ARSENIA T. BERGONIA, COMPLAINANT, VS. JUDGE ALICIA B. GONZALEZ-DECANO, RESPONDENT.

A.M. No. RTJ-99-1505 (Formerly A.M. No. 99-692-RTJ). October 29, 1999

Ponente: BUENA, J.

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BUENA, J.:

In an affidavit-complaint, Ms. Arsenia T. Bergonia charges Judge Alicia B. Gonzalez-Decano, RTC, Branch 48, Urdaneta City, Pangasinan, with bias and partiality and conduct unbecoming of a judge and violation of Canon 3, Rule 3.04 of the Canons of Judicial Conduct.

Complainant is the defendant in Civil Case No. U-6061 entitled “Gretchen V. Parayno, represented by her Attorney-in-Fact, Dr. Rodolfo E. Parayno, vs. Arsenia Bergonia,” for Recovery of Possession and Ownership with Damages, which was heard and tried by respondent Judge.

On October 15, 1996, after due trial, respondent rendered a judgment in the said civil case in favor of the plaintiff and against the defendant, ordering the latter to vacate the property in question.[1]

Aggrieved by the Decision, complainant appealed the same to the Court of appeals which dismissed the appeal in a Resolution dated June 25, 1998, for failure of the appellant (herein complainant) to file the necessary appellant’s brief despite extensions given to her. On July 21, 1998, plaintiff through counsel filed a Motion for Execution and Demolition. The trial court set the hearing on the motion on August 4, 1998.

Complainant alleges in her complaint that during the said scheduled hearing, respondent herein humiliated her by saying in open court, “Bakit hindi ka pa umalis?” (referring to the property subject matter of the civil case), “Naiintindihan mo ba itong nakasulat dito?” (referring to the motion for execution and demolition), to which complainant answered, “Mayroon po akong abogado” and proceeded to wait for her counsel. When complainant’s counsel arrived, he requested that he be given ten (10) days within which to file an opposition to the motion for execution and demolition, but was granted only five (5) days. This motion for execution and demolition was denied by respondent Judge in an order dated August 18, 1998.

Complainant further alleges that on several occasions, whenever her counsel is late for the hearings, respondent will say in open court, “Siguro, hindi mo binabayaran ang abogado mo?”

Complainant claims that the actuations of respondent constitute conduct unbecoming of a judge and are a clear case of bias and partiality in favor of the plaintiff, Gretchen V. Parayno, who is the daughter of the incumbent mayor of Urdaneta City, Pangasinan and is represented by her mayor-father, as attorney-in-fact, in this case.

On March 16, 1999, Senior Deputy Court Administrator Reynaldo L. Suarez required the respondent Judge Decano to comment on the complaint.

In her Comment dated April 7, 1999, respondent alleged among others that: 1.) she is an applicant for the position of Associate Justice of the Court of Appeals, by reason of which, her name was published in newspapers of

general circulation for the purpose of informing the public; that some disgruntled lawyers made use of the complainant to file this petty administrative case against her for lack of any legitimate cause to pin her down, and to malign her reputation in an attempt to poison the Judicial and Bar Council; and 2.) she denies the allegation of complainant that she showed bias and partiality when, in a jesting manner, she told the latter only once on August 4, 1998 and "NOT on several occasions" as alleged in the complaint, that perhaps her lawyer is not around because he is not being paid for his services; that Atty. Merrera, counsel for the defense, came late on that day; and that comments such as these are made by some judges too, in a joking manner, but they are not uttered to show any bias or prejudice against any litigant.

On April 19, 1999, complainant filed a Motion with Leave of Court to File Reply, containing the following allegations:

> 1. Complainant was never influenced by anybody in the filing of this administrative complaint against Judge Alicia Gonzalez-Decano. Complainant's counsel on record never had a hand in the filing of this case. In fact, disbarment proceedings against said counsel had been initiated by complainant, on account of his negligence which resulted in the dismissal of complainant's appeal in the Court of Appeals.
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> 2. Complainant has no knowledge or information that respondent Judge is an applicant to the Court of Appeals. Complainant believes that she has a legitimate cause in filing this administrative case against respondent.
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> 3. Respondent admitted in her Comment that on August 4, 1998, she told complainant that the latter's lawyer is not around because she does not pay him, but that this was said "in a joking manner." This is a lie. Respondent was so serious at that time and "galit na galit." Besides, the court is not a venue for jokes. Serious issues are being discussed in court. Respondent's manner of saying those statements caused humiliation and anxiety to complainant because there were a lot of people present on that day in court.
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> 4. On another occasion, respondent even told complainant, "Umalis ka na sa loteng ito! Bakit, hindi mo ba naiintindihan yung order ng Court of Appeals na talo ka?" This conduct of respondent clearly tarnishes the integrity of the judiciary.
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> 5. The filing of this administrative complaint is not, as alleged by respondent in her comment, motivated by the fact that complainant "could not get the terms she wanted from the Court of Appeals," and so "her ire turned towards" the respondent. In filing this administrative case, complainant is, among others, questioning the propriety of the premature hearing conducted by respondent on plaintiff's motion for execution and demolition notwithstanding the fact that the records of the case are still with the Court of Appeals and the latter has yet to issue the Entry of Judgment. Respondent's act of entertaining the motion despite knowledge that the appeal has not attained finality is a clear indication of bias in favor of the plaintiff who is the incumbent mayor of Urdaneta City, Pangasinan.
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> 6. There are other similar litigants whom complainant knows to be victims also of respondent's improper conduct but who are afraid to file charges or make their grievances known.

The charge of bias and partiality leveled against respondent is baseless and unfounded, hence must be dismissed. Complainant avers that the hearing on the motion for execution and demolition should have been deferred considering that the Court of Appeals has yet to issue an Entry of Judgment and the original record, together with its oral and documentary evidence is still with the Court of Appeals and has not been remanded to the court of origin.

The respondent judge denied the defendant's motion for execution and demolition through an Order dated August 18, 1998 because what plaintiff submitted were only certified xeroxed copies instead of certified true copies of the entry of the resolution of the Court of Appeals. This circumstance defeats complainant's claim that respondent is biased and partial to the plaintiff.

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Also, plaintiff's contention that the motion for execution should have been deferred considering that the original records of the case together with the oral and documentary evidence is still with the Court of Appeals and has not been remanded to the court of origin, is erroneous.

There is no need to wait for the records of the case to be remanded to the court of origin before moving for the execution of the judgment of the trial court. All that the law requires is that the appeal be duly perfected and finally resolved before execution may be applied for.

The second paragraph of Section 1, Rule 39 of the 1997 Rules of Civil Procedure provides that:

> "If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party."

In his book, "Remedial Law Compendium"[2] Justice Florenz D. Regalado made the following explanations relative to the above-quoted provision of the Rules of Court:

> "The second paragraph of this section is an innovation in response to complaints over the delay caused by the former procedure in obtaining a writ of execution of a judgment, which has already been affirmed on appeal, with notice to the parties. As things then stood, after the entry of judgment in the appellate court, the prevailing party had to wait for the records of the case to be remanded to the court of origin when and where he could then move for the issuance of a writ of execution. The intervening time could sometimes be substantial, especially if the court a quo is in a remote province, and could also be availed of by the losing party to delay or thwart actual execution.
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> "On these considerations, the Supreme Court issued Circular No. 24-94, dated April 18, 1994, approving and promulgating in advance this amended Section 1 of Rule 39 and declaring the same effective as of June 1, 1994.
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> "Under the present procedure, the prevailing party can secure certified true copies of the judgment or final order of the appellate court and the entry thereof, and submit the same to the court of origin with and to justify his motion for a writ of execution, without waiting for its receipt of the records from the appellate court. That motion must be with notice to the adverse party, with a hearing when the circumstances so require, to enable him to file any objection thereto or bring to the attention of said court matters which may have transpired during the pendency of the appeal and which may have a bearing on the execution sought to enforce the judgment."

With regard to the alleged act of respondent Judge of uttering, in open court, insulting and offensive language directed towards complainant herein, thereby humiliating her in the presence of so many people, we find that the judge thereby deserves admonition.

While respondent admits having uttered the words "Siguro, hindi mo binabayaran ang abogado mo," she however claims that the same were said in jest. Complainant, on the other hand, insists that this is not so. She maintains that the statement was made in a serious and very angry tone.

After studying the records of the case, the Court is inclined to give more credence to the allegations of the complaint. In the first place, complainant is an ordinary person, wielding neither power nor influence. It is thus doubtful whether she will institute the instant administrative complaint against respondent Judge unless she is convinced that her allegations could withstand judicial scrutiny. In the second place, complainant would not have exerted effort in filing a reply to respondent's comment to refute the latter's allegations therein and to reiterate her grievances, if she does not truly believe in the legitimacy of her cause.

Respondent, on the other hand, did not even bother to give an explanation with respect to the other two (2) similarly insulting statements likewise allegedly uttered by her, to wit: “Bakit hindi ka pa umalis? Naiintindihan mo ba itong nakasulat dito?” and “Umalis ka na sa loteng ito! Bakit, hindi mo ba naiintindihan ‘yung order ng Court of Appeals na talo ka?”

Time and again, the Supreme Court has reminded judges that their official conduct should be free from and be untainted by the appearance of impropriety, and his or her personal behavior, not only upon the bench and in the performance of judicial duties, but also in his or her everyday life, should be beyond reproach.[3]

Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.[4]

From the standpoint of conduct and demeanor expected of a judge, resort to intemperate language only detracts from the respect due a member of the judiciary and becomes self-destructive.[5]

Respondent has departed from the proper judicial decorum by using such intemperate and insulting language directed towards complainant herein. Her choice of words is not proper. As a judge, respondent should not resort to the use of undignified language. Respondent forgets that a judge should be prudent and more circumspect in his or her utterances, remembering that his or her conduct in and outside the courtroom is under constant observation.

Canon 3, Rule 3.04 of the Code of Judicial Conduct provides that “A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.”

Obviously, respondent Judge was remiss in observing the conduct expected of a member of the judiciary. She failed to exert such courteousness and patience expected and demanded of a judge.

WHEREFORE, respondent Judge Alicia B. Gonzalez-Decano, RTC, Branch 48, Urdaneta, Pangasinan is ADMONISHED for exhibiting conduct unbecoming of a judge, and for violation of Canon 3, Rule 3.04 of the Code of Judicial Conduct by uttering uncalled-for statements during the trial of Civil Case No. U-6061. The charges of bias and partiality against respondent is dismissed for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Quisumbing, J., on official business.

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[1] Motion for Execution and Demolition, Rollo, p. 12.

[2] 6th Revised Edition, c. 1997, pp. 399-400.

[3] Panganiban vs. Guerrero, Jr. 242 SCRA 11.

[4] Padilla vs. Zantua, Jr., 237 SCRA 670.

[5] Court Employees of the RTC, Br. 27, Gingoog City vs. Galon, 265 SCRA 770.

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