

MODESTO KALALANG, COMPLAINANT, VS. JUDGE JOSE F. FERNANDEZ, RESPONDENT.

Adm. Case No. 175-J. June 10, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaints filed by the Mayor of Bacolod City, Hon. Romeo G. Guanzon (Case No. 176-J) and one Modesto Kalalang (Case No. 175-J) against the Hon. Jose F. Fernandez, Judge of the Court of First Instance of Negros Occidental, Branch V, the first, for alleged inefficiency, incompetency, physical incapacity, impunctuality, intemperance, abuse of authority, gross partiality, ignorance of the law, serious misconduct and maladministration of justice and the second, for alleged oppression.

The said charges and the respective answers there-to of respondent are adequately summarized in the re-port, dated May 7, 1971, of the Honorable Juan P. Enri-quez, Justice of the Court of Appeals, who was designa-ted by this Court to conduct the necessary investiga-tion as follows:

"Re: Adm. Case No. 175-J, for OPPRESSION

"Modesto Kalalang alleges in his complaint that on May 7, 1970, at about 8:30 A.M., he was ordered ar-rested by the respondent Judge for having taken his picture while he was entering his sala; that he was detained at respondent's chamber for some 30 minutes after which he begged of respondent to allow him to go to the comfort room; that emerging from the comfort room, he went out to confer with his lawyer but when he returned, respondent's sala was already closed; that four days later he was subpoenaed to appear and explain why he should not be punished for contempt; that when he appeared he was admonished and reprimanded.

"In answer, respondent admits the allegations of the complaint as substantially correct except the averment on detention, alleging that petitioner was called to the chamber to explain his actuation and was advised to telephone the mayor who ordered him to take his pictures and to call his counsel to assist him in giving his explanation in open court, and that he was reprimanded after pleading guilty and begging for forgiveness.

"Re: Adm. Case No. 176-J, for INEFFICIENCY, INCOMPETENCY, PHYSICAL INCAPACITY, IMPUNCTUALITY, INTEMPERANCE, ABUSE OF AUTHORITY, GROSS PARTIALITY, IGNORANCE OF THE LAW, SERIOUS MISCONDUCT AND MALADMINISTRATION OF JUSTICE.

"Romeo G. Guanzon, Mayor of Bacolod City, charges respondent Judge under three specifications: (1) physical in-capacity to discharge the functions of his office; (2) partiality and intem-perance in Civil Case No. 9059; and (3) abuse of authority, partiality, ig-norance of the law, serious misconduct and maladministration of justice in connection with Civil Case No. 6689.

"Under Specification No. 1, peti-tioner alleges that the respondent judge starts morning session late and ends it early; that he seldom hold sessions in the afternoon; that he renders less than five hours of duty a day; and that he is physically unfit to discharge his duties as a Judge.

"Under Specification No. 2, peti-tioner alleges that during the hear-ing of Civil Case No. 9059, the

re-spondent Judge failed to protect Atty. Jules Rabago from scurrilous and in-sulting language of a Chinese witness; and that he even held said attorney in contempt of court.

"Under Specification No. 3, petitioner alleges that the respondent Judge heard a petition for preliminary attachment before the amended complaint could be served upon the defendants in Civil Case No. 6689; that he ordered the garnishment of the property of a third-party; that he issued an order different from what he verbally assured defendant's counsel; that he issued an order of execution pending appeal which might be stayed upon the filing of a P50,000.00 supersedeas bond, knowing fully that provincial branches of surety companies for such sum need-ed prior approval of the Manila offices; that he personally instructed the office of the clerk of court to expedite issuance of the writ of execution; that he ordered the manager of a surety company to execute a certificate of solvency to be attached to the bond; that he issued a supplemental order without resolving defendant's motion for reconsideration; and that he allows his employees to offer for sale his personal effects.

"In answer to Specification No. 1, respondent Judge denies the imputation of late start and early termination of morning sessions, admitting but attributing to some lawyers some instances though; admits few sessions in the afternoon due to reluctance of some lawyers to attend; admits some instances of daily service of less than five hours when physically indisposed but ready at a nearby residence for any and all exigencies; and admits physical weakness but asserts mental alertness. Respondent alleges that the affidavits attached to the complaint for support are unreliable, because the affiant Romeo Gonzaga is a relative of complainant Romeo Guanzon and the first was the counsel of the latter in eight cases which were dismissed for lack of evidence, and that affiant Jules Rabago is a poor loser and apparently sick mentally.

"In answer to Specification No. 2, respondent alleges that Atty. Rabago was found guilty of contempt in Civil Case No. 9059 which he served for six hours, while the mandamus petition arising from Civil Case No. 9064 was dismissed by this Honorable Court and it would be a waste of time to discuss a closed case.

"In answer to Specification No. 3, respondent refrains from discussing the subject thereof because the same is on appeal in the Court of Appeals under CA-G.R. No. 36005-R, and therefore is sub judice, but he observes the appalling ignorance of the lawyer therein. He denies the imputation that he ever offered for sale his personal effects to litigants. He adds an alleged incident with complainant City Mayor of Bacolod City, insinuating that these cases are the offshoots of his refusal to yield to pressure in several cases the Mayor was interested in."

In the same report, Justice Enriquez analyzed the evidence presented by the complainants to substantiate said charges thus:

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"Only petitioner Modesto Kalalang testified in support of his complaint. He merely reiterated the recitals of his complaint and his affidavit annexed thereto.

"Re: Adm. Case No. 176-J.

"In support of the complaint of Mayor Romeo G. Guanzon, he presented Messrs. Romeo G. Gonzaga, Jules Rabago, Felipe Lacson, Luz Datu Lacson in addition to his testimony.

"Affirming the recitals of his affidavit, Atty. Romeo Gonzaga declared that respondent required the presence of lawyers as early as 8:30 only to arrive late and then terminated the morning sessions as early as 11:00 A.M.; that his interpreter often asked attorneys to postpone their hearings because the respondent Judge was not feeling well; that at times the respondent Judge was attacked by paroxysms of coughing thereby forcing him to suspend the session for some time; that he had the habit of making it appear in his orders that the trial had to be postponed for lack of material time although such was not the real reason; and that at times after this witness was through with his hearings in other salas, he noticed that respondent Judge had not started his

hearings.

"Atty. Jules Rabago likewise affirmed the recitals in his affidavit declaring that he received insulting answers from a Chinese witness in Civil Case No. 9059; that instead of protection, he got from the respondent Judge an order to be jailed by the bailiff; that when he inquired why, respondent closeted himself in his chamber; that he saw the respondent Judge the next day who suggested that the penalty for contempt would be set aside, if he should apologize; that he turned down the suggestion believing he did nothing wrong; that the respondent subsequently disregarded his order; and that the respondent is sickly and comes to court late and leaves early.

"Atty. Luz Lacson, likewise affirming the recitals of her affidavit, declared that respondent Judge heard the petition for preliminary attachment in Civil Case No. 6689 before the amended complaint could be served upon defendants; that he caused to be garnished properties of third persons; that the interpreter advised her to settle the case amicably because they would surely lose the same; that the same interpreter then offered to sell the car and air-conditioner of respondent for P23,800.00 which she and her husband refused to buy; that they lost the case thereafter as forewarned; that respondent issued an order for immediate execution, although he had previously assured her co-counsel that the motion for execution would be denied; that at the hearing thereon, respondent was even arguing in favor of the motion for execution pending appeal; that she filed a motion for reconsideration of the order for immediate execution, but the respondent Judge rendered it moot with the issuance of a supplemental order allowing the defendants to file a supersedeas bond; that contrary to usual practice, respondent caused prompt personal service of the decision and orders. Mr. Felipe Lacson was not presented as a witness, since he would merely corroborate his wife's testimony.

"Complainant City Mayor of Bacolod declared that respondent's interpreter tried to intercede for his superior in settling these administrative cases, but that he refused; and that in presenting this case, he was motivated by a desire to have judicial cases speedily disposed of.

"The respondent Judge submitted the cases without testimonial evidence. He however submitted a written memorandum with documentary evidence annexed thereto."

It is to be noted that respondent did not present any oral evidence and submitted the case for resolution upon the submission of a memorandum with annexes, consisting of certain certifications and copies of motions and orders.

We have gone over the evidence thus submitted by the parties to Justice Enriquez. We are satisfied that, on the whole, the observations and conclusions made and arrived at by the investigator in his report are amply supported by the evidence in the record. So also is the investigator's recommendation that respondent be exonerated from all the charges against him in these cases.

As to the charge of oppression by complainant Kalalang, We find that the respondent was not without reason to summon said complainant and require him to explain why he was taking pictures of respondent, without his consent. Even representatives of the mass media are not entirely free to take photographs in the premises of the court, without at least priorly advising the presiding judge. Actually, respondent did not call complainant to account necessarily because of the picture-taking. More accurately, what impelled the summons for a contempt hearing was the seeming ruse which was practiced by complainant of pretending he would go to the comfort room only to disappear. It appears that what respondent actually wanted was for complainant to call the Mayor, who, incidentally, is the complainant in the other case, so that the matter of the instructions allegedly given by said Mayor to complainant to photograph the respondent may be threshed out in a formal hearing. In any event, with the apology given by complainant to respondent on May 12, 1970, which, according to complainant satisfied respondent, the matter was considered closed. After all, from a reading of complainant's own testimony, We find that the alleged detention of the complainant in respondent's chamber for about thirty minutes is unfounded, for what actually happened was that respondent merely gave instructions for the complainant to wait therein and not

to leave as other matters had to be attended to by respondent in the meanwhile. Of course, he also told his bailiff that complainant should not leave without his (the respondent's) permission. Indeed, We do not see how any administrative sanction can be imposed upon respondent for such an incident, which the parties themselves considered closed on May 12, 1970 and made the subject of a complaint only on July 10, 1970, the same day Mayor Guanzon filed his own complaint, which parenthetically, appears to have been prepared since April 17, 1970 and sworn to on May 26, 1970 yet.

With respect to the charges of Mayor Guanzon, other than the one about the alleged physical and mental incapacity of respondent to perform the duties of his position, which will be taken up lastly in this opinion, We approve the findings and conclusions of Justice Enriquez on the matter, which are contained in his report as follows:

"2. The incident leading to the issuance of contempt order against Atty. Jules Rabago has its pros and cons. The quoted portions of the transcript of the proceedings show some insulting answers from a Chinese witness which admittedly so incensed Atty. Rabago that he approached the witness with an accusing finger warning that something untoward would have happened had the incident occurred outside the courtroom. The respondent Judge failed to admonish the witness, striking his gavel when Atty. Rabago reacted sharply thereto. If respondent Judge, who is a Tagalog, understood the insulting remarks spoken in the Hinigayon dialect, his intervention against Atty. Rabago would be ill-timed and biased, not justified under Rule 132, Section 19, of the Rules of Court, calling for the protection of a witness under certain circumstances. It appears though that the reaction of Atty. Rabago upon the answer of the witness as well as of respondent Judge against Atty. Rabago who was approaching the witness with an accusing finger followed each other in split seconds before the insulting remarks of the witness could be translated to English.

"The issuance of the contempt order against Atty. Rabago might not have been motivated by downright malice or ill will. He admittedly spoke loud because of his hoarse voice in his desire to be heard. The respondent Judge evidently construed the high pitch as disrespectful and contemptuous, but that was not all. The order was likewise premised upon his having allegedly left the trial without the court's permission before the trial could be adjourned. On the other hand, the whole thing appears not so serious as pictured, because Atty. Rabago did not actually go to jail.

"If there is anything condemnable in the incident, it was when the respondent Judge shouted at the bailiff to jail Atty. Rabago. He thus exhibited unrestrained emotion which might be attributed to an uncontrollable temper characteristic of some nervous ailment. The record of the proceeding does not reflect how loud or contemptuously Atty. Rabago spoke. While the substance of his statement which incensed the respondent Judge to order his incarceration, seems to bear the humility of a pleader, it could have been said in a manner characteristic of a lawyer who was just insulted by a witness, if not resentful for alleged lost cases decided by the respondent Judge. That the respondent Judge left the courtroom for his chamber aided by his bailiff shows how strongly he was disturbed by the incident. If this does not show the impotency of his anger, it manifests to some extent an attempt to check it, however late it might be.

"3. Except for some personal interest imputed to the respondent Judge in favor of a Chinese national in Civil Case No. 6689, which should have been at least personally denied by him were it not the truth, the facts complained of by Atty. Luz Datu Lacson refer to utterances or representations made by respondent's bailiff, interpreter and deputy clerk and the adverse order for immediate execution despite the assurance given Atty. Lalisian by respondent Judge. The charges being penal in nature, the undersigned is not inclined to draw adverse inferences from the imputations. At least, the *res inter alios acta* rule would be a deterrent against taking such action of the employees as reflecting adversely against respondent. It is true that Judges must like Caesar's wife be beyond suspicion, so to speak, but such suspicion must be engendered by the Judge's own acts, not by the words of others. Complainant should have brought the matter up to the Judge for confirmation and only thru his reaction may he be judged.

"A neutralizing factor is the un rebutted insinuation and allegation that complaining witnesses and attorneys are relatives of losers in cases decided adversely by respondent Judge. No reason has been offered for taking such serious accusation in silence. It has not been met even with a denial in petitioner's memorandum which was filed in reply to that of respondent.

"With respect to the procedural complaints made against the respondent in connection with Civil Case No. 6689, suffice it to mention that no prejudice was alleged to have been suffered from his hearing the petition for preliminary attachment before the amended complaint could be served upon the defendants, which prior service was not shown to be extremely necessary; that the garnishment or attachment of properties of third persons was not the fault of the attaching or garnishing sheriff and that the remedy under Rule 57, Section 14, of the Rules of Court, was available to such third persons; that the offer to sell respondent's car and air-conditioner made by third parties who were not shown to have been commissioned by respondent to sell them particularly to litigants. With the appealed judgment not actually executed, because Atty. Lacson filed a supersedeas bond, we see nothing therein for which the respondent may be dismissed.

"The acts imputed to the respondent Judge could hardly constitute the grounds alleged for respondent's dismissal. They are not of such magnitude and gravity as would establish any of the statutory grounds for dismissal of a Judge of First Instance - serious misconduct and inefficiency as construed in the cases of *In re Impeachment of Horilleno* (43 Phil. 212), *Lacson vs. Roque et al.* (92 Phil. 456), *Ochate et al. vs. Deling et al.* (105 Phil. 389). His reversed judgments are attributable to errors of judgment rather than wrongful intention. Determination of cases on the merits without the record of said cases is risky. The mere reversal of decisions by appellate courts is insufficient and unjust basis for a conclusion of ignorance of the law of the trial judge, especially when those affirmed are not considered. No Judge would feel safe if reversal of his judgment would constitute sure index of his ignorance of the law."

Coming now to the alleged physical and mental incapacity of respondent, it must be emphasized that, although the respondent did not testify before Justice Enriquez, the record suggests that he was present in some parts of the investigation and the investigator actually had the opportunity to observe his physical condition. Nevertheless, to have further assurance of the exact physical and mental condition of the respondent, the Court agreed that the writer of this opinion personally see the respondent in Bacolod City, as, any-way, he was going there for other purposes.

All relevant things considered, the Court feels that, considering that respondent has intimated to this writer his determination to retire as soon as these cases are decided by this Court and inasmuch as under Section 2 of Republic Act No. 910, as amended by Republic Acts 2614 and 5095, on the retirement of members of the judiciary, it is the Secretary of Justice who is called upon to certify to the permanent physical disability of a judge of the Court of First Instance, for purposes of immediate retirement with the benefits provided therein, there is no imperative necessity for this Court to make any express and specific ruling on the alleged physical and mental incapacity of respondent.

Undoubtedly, and this is admitted expressly in his own memorandum in his defense, respondent is suffering from a physical ailment that impairs his mobility to such an extent that he cannot walk alone. It cannot also be denied that his disease, which is basically of the nerves, has to a great extent affected his mental disposition and temperament and even his power of speech. There is no question that further effort on his part to discharge the heavy burdens and responsibilities of a judicial magistrate will only aggravate his condition and correspondingly reduce his remaining capacity for the work required of his position. While it is not proper on the one hand, that a judge, as a public servant who has been rendering public service continuously for almost three decades and a half without any serious derogatory record, should be just unceremoniously cast aside simply because he has outlived his usefulness, on the other, it is but fair to the public interest that the smooth and efficient administration of justice should not in any degree be knowingly allowed to be impaired by the physical ailment and consequent

handicaps of an incumbent magistrate. Public policy demands that the outcome of judicial proceedings should reflect maximum efficiency and, as much as possible, excellence of performance on the part of those who man the courts. Naturally, these cannot be expected from one who suffers an incurable malady so obviously affecting the functioning of the nerves as to impair his powers of locomotion and speech and to cause frequent paroxysms of coughing and what is worse, shortness of temper. The propensity of a judge to lose patience without much provocation does not lend to the equanimity and judiciousness that should be the constant marks of a dispenser of justice.

What is obviously happening to the respondent is that after such a long service to the government, one-half thereof in the judiciary, and being only fifty-eight years old, he feels that he should be allowed to render more service to the people, even as he knows the handicaps that afflict him. To be sure, such an attitude should be appreciated rather than condemned. No-thing in the record suggests that respondent is insisting to continue on the job for any improper motive or purpose. It is simply that he honestly believes he is still equal to the task assigned to him. We can see, however, that he is, to put it mildly, already very tired. It is evident that over thirty-four years of continuous work has told heavily on his health. As we see it, only a long deserved rest can save him, and the earlier he gets it, the better. Respondent should realize that by taking early advantage of the opportunity to rest and to still regain part of his former self, he will at the same time be rendering a valuable contribution to the administration of justice to which he has been devoted for so long and which he must be most interested to promote because then his court will again be able to function as well as it should under someone better physically fit for the tremendous and arduous job therein.

In other words, without necessarily finding and holding that respondent is already permanently disabled to perform the duties of a judge, it is our considered opinion that in his present physical and mental condition, the respondent may well be entitled to his just rewards for his long and unblemished service to the government and that he would promote in a big way the best interests of the administration of justice, if he sought the benefits of retirement with the proper administrative authorities soonest.

IN VIEW OF ALL THESE CONSIDERATIONS, these two administrative complaints are hereby dismissed. Let a copy of this decision be furnished the Secretary of Justice.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., on leave.

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