

ROGELIO PESOLE, COMPLAINANT, VS. MUNICIPAL JUDGE LUCIO L. RODRIGUEZ, OF TABOGON, CEBU, RESPONDENT.

A.M. No. 755-MJ. January 31, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

In his verified complaint, dated May 16, 1974, complainant Rogelio Pesole of Cebu City charged respondent Lucio L. Rodriguez, Municipal Judge of Tabogon, Cebu, with "Misconduct and/or Misbehavior" for having acted as counsel of one Pedro Apa in the preliminary investigation for falsification before the Office of the Provincial Fiscal of Cebu, and for having notarized the documents of said Pedro Apa, which documents became the basis of the falsification charge.

Required to comment on the complaint, respondent Judge vehemently denied the charges, explaining that he notarized the affidavit of Pedro Apa in his capacity as ex-officio notary public and that during the preliminary investigation of the falsification charge against Pedro Apa, a cultivator of a piece of land belonging to him (respondent), he acted not as counsel but as "moderator" or "amicus curiae", with the implied permission of the Fiscal. Subsequent to the filing of said comment, respondent filed with this Court no less than four (4) petitions, all praying for the formal investigation of the complaint or its dismissal for being malicious or groundless.

Pending investigation of the administrative charges, the President of the Philippines accepted respondent's courtesy resignation. In view thereof, this Court, in a Resolution dated March 10, 1976 in connection with respondent's request for admission of additional proofs, dismissed this case for being moot and academic.

In an undated motion, received by this Court on May 13, 1976, respondent prayed that the Resolution of this Court of March 10, 1976 be set aside and that his urgent petition dated May 7, 1976 praying, among other things, for formal investigation of this case at the earliest date convenient to the Court, be entertained. On August 10, 1976, this Court resolved to set aside its previous order and to refer the complaint to the Executive Judge of the Court of First Instance of Cebu City for investigation, report and recommendation.

Pursuant to said referral, Judge Mariano A. Zosa, Executive Judge of the Court of First Instance of Cebu City, set the complaint for hearing on September 20, 21, and 22, but because the complainant was not duly notified thereof, the hearing was reset to October 6, 8, and 11, 1976. Meanwhile, Judge Zosa received a letter, dated September 30, 1976, from complainant Rogelio Pesole formally withdrawing his complaint against respondent on the ground of lack of interest with the further information that he was no longer appearing in the scheduled investigation to substantiate his complaint.

Notwithstanding the formal withdrawal of the complaint by the complainant, respondent insisted on presenting his evidence which the Investigating Judge accordingly received on October 6, 1976. The evidence presented by the respondent to prove the falsity of the charges consisted of documents, namely: letter of the respondent dated August 13, 1974 addressed to the Provincial Fiscal of Cebu requesting for clarification on the question of whether or not he appeared as counsel for Pedro Apa (Exhibit "1"), and the 1st indorsement thereon dated August 19, 1974

of Provincial Fiscal Santiago N. Medida stating that as per record of the investigation there is no such appearance (Exhibit "1-A"); certification of the stenographer during the formal investigation, stating that nobody entered his appearance as counsel for Pedro Apa (Exhibit "2"); transcript of stenographic notes evidencing that respondent did not enter any appearance as counsel for Pedro Apa (Exhibit "5"); and the certification of Judge Eusebio Arnoco, Acting Municipal Judge of Tabogon, Cebu, to the effect that the affidavit executed by Pedro Apa was subscribed and sworn to before respondent. Judge in his capacity as Municipal Judge and ex-officio notary public of Tabogon, Cebu.

In his "Findings and Recommendation", the Investigating Judge recommends the dismissal of the complaint and the exoneration of the respondent on the ground that the charges have not been substantiated.

Upon an examination of the records of this case, We find the recommendation of the Investigating Judge well-taken. The rule is that charges of misconduct against judges should be proven by clear and convincing evidence, otherwise they should be dismissed. Thus, in *Valle v. Campos, Jr.*,^[1] where the complainant, in like manner as the complainant in the present case, manifested in writing that he was withdrawing his complaint because he was no longer interested in the further prosecution of the case, We dismissed the complaint because the charges thereon could not be substantiated. So, too, in *Pawaki v. Malik*,^[2] where the complainant appeared for the hearing of the administrative case without counsel and witnesses, and, upon being asked if he was ready to proceed with the investigation of the charges filed against respondent judge therein, manifested that he was withdrawing his complaint for the simple reason that he had no evidence to support it, We dismissed the complaint considering that no evidence was submitted by the complainant to substantiate the charges. Considering that in the present case complainant not only failed to present any evidence substantiate his complaint but, on the other hand, respondent has presented proofs which show the falsity of the charges, We can do no less than approve the recommendation of the Investigating Judge.

It may be apropos to mention here that in certain cases, the acceptance by the President of respondent's courtesy resignation does not necessarily render the case moot or deprive Us of the authority to investigate the charges. In *Perez v. Abiera*,^[3] We have said that the rule that the resignation or retirement of the respondent in an administrative case renders the case moot and academic is not a hard and fast rule. Each case is to be resolved in the context of the circumstances present thereat. Thus, We explained:

"* * * (T)he jurisdiction that was Ours at the time of filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. * * * If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation."

WHEREFORE, the present complaint is DISMISSED and the respondent exonerated of the charges therein.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Santos, J., on leave.

[1] Administrative Case No. 282-J, August 15, 1974, 58 SCRA 334.

[2] Administrative Matter No. 6-MJ, November 28, 1975, 68 SCRA 130.

[3] Administrative Matter No. 223-J, June 11, 1975, 64 SCRA 302, 306-307.

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