

SULU ISLAMIC ASSOCIATION OF MASJID LAMBAYONG, COMPLAINANT, VS. JUDGE NABDAR J. MALIK, MUNICIPAL TRIAL COURT, JOLO, SULU, RESPONDENT.

A.M. No. MTJ-92-691. September 10, 1993

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PER CURIAM:

On June 5, 1992, Imam Hashim Abdulla, Imam Hadji Tambing, Hatib Illih Musa, as officers and members of the Sulu Islamic Association of Masjid Lambayong, filed an administrative complaint against Judge Nabdar J. Malik, Presiding Judge of the Municipal Trial Court in Jolo, Sulu, charging him with violation of R.A. 2260 (An Act To Amend and Revise the Laws Relative to Philippine Civil Service) and serious misconduct committed as follows:

1. Nepotism - by recommending the appointment of Omar Kalim, his nephew, and Hanina Kalim, his niece-in-law, as process server and clerk, respectively;
2. Graft and Corruption - by using Omar Kalim to extort money from court litigants, e.g.:
 - a. P13,000.00 in exchange for the freedom of Datu Tating Erwin, who had been charged as an accessory in a robbery case;
 - b. demanding P10,000.00 thru a certain P/Sgt. Duran Abam Tating, Erwin's brother-in-law; and
 - c. blackmailing litigants;
3. Immorality - engaging in an adulterous relationship with another woman with whom he has three children.

In his letter/comment dated October 19, 1992, Judge Malik alleged that the complainants are fictitious persons and that the charges against him are false and fabricated. He asked that the complaint be dismissed.

The Supreme Court referred the case to Judge Harun Ismael of the Regional Trial Court of Jolo, Sulu, for investigation, report and recommendation.

On April 7, 1993, Judge Malik addressed a letter to Judge Ismael, enclosing affidavits of four witnesses, namely: (1) Imam Hashim Abdulla; (2) Mrs. Jamura Tambing; (3) Mr. Mirad Tambing; and (4) Marina Balais Malik.

He alleged that Datu Tating Erwin is the nephew of Kaya B. Sarabi who had previously filed "many fabricated charges" (p. 235, Rollo) against him which had been dismissed by the Supreme Court. He implied that Erwin was being used by Sarabi and that the affidavit was false.

Imam Hashim Abdulla, one of the "complainants," denied any knowledge of, or participation in, the filing of the complaint against Judge Malik. He disowned his supposed signature in the complaint as a forgery. He alleged that Judge Malik is his neighbor and he knows him to be "honest and righteous" (p. 238, Rollo).

Illih Musad, another "complainant," died on February 24, 1991 yet. His widow, Jamura Musad, executed an affidavit certifying that she knows Judge Malik personally because he has been her neighbor for many years. It was physically impossible for her late husband to have signed the complaint dated June 5, 1992 against Judge

Malik because her husband died more than a year before the signing of the complaint.

The signature of another complainant, Imam Hadji Tambing Arong, was impugned by his son, Mirad Tambing. He said his father could not have signed the complaint because he had been sick and bedridden for five years before his death. In fact, he died on August 15, 1992.

Marina Balais Malik, wife of respondent Judge N. Malik, disowned her supposed affidavit which she supposedly signed before Notary Public Attorney Rodrigo Martinez in Zamboanga City, in February 1991 (p. 250, Rollo).

She, however, denied having appeared before the Notary Public to subscribe said affidavit which attacks the “honor and integrity of her beloved husband” (p. 251, Rollo).

After conducting an investigation of the charges, Judge Ismael on May 25, 1993, submitted a Report to the court. Of the three (3) charges against Judge Malik, only the charge of nepotism holds.

On the charge of graft and corruption, Judge Ismael observed that:

“x x x practically all of those who testified denied any knowledge of any particular instance that Judge Malik extorted or received bribe money from litigants having pending cases before his sala. Mrs. Beatriz Abbas, Clerk of Court II of Municipal Trial Court of Jolo, Sulu presided by Judge Malik, testified that the people praised highly Judge Malik because of his honesty. She attests to this because she was, at one time told by Judge Malik to return to litigants something which litigants wanted to give to Judge Malik. However, one of those who testified confided, but refused to be quoted in his testimony for fear of reprisal, suggested that in order for the Court to be spared of any ill suspicion, Omar Kalim should be transferred to another Municipal Circuit Trial Court branch where Judge Malik has no supervision. Accordingly, it’s just not nice and good looking to have Omar Kalim where he is now. This information is worth considering. The only obstacle is Judge Malik is Acting Judge in all Municipal Circuit Trial Court branches except Siasi, Sulu. However, no hard evidence was adduced linking Judge Malik to graft and corruption as alleged in the complaint.” (p. 51, Rollo.)

With regard to the charge of adultery or immorality, the investigating Judge observed that under Muslim Law the marriage of a Tausug (the tribal group to which Judge Malik belongs) to as many as four (4) wives is sanctioned provided the man can support them and does not neglect any of them. Judge Ismael’s report states:

“As regards the claim that Judge Malik has two (2) wives, all those who testified at the investigations confirmed the same. Mrs. Marina Balais-Malik, the first wife, admitted that Judge Malik has a second wife (Lourdes) but she does not mind them since she and her children are financially taken care of - all their eight children are going to school and three (3) have reached college level. Moreover, under the Muslim Shari’a (Law) marrying more than one wife is allowed provided the man can afford financially and can give equity and justice to the wives. Mrs. Marina Balais Malik claims that Judge Malik is financially capable.

The Holy Qur’an (the Muslim Holy Scripture) provides in Surah 4:3 (Chapter 4, verse 3) thus:

‘3. And if ye fear that ye shall not Be able to deal justly With the orphans, Marry women of your choice Two, or three, or four; But if ye fear that ye shall not Be able to deal justly (with them) Then only one, or That which your right hand possess That will be more suitable, To prevent you From doing injustice.’

“Strictly, Islam enjoins only monogamous marriage. While Islam allows marrying more than one wife, it however sets limitation, i.e., not more than four at a time and the man be financially capable in order for him to provide equity and justice to the wives. These revelations came to the Prophet Muhammad after the Battle of Uhud whereby many Mujahideens died thus leaving more widows and orphans. This particular revelation serve, as it was then, as a remedy to the impending situation of the widows and orphans left unattended. By allowing the mujahideens to take them in marriage helped prevent them from engaging in illicit marital

relations like fornication. Marrying more than one wife does not per se create any stint (sic) of social immorality, since this marriage, like any other ordinary marriages, is made public and are (sic) accepted by the people in the community. Any issue out of this marriage is legitimate before the eyes of the Almighty Lord and the people.

“True, Islam sanctions such marriage but very few Muslim males practice it. Worst yet today, however, this permissible marriage is used as a means of building social standing in the community. As a judge, there is no doubt that Judge Malik has acquired higher respect and social standing in the community, and is deemed financially capable. Hence, he can marry more than one wife in accordance with the Muslim Shari’a.” (pp. 49-50, Rollo.)

Mrs. Marina Malik consented to her husband’s wish to contract a second marriage because he does not neglect to support her children. Three of them are in college. She has no ill-feelings against Malik’s second wife, who married her husband under Muslim law. Since Art. 180 of P.D. No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, provides that the penal laws relative to the crime of bigamy “shall not apply to a person married x x x under Muslim Law,” it is not “immoral” by Muslim standards for Judge Malik to marry a second time while his first marriage exists.

The charge of nepotism, however, is a different matter.

Judge Nabdar Malik was appointed and confirmed as Judge of Municipal Court of Jolo on May 29, 1972. He assumed office on May 29, 1972.[1] On June 16, 1978, he recommended the appointment of his nephew, Omar Kalim, the son of his older sister, Nuridjam Ambutong, to the position of Janitor in his court. He falsely certified that Kalim was not related to him by affinity or consanguinity within the third degree:

“This is to certify that Mr. Omar Kalim, a proposed appointee for the position of Janitor in the Municipal Court of Jolo, Branch 1, is not related to the undersigned within the third degree either by affinity or consanguinity.

“xxx xxx xxx.

NABDAR J. MALIK

Municipal Judge”

(Certification dated June 16, 1978, 201 File.)

The truth is that, being his sister’s son, Kalim is related to Judge Malik by consanguinity within the third degree.

Later, Omar Kalim was promoted as MTC Aide and still later, in 1985, he became a Process Server[2]. In support of Kalim’s promotion, Judge Malik again issued a false certification that Kalim is not related to him by affinity or consanguinity.

“This is to certify that MR. OMAR N. KALIM, a proposed appointee for the position of MTC PROCESS SERVER in the Office of the Municipal Trial Court of Jolo, is not related to the undersigned appointed official either by affinity or consanguinity.” (Certification dated January 2, 1985, 201 File.)

Similarly, Kalim falsely denied his relationship to Judge Malik in answer to question No. 23 in his Personal Data Sheet.

“Are you related within the third degree of consanguinity or of affinity to the appointing or recommending authority, or to the chief of bureau or office, or to the person who has immediate supervision over you in the Office, Bureau or Ministry you are to be appointed?”

His answer was “No.”

The prohibition against nepotism in the government service is found in Section 59, Chapter 7, Book V of the Administrative Code of 1987 which reads:

Sec. 59. Nepotism. - (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

“As used in this Section, the word ‘relative’ and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

“(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

“The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

“(3) In order to “give immediate effect to these provisions, cases of previous appointments which are in contravention hereof shall be corrected by transfer, and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives who were appointed in violation of these provisions.”

In the case of *Layno vs. People* (213 SCRA 686, 696-697), the incumbent Mayor of Lianga, Surigao, appointed his legitimate son as Meat Inspector, but certified that the appointee was not a relative by consanguinity or affinity. He was prosecuted criminally and punished for falsification of public document (Art. 171, par. 4 of the RPC).

One of the legal issues raised was whether the appointing authority is obliged to disclose his true relationship to the appointee. That question was answered by this Court in the affirmative:

“The law on nepotism, as provided in Section 49(a) of PD No. 807, prohibits the appointing or recommending authority from making any appointment in the national, provincial, city or municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, in favor of his (appointing or recommending authority’s) relative within the third degree of consanguinity or affinity. Thus, in order to guarantee that the law is duly observed, it is required, among others, that the appointment paper should be accompanied by a certification of the appointing or recommending authority stating therein that he is not related to the appointee within the third degree of consanguinity or affinity. Although Section 49(a) of PD No. 807 does not explicitly provide that the appointing or recommending authority shall disclose his true relationship with the appointee in the form of a certification, nonetheless, in the light of the rulings in the afore-cited cases, the legal obligation of the appointing or recommending authority to state the true facts required to be stated in the certification is inherent in the law on prohibition against nepotism and the nature and purpose of such certification.

“xxx xxx xxx.

“x x x. As aptly observed by the Solicitor General in his Memorandum -

“The general purpose of PD No. 807 is to ‘insure and promote the constitutional mandate that appointments in

the Civil Service shall be made only according to merit and fitness, to provide within the public service a progressive system of personnel administration, and to adopt measures to promote moral and the highest degree of responsibility, integrity, loyalty, efficiency, and professionalism in the Civil Service.’ (Section 2, PD No. 807.)

“The civil service laws are designed to eradicate the system of appointment to public office based on political considerations and to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments. These laws intend to establish a merit system of fitness and efficiency as the basis of the appointment; to secure more competent employees, and thereby promote better government. (Meran vs. Edralin, 154 SCRA 238 [1987]).

“Indeed, there are many cases wherein local elective officials, upon assumption to office, wield their new-found power by appointing their own proteges, and even relatives, in violation of civil service laws and regulations. Victory at the polls should not be taken as authority for the commission of such illegal acts. (Mendoza vs. Quisumbing, G.R. No. 78053, June 4, 1990, citing Nemenzo vs. Sabillano, 25 SCRA 1 [1968]).”

By making untruthful statements and certifications regarding their relationship to each other, Judge Malik and his nephew, Omar Kalim, committed the crime of falsification under Article 171, subparagraph 4 of the Revised Penal Code.

Nepotism is a ground for disciplinary action under Section 46, subpar. 30, Chapter 5, Book V of the Administrative Code of 1987:

“Sec. 46. Discipline: General Provisions. - (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

“(b) The following shall be grounds for disciplinary action:

“xxx xxx xxx

“(30) Nepotism as defined in Section 59 of this Title.”

Section 67 (Penal Provision) of the Administrative Code provides the following penalty therefor:

“Sec. 67. Penal Provision. - Whoever makes any appointment or employs any person in violation of any provision of this Title or the rules made thereunder or whoever commits fraud, deceit or intentional misrepresentation of material facts concerning other civil service matters, or whoever violates, re-fuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.” (Executive Order 292, Underscoring ours.)

Disclosure of one’s relatives in the Government is required of every public official or employee:

“Sec. 8. x x x

“(B) Identification and disclosure of relatives. - It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.” (Sec. 8 (B), Rep. Act 6713 [Code of Conduct and Ethical Standards for Public Officials and Employees].)

Judge Malik did not merely fail to disclose his relationship to Omar Kalim, but he falsely certified that he was not related to the latter.

Kalim, likewise, falsely denied his relationship to Judge Malik. Their acts violated the Code of Conduct and

Ethical Standards for Public Officials and Employees and are punishable under Section 11 of the Code, with removal from office.

“Sec. 11. Penalties. - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months’ salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000.00), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

“(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.” (Emphasis supplied.)

Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, classifies nepotism as a grave offense punishable with dismissal from the service, even as a first offense.

“Sec. 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

“The following are grave offenses with its corresponding penalties:

“xxx xxx xxx

“(m) Nepotism [1st Offense, Dismissal]”

Moreover, by committing nepotism and covering up his malfeasance by falsely disavowing any relationship to the appointee, Judge Malik is also guilty of gross ignorance of the law and falsification and violated the Code of Judicial Conduct which requires that “a judge shall not allow family, social, or other relationship to influence his judicial conduct or judgment” (Canon 2, Rule 2.03) and enjoins a judge to “be faithful to the law” (Canon 3, Rule 3.01). Violations of the Code of Judicial Conduct are serious offenses punishable by any of the following sanctions under Section 10-A, Rule 140 of the Rules of Court, as amended:

“1. Dismissal from the service with forfeiture of benefits (except accrued leaves) and disqualification from reinstatement or appointment to any public office including a government-owned or controlled corporation;

“2. Suspension for three (3) to six (6) months without salary and benefits; or

“3. A fine of not less than P20,000.00 but not more than P40,000.00.”

With respect to Judge Malik’s niece-in-law, Hanina M. Hailidani Kalim, her appointment did not violate the law against nepotism.

Hanina began her service in the judiciary on August 6, 1973. She was then known as “Mrs. Hanina M. Hailidani-Ainin,” for she was married to Hadji Abubakar Ainin, clerk of the Municipal Court, Branch 1. Omar Kalim entered the service in 1978 or five years after Hanina. She was already a widow when she and Kalim met and married in a ceremony performed by Judge N. Malik on July 24, 1982. Evidently, when Hanina was appointed as a member of Judge Malik’s staff in 1973, she was not yet related to him by affinity or consanguinity. Her marriage to Omar Kalim after both had entered the government service is expressly excluded from the prohibition against nepotism. Section 59 of the Administrative Code of 1987 provides that:

“Sec. 59. x x x.

“(2) x x x “The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be al-lowed.”

WHEREFORE, the Court finds Judge Nabdar J. Malik, GUILTY of nepotism, falsification and violation of the Code of Judicial Conduct. His Process Server and nephew, Omar Kalim, is likewise found GUILTY of falsification and deceit. The Court hereby orders their DISMISSAL from the service, with prejudice to re-employ-ment in the government, including government-owned or controlled corporations, with forfeiture of all retire-ment benefits and privileges (if any), except the money value of their earned leave credits. Respondent Judge is ORDERED to cease and desist immediately from rendering any order or decision, or continuing any proceedings, in any case whatsoever, effective immediately upon receipt of a copy of this Resolution.

SO ORDERED.

Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.

Narvasa, C.J. and Feliciano, J., on leave.

[1] Certification of the Commission on Appointments dated April 13, 1972; Service Record in the Judiciary. Telegram sent by Judge Malik to the Secretary of Jus-tice, Personal Files.

[2] Service Record dated July 13, 1987, Certified correct by Nabdar Malik.

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