

**ATTY. BERTENI C. CAUSING AND PERCIVAL CARAG MABASA,
COMPLAINANTS, V. PRESIDING JUDGE JOSE LORENZO R. DELA
ROSA, REGIONAL TRIAL COURT, BRANCH 4, MANILA, RESPONDENT.**

OCA IPI No.17-4663-RTJ. March 07, 2018

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CAGUIOA, J:

Before the Court is the Complaint[1] dated January 6, 2017 filed before the Office of the Court Administrator (OCA) by Atty. Berteni C. Causing (Atty. Causing) and Percival Carag Mabasa a.k.a. Percy Lapid (Mabasa) against respondent Judge Jose Lorenzo R. Dela Rosa (respondent Judge Dela Rosa), Presiding Judge, Regional Trial Court (RTC), Branch (Br.) 4, Manila.

Antecedents

Atty. Causing and his client, Mabasa (Complainants), charged respondent Judge Dela Rosa with gross ignorance of the law, gross misconduct and gross incompetence for reversing[2] the dismissal of Criminal Case Nos. 09-268685-86 entitled *People v. Eleazar, et al. (Libel Cases)*, wherein Mabasa was one of the accused.

Complainants alleged that the Libel Cases were dismissed by former Acting Presiding Judge Gamor B. Disalo (Judge Disalo) in an Order[3] dated April 13, 2015 on the ground that the right of the accused to speedy trial had been violated. The prosecution filed a Motion for Reconsideration of the April 13, 2015 Order before the RTC Br. 4 Manila, now presided by respondent Judge Dela Rosa.

Respondent Judge Dela Rosa granted the prosecution's Motion for Reconsideration in the assailed Resolution[4] dated November 23, 2015 (November 23, 2015 Resolution), the pertinent portions of which read:

x x x x

In opposition thereto, counsel for the accused cites double jeopardy. However, several settings of this Court showed that the resetting was on motion of counsel for the accused and hence with the consent of the accused. Further, the questioned Order dated April 13, 2015 has not yet attained finality, so double jeopardy is not yet attached.

Further, the records of this case would show that the accused is not entirely without blame as to why this case has been pending. Aside from that, the accused filed a Motion to Quash as well as accused's Motion for Reconsideration thereto resulting in the conduct of the arraignment only in the last year of September.

The prosecution should be given its day in court. To deny the Motion For Reconsideration is a (sic) deny to prosecute on the part of the prosecution.[5]

Complainants questioned respondent Judge Dela Rosa's November 23, 2015 Resolution granting the prosecution's Motion for Reconsideration because, according to them, it was elementary for respondent Judge Dela Rosa to know that the prior dismissal of a criminal case due to a violation of the accused's right to speedy trial is equivalent to a dismissal on the merits of the case and, as such, granting the prosecution's Motion for

Reconsideration was tantamount to a violation of the constitutional right against double jeopardy.[6] Complainants averred further that it was unacceptable, given respondent Judge Dela Rosa's position and the presumption of his knowledge of the law, for him to have disregarded a rule as elementary as the constitutional right of an accused against double jeopardy.[7]

Complainants also criticized respondent Judge Dela Rosa's act of referring to the Integrated Bar of the Philippines (IBP) Atty. Causing's two (2) separate posts on his Facebook and blogspot accounts about the subject criminal cases. They reasoned that respondent Judge Dela Rosa should have first required Atty. Causing to show cause why he should not be cited in contempt for publicizing and taking his posts to social media. Atty. Causing emphasized that the posts were presented using decent words and thus, it was incorrect for respondent Judge Dela Rosa to refer his actions to a disciplinary body such as the IBP. Atty. Causing further asserted that he did not violate the sub judice[8] rule because this rule cannot be used to preserve the unfairness and errors of respondent Judge Dela Rosa.[9]

In a 1[st] Indorsement[10] dated January 16, 2017, the OCA directed respondent Judge Dela Rosa to file his Comment within ten (10) days from receipt thereof. [11]

In his Comment[12] dated March 13, 2017 (Comment), respondent Judge Dela Rosa averred that he had already reversed the November 23, 2015 Resolution as early as June 20, 2016 or way before the filing of the Complaint on January 6, 2017 — when he issued a Resolution[13] of even date, which states:

x x x While the records of the cases will show delay also attributable to the defense and that this court was acting in the spirit of fairness, the April 13, 2015 Order of Hon. Disalo should be upheld to the prejudice of fairness. Being caught between a rock and a hard place, liberality is afforded to the accused. x x x

xxxx

As the records would show that the Hon. Judge Disalo dismissed these cases on the right of speedy trial, double jeopardy attaches. Hence, this Court's Resolution dated November 23, 2015 is recalled and set aside. The dismissal dated April 13, 2015 as dictated in the Order of Hon. Judge Disalo is reinstated.

While the right of due process of the State may have been circumvented, the interest of the private complainants with regard to the civil aspect of the cases is protected as the dismissal of the subject criminal cases is without prejudice to the pursuit of civil indemnity.[14]

Respondent Judge Dela Rosa explained in his Comment that he had issued the November 23, 2015 Resolution because, after studying the records, he discovered that Complainants caused much of the delay in the proceedings.[15]

Respondent Judge Dela Rosa then enumerated in his Comment the instances wherein Complainants caused the delay in the proceedings in the Libel Cases:

- While the warrant of arrest for Mabasa was issued on May 28, 2009, it was only one (1) year and four (4) months after or on September 28, 2010 that Mabasa was detained;[16]
- Mabasa filed a Motion to Dismiss on November 30, 2010;[17]
- The arraignment and pre-trial of the cases were reset after then Presiding Judge Marcelino L. Sayo, Jr. (Judge Sayo) issued an Order dated April 6, 2011, which indicated that Mabasa, through counsel, moved that the scheduled arraignment and pre-trial be reset in order "for the parties to settle the civil aspect of these cases";[18]
- The counsel of Mabasa filed an Urgent Motion for Deferment dated June 9, 2011 requesting again for the re-scheduling of the arraignment and pre-trial;[19]

- The pre-trial of the case was again rescheduled in an Order dated August 24, 2011 by the lower court due to the absence of Mabasa's co-accused, Johnson L. Eleazar;[20]
- Mabasa filed a Motion to Quash dated October 11, 2011, citing the court's lack of jurisdiction;[21]
- The lower court, in an Order dated June 27, 2012, rescheduled again the arraignment and pre-trial, citing the absence of the private prosecutor, Mabasa and his counsel;[22]
- Judge Sayo thereafter issued an Order dated November 28, 2012, directing the issuance of warrants of arrest against Mabasa and co-accused Gloria Galuno due to their continued non-appearance in court;[23]
- In an Order dated December 12, 2012, Judge Sayo lifted the warrants of arrest against Mabasa and his other co-accused in the Libel Cases after their counsel admitted that their non-appearance in the previous hearing was due to the fault of their counsel's law Office.[24]
- The hearing of the case on June 30, 2014 was rescheduled after Mabasa moved for the resetting of the case due to the absence of his counsel;[25]
- In an Order by Judge Disalo dated August 11, 2014, counsel for Mabasa was absent again. Mabasa was finally arraigned after the court appointed one of the lawyers from the Public Attorney's Office as counsel de oficio for Mabasa;[26]
- The Commissioner's Report dated September 23, 2014 stated that the preliminary conference failed to push through due to the absence of Mabasa and his counsel;[27] and
- The initial date of the presentation of the prosecution evidence was set on April 13, 2015 by the branch clerk of court. Notably, the cases against Mabasa would be dismissed on the same day.[28]

Respondent Judge DelaRosa emphasized that the day the Libel Cases were dismissed, i.e., on April 13, 2015, was actually the date set for the first actual trial of the cases. He stressed that the delay of almost five (5) years in the subject cases was attributable more to Mabasa than anyone else.[29]

Respondent Judge Dela Rosa claimed that the November 23, 2015 Resolution was issued in good faith and after evaluation of the evidence submitted by each party. He denied that the same was motivated by bad faith, ill will, fraud, dishonesty, corruption or caprice. In fact, Respondent Judge issued this as a matter of fairness — that is, to give the private complainants in the Libel Cases an opportunity to pursue against Mabasa and his co-accused the civil aspect of the Libel Cases.[30]

Finally, respondent Judge Dela Rosa stressed how the filing of this administrative complaint against him — on January 6, 2017, or after he had already reversed the November 23, 2015 Resolution through his June 20, 2016 Resolution — is pure harassment.[31]

OCA Report and Recommendation

In a Report and Recommendation[32] dated June 28, 2017, the OCA recommended that the administrative complaint against Judge Dela Rosa be dismissed for lack of merit.

After considering the allegations in the Complaint and respondent Judge Dela Rosa's Comment, the OCA found that in the absence of any proof that respondent Judge Dela Rosa was ill-motivated in issuing the November 23, 2015 Order and that he had, in fact, issued his June 20, 2016 Resolution reversing himself, the charge of gross ignorance of the law should be dismissed.

The OCA ratiocinated as follows:

The main issue in this administrative complaint is rooted in respondent Judge's issuance of the Order dated 23 November 2015[5], reversing the previous one dismissing the criminal cases on the ground of violation of the right of the accused to speedy trial. Respondent Judge has already admitted that he made a mistake in issuing the said order as this would have constituted a violation of the right of the accused against double jeopardy. To rectify his error, he granted the motion for reconsideration filed by the accused.

Although not without exceptions, it is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. In "Republic of the Philippines v. Abdulwahab A. Bayao, et al." [33], the Court explains the general rule that the purpose of a motion for reconsideration is to grant an opportunity for the court to rectify any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. The wisdom of this rule is to expedite the resolution of the issues of the case at the level of the trial court so it can take a harder look at the records to come up with a more informed decision on the case.[34] (Emphasis supplied)

The OCA found that the records of the case show that respondent Judge Dela Rosa admitted that he had erred in issuing the November 23, 2015 Order, but that he had rectified such mistake.[35] The OCA held that this is precisely why our judicial system has remedies for both the party-litigants and the court to avail of if need be.[36] The OCA asserted that it would be absurd to still hold respondent Judge Dela Rosa liable despite his rectification through his June 20, 2016 Resolution.[37]

As to the referral by respondent Judge Dela Rosa to the IBP of Atty. Causing's act of posting matters pertaining to the pending criminal case on the internet, the OCA disagreed with Atty. Causing's argument that respondent Judge Dela Rosa should have first required him to show cause for having done so.[38] The OCA explained that respondent Judge Dela Rosa cannot just exercise his contempt powers on a whim, if not haphazardly, if he believes that he has other remedies to resort to, just like in this case.[39]

The Court's Ruling

In view of the foregoing, the Court hereby adopts and approves the findings of facts and conclusions of law in the above-mentioned OCA Report and Recommendation.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence.[40] A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[41]

The Court however has also ruled that "not every error or mistake of a judge in the performance of his official duties renders him liable." [42]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.[43]

The Court agrees with the OCA that it would be absurd to hold respondent Judge Dela Rosa liable for his November 23, 2015 Order when he had himself rectified this in his subsequent June 20, 2016 Order. To rule otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[44] To hold otherwise "would be nothing short of harassing judges to take the fantastic and impossible oath of rendering infallible judgments." [45]

Furthermore, nothing in the records of the case suggests that respondent Judge Dela Rosa was motivated by bad

faith, fraud, corruption, dishonesty or egregious error in rendering his decision. Other than their bare assertions, Complainants failed to substantiate their allegations with competent proof. Bad faith cannot be presumed^[46] and this Court cannot conclude bad faith intervened when none was actually proven.^[47]

The Court likewise finds no merit in Complainants' allegation that respondent Judge Dela Rosa should have first required Atty. Causing to show cause for his act of posting matters pertaining to the pending criminal case on the internet. The Court agrees with the OCA that respondent Judge Dela Rosa's act of referring the matter to the IBP, an independent tribunal who exercises disciplinary powers over lawyers, was a prudent and proper action to take for a trial court judge. The Court has explained, in the case of *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,^[48] that judges' power to punish contempt must be exercised judiciously and sparingly, not for retaliation or vindictiveness, viz.:

x x x [T]he power to punish for contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail. As judges[,] we ought to exercise our power to punish contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the power for the correction and preservation of the dignity of the Court, not for retaliation or vindictiveness.^[49]

In fine, the administrative charge against respondent Judge Dela Rosa should be, as it is hereby, dismissed.

WHEREFORE, the instant administrative complaint against respondent Presiding Judge Jose Lorenzo R. Dela Rosa, Regional Trial Court, Branch 4, Manila is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Carpio,^[*] Acting C.J., (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] Rollo, pp. 1-29.

[2] See Resolution dated November 23, 2015, id. at 141.

[3] Rollo, pp. 162-163.

[4] Id. at 141.

[5] Id.

[6] RULES OF COURT, Rule 117, SEC. 7. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

[7] Rollo, pp. 3-6, 254.

[8] The sub judice rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies not only to participants in the pending case, i.e., to members of the bar and bench, and to litigants and witnesses, but also to the public in general, which necessarily includes the media. Although the Rules

of Court does not contain a specific provision imposing the sub judice rule, it supports the observance of the restriction by punishing its violation as indirect contempt under Section 3 (d) of Rule 71:

Section 3. Indirect contempt to be punished after charge and hearing. x x x a person guilty of any of the following acts may be punished for indirect contempt:

xxxx

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice. (Rollo, p. 255.)

[9] Rollo, pp. 6-7, 254-255.

[10] Id. at 127.

[11] Id.

[12] Id. at 128-140.

[13] Id. at 204-205.

[14] Id.

[15] Id. at 129-133, 255.

[16] Id. at 130, 165.

[17] Id. at 130, 166-169.

[18] Id. at 130, 170.

[19] Id. at 130, 171-172.

[20] Id. at 130, 173.

[21] Id. at 130, 174-184.

[22] Id. at 130-131, 185.

[23] Id. at 131, 186.

[24] Id. at 131, 187.

[25] Id. at 131, 188-189.

[26] Id. at 131, 190-191.

[27] Id. at 132, 192.

[28] Id. at 132, 193.

[29] Id. at 132, 255.

[30] Id. at 132-135, 255.

[31] Id. at 133-139, 255.

[32] Id. at 254-257.

[33] 710 Phil. 279, 287 (2013).

[34] Rollo, p. 256.

[35] Id.

[36] Id.

[37] Id.

[38] Id. at 257.

[39] Id.

[40] Department of Justice v. Mislang, A.M. No. RTJ-14-2369, July 26, 2016, 798 SCRA 225, 234.

[41] Id. at 234.

[42] Dipatuan v. Mangotara, 633 Phil. 67 (2012).

[43] Salvador v. Limsiaco, Jr., 519 Phil. 683, 687 (2006).

[44] Lorenzana v. Austria, 731 Phil. 82, 98 (2014), citing Magdadaro v. Sanial, Jr., 700 Phil. 513, 520 (2012).

[45] Office of the Court Administrator v. Floro, Jr., 520 Phil. 591, 624 (2006).

[46] Gatmaitan v. Gonzales, 525 Phil. 658, 671 (2006).

[47] Lorenzana v. Austria, *supra* note 44, at 99.

[48] 672 Phil. 1 (2011).

[49] Id. at 19-20.

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