiction over a dead person.

Complainant likewise alleges that on September 16, 1997 he filed an Omnibus Motion praying for the substitution of the deceased defendant Tui Hok by his heirs and for summons to be served on the latter. Despite repeated follow-ups, manifestations and motions, respondent Judge refused to act on said Omnibus Motion and instead issued the Order dated December 11, 1997 setting the case for trial for the last time on January 21, 1998 with or without the presence of defendants' counsel.

Complainant further alleges that during the hearing on December 11, 1997, he made a verbal request to cite plaintiff's counsel in contempt for failure to attend the hearing despite due notice. In open court, respondent Judge shouted, mocked and sneered at him and told him, in a voice full of hatred, that he does not know the legal procedure as it was not the appropriate pleading; and

In a LETTER-COMPLAINT dated September 7, 1998, complainant charged respondent Judge with bias and partiality alleging that the latter obstinately refused to inhibit/disqualify herself from trying the case despite numerous motions filed by complainant.

In two comments, the first undated[1] and the second one dated December 28, 1998,[2] respondent judge denied the accusations leveled against her by complainant. First, she attributes the filing of the complaints against her to her denial of complainant's motion to suspend proceedings in Civil Case No. 90-52142. She alleged that complainant retaliated by filing several motions for her inhibition, all of which were denied by respondent judge in an Order, dated September 13, 1996. Despite the denial of his motion, complainant persisted in filing pleadings based on the same grounds.

Respondent judge explained that when she took over Civil Case No. 90-52142, the records already consisted of three volumes, but the case had yet to be tried. She claimed that when all of complainant's pleadings which contain caricatures were segregated, they made up another thick volume. She likewise claimed that Civil Case No. 90-52142 had been assigned to other judges before her but no one wanted to have the case after experiencing the practice of complainant of filing numerous pleadings, strewn with caricatures and newspaper clippings, and containing offensive, scurrilous and libelous language not germane to the issues of the case.

Second, respondent judge denied that she had concealed her Order of April 22, 1997. She explained that it is her practice to dictate her orders in open court immediately after the proceedings in each case; that the orders are transcribed, corrected, signed, and released in the afternoon or in the morning of the following day; and that it is the clerk of court who released the orders.

Respondent judge alleged that complainant would go to the court a day before the scheduled hearing of his case or early in the morning before the start of the trial, but would not attend the actual trial or send his lawyer to represent him. Instead, he would return in the afternoon after the morning's proceedings to check on what had transpired and get a copy of any order issued that day. Complainant, however, refused to sign the receipt of orders served on him and denied having been furnished a copy of the same.

Third, with respect to the charge that notices and orders continued to be sent to defendant Tui Hok, respondent judge explained that it was because no proof had been submitted to her court to prove the reported death of defendant Tui Hok.

Finally, respondent judge contended that complainant had failed to substantiate the charges of her alleged character deficiencies and vindictiveness. She admitted that, once, she issued a stern warning to complainant after a member of her staff caught complainant writing on the minutes of the hearing of his case. Respondent judge

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confronted complainant and told him that the minutes were public records and he was altering, if not falsifying, public records.

After evaluating the facts, the Office of the Court Administrator recommends that:

> - this instant complaint be RE-DOCKETED as an Administrative Matter;
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> - with the exception of the charge relative to the care and custody of case records, the complaint against respondent Judge Amalia R. Andrade be DISMISSED for failure to substantiate the charges;
>
> - respondent Judge be REPRIMANDED and ADVISED to be more vigilant in the supervision and management of the personnel and the state of the docket in her sala; and
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> - the directive of this Court in its Resolution dated July 29, 1997 in A.M. No. 95-8-274-RTC (Re: Letter-Complaint of Mr. Ang Kek Chen) to REFRAIN from filing his pleadings with this Court containing as in the previous pleadings, scurrilous and libelous remarks be REITERATED otherwise he will be made to account for his acts.

These recommendations are well-taken.

Indeed, the records show that complainant has been persistently filing pleadings containing extraneous matters such as caricatures, newspaper clippings, and quotations. In its Memorandum, the Office of the Court Administrator points out that complainant "is not a lawyer but claims to have substantially read law books that helped him understand substantive legal principles and procedural rules. His incursions into lawyering resulted in the institution and prosecution of his cases in different fora where he dogmatically pontificates on errors supposedly committed by judges, lawyers and court personnel."[3] Worse, the pleadings and motions filed by complainant contain remarks which are scurrilous and libelous. Complainant was advised to secure the services of counsel, but he has insisted on preparing his pleadings by himself. His co-defendant's counsel offered his services, which apparently complainant has refused. The result has been that complainant has not only brought the judicial process into disrepute but caused a delay in the disposition of his case.

Nor is there any basis for the charge of serious inefficiency against respondent judge based on her alleged failure to take judicial notice of the death of defendant Tui Hok despite manifestations of plaintiff's counsel.

Under §16, Rule 3 of the 1997 Rules of Civil Procedure, it is provided that:

> Death of party; duty of counsel. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of a counsel to comply with this duty shall be a ground for disciplinary action. . . .

Clearly, the duty of informing the court of the death of a party is on the counsel of the deceased.[4] In Heirs of Maximo Regoso v. Court of Appeals,[5] we held:

> Under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased. . .
>
> The rules operate on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the names and addresses of his legal representative or representatives.
>
> In the case at bar, no such notice of death, nor a motion for substitution of the deceased defendant, was ever made. Hence, the trial court could not be expected to know or take judicial notice of the death of defendant,

> Maximo Regoso, without the proper manifestation from his counsel. It must be remembered that the fault or negligence was Attorney Javier's alone.

Respondent judge cannot be blamed for sending copies of the orders and notices to defendant Tui Hok in the absence of proof of death or manifestation to that effect from his counsel. Nor can she be faulted for not resolving the Motion for Substitution filed by complainant as co-defendant in the civil case, and opting instead to reset the case for trial.

We likewise agree with the finding of the Court Administrator that complainant failed to substantiate his allegation of serious misconduct. There is no basis for the allegation that the failure to serve him a copy of the order dated April 22, 1997 was due to the instruction of respondent judge. In Apiag v. Judge Cantero,[6] we ruled that in order that a judge may be held liable for serious misconduct, there must be "reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules." There is no such evidence presented in this case.

With respect to the charge of bias and partiality against respondent judge resulting from her denial of complainant's Motions for Inhibition, this Court's Circular No. 7, dated November 10, 1980, provides that "all orders arising from motions for inhibition should not be treated as administrative in character but should be considered as judicial. The party who alleges to be aggrieved may apply for the appropriate legal remedy. In the absence of such a proceeding, the order either for or against inhibition stands."

Conformably with this circular, complainant should have moved for reconsideration or filed a petition for certiorari under Rule 65 of the Rules of Court. As we held in Flores v. Abesamis:[7]

> Even assuming arguendo that there was reasonable ground for belief on Flores' part that Judge Abesamis was refraining from acting on his motions, out of bias or hostility or other improper motive, there were obvious judicial remedies readily available to him to obtain relief - the existence and availability of which precluded his resort to criminal, civil or administrative proceedings against the Judge.
>
> As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The ordinary remedies against errors or irregularities which may be regarded as normal in nature (i.e., error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The extraordinary remedies against error or irregularities which may be deemed extraordinary in character (i.e., whimsical, capricious, despotic exercise of power or neglect of duty, etc.) are inter alia the special civil actions of certiorari, prohibition or mandamus, or a motion for inhibition, a petition for change of venue, as the case may be.
>
> Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.

However, we find complainant's allegation that the records of Civil Case No. 90-52142 have not been properly kept. This is shown by photographs submitted by complainant.[8] It is noteworthy that respondent judge has neither contradicted this matter nor offered any explanation therefor.

The keeping of records is of course the job of clerks of courts.[9] Nonetheless, it is incumbent upon judges to see to it that the personnel of the courts perform their duties well and to call the attention of the clerk of court

whenever they fail to do so.[10]

On the other hand, complainant should be sternly warned to stop filing unnecessary and frivolous pleadings and motions, especially those decorated with caricatures, newspaper clippings and quotations, which not only contravene the requirements of the Rules of Court on pleadings but also trivializes judicial proceedings.

WHEREFORE, the administrative case against respondent judge is DISMISSED. However, she is ADMONISHED to see to it that the records of cases in her sala are properly kept. On the other hand, complainant is ORDERED to refrain from filing unnecessary pleadings and motions.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 21-25.

[2] Id., pp. 428-431.

[3] Id., p. 439.

[4] Spouses Cordova v. Judge Tornilla, 316 Phil. 522 (1995).

[5] 211 SCRA 348, 351-352 (1992). (Emphasis added)

[6] 335 Phil. 511, 523 (1997).

[7] 275 SCRA 302, 315-316 (1997).

[8] Rollo, pp. 196-199.

[9] Rule 136, §§6-7; Bandong v. Ching, 268 SCRA 1 (1997).

[10] See Secretary of Justice v. Legaspi, 107 SCRA 234 (1981).

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