

MIGUEL CUENCO, COMPLAINANT, VS. HON. MARCELO B. FERNAN, RESPONDENT.*Adm. Case No. 3135. February 17, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d497e1532a38/>**PER CURIAM:**

In a sworn complaint dated 10 October 1987, complainant Atty. Miguel Cuenco, a former Member of the Philippine House of Representatives from the province of Cebu, prayed for judgment ordering the disbarment of Mr. Justice Marcelo B. Fernan, Chairman of the Third Division of this Court.

The pertinent facts of this case are as follows:

On 13 March 1952, Vito Borromeo died without any forced heirs, but leaving behind extensive properties situated in the province of Cebu. On 19 April 1952, a Petition for probate (docketed as Special Proceedings No. 916-R) of a one-page document -- purportedly the last will and testament of the decedent -- was filed with the then Court of First Instance of Cebu. Those instituted under said will as the sole heirs of the late Vito Borromeo were Fortunato, Tomas and Amelia, all surnamed Borromeo.

On 28 May 1960, the probate court rendered a Decision declaring the will to be a forgery. That decision became final in 1967 after being affirmed by this Court in *Testate Estate of Vito Borromeo. Jose H. Junquera vs. Crispin Borromeo, et al.*, 19 SCRA 656 [1967]. In the intestacy proceedings that ensued, nine (9) individuals were declared by the trial court as the rightful successors to the decedent Vito Borromeo's estate.

During the course of the intestacy proceedings, several petitions were filed with this Court by the parties involved therein. These petitions are: G.R. No. L-41171 (entitled "*Intestate Estate of the Late Vito Borromeo. Patrocinio Borromeo-Herrera v. Fortunato Borromeo, et al.*"); G.R. No. 55000 (entitled "*In the Matter of the Estate of Vito Borromeo, Deceased. Pilar N. Borromeo, et al. v. Fortunato Borromeo*"); G.R. No. 62895 (entitled "*Jose Cuenco Borromeo v. Court of Appeals, et al.*"); G.R. No. 63818 (entitled "*Domingo Antigua, et al. v. Court of Appeals, et al.*"); and G.R. No. 65995 (entitled "*Petra Borromeo, et al. v. Francisco P. Burgos, etc., et al.*"). These five (5) petitions, having emanated from a common source and being closely interrelated, were subsequently consolidated.

On 23 July 1987, the Third Division of the Court, through Mr. Justice Hugo E. Gutierrez, Jr., rendered a Decision in the consolidated petitions, the dispositive portion of which reads:

"WHEREFORE, -

(1)

In G.R. No. 41171, the order of the respondent judge dated December 24, 1974, declaring the respondent entitled to 5/9 of the estate of the late Vito Borromeo and the order dated July 7, 1975, denying the petitioner's motion for reconsideration of the aforementioned order are hereby SET ASIDE for being NULL and VOID;

(2)

In G.R. No. 55000, the order of the trial court declaring the waiver document valid is hereby SET ASIDE;

(3)

In G.R. No. 63818, the petition is hereby DENIED. The issue in the decision of the Intermediate Appellate Court disqualifying and ordering the inhibition of Judge Francisco P. Burgos from further hearing Special Proceedings No. 916-R is declared moot and academic. The judge who has taken over the sala of retired Judge Francisco P. Burgos shall immediately conduct hearings with a view to terminating the proceedings. In the event that the successor-judge is likewise disqualified, the order of the Intermediate Appellate Court directing the Executive Judge of the Regional Trial Court of Cebu to re-raffle the case shall be implemented;

(4)

In G.R. No. 65995, the petition is hereby GRANTED. The issue seeking to restrain Judge Francisco P. Burgos from further acting in G.R. No. 63818 is MOOT and ACADEMIC;

(5)

In G.R. No. 62895, the trial court is hereby ordered to speedily terminate and close Special Proceedings No. 916-R, subject to the submission of an inventory of the real properties of the estate and an accounting of the cash and bank deposits by the petitioner-administrator of the estate as required by this Court in its Resolution dated June 15, 1983; and

(6)

The portion of the Order of August 15, 1969, segregating 40% of the market value of the estate from which attorney's fees shall be taken and paid should be, as it is hereby DELETED. The lawyers should collect from the heirs-distributees who individually hired them, attorney's fees according to the nature of the services rendered but in amounts which should not exceed more than 20% of the market value of the property the latter acquired from the estate as beneficiaries.

SO ORDERED."

In a Manifestation dated 22 August 1987 and filed with this Court on 24 August 1987, complainant Cuenco requested that he be given until 22 September 1987 within which to file a motion for reconsideration of the aforementioned decision in the consolidated petitions. This request was granted by the Court's Third Division in a resolution issued on 16 September 1987 with the warning, however, that no further extensions of time would be allowed. Complainant's formal Motion for Reconsideration was posted only on 28 September 1987.

Meanwhile, on 19 November 1987, the Court, sitting en banc resolved, among other things, to dismiss for lack of merit Administrative Matter No. R-593-RTJ and Administrative Matter No. R-672-RTJ, filed by complainant Cuenco and Numeriano E. Estenzo, respectively, against Judge Francisco P. Burgos, the former trial judge at the Vito Borromeo intestate estate proceedings.

Complainant Cuenco, who had represented a group of heirs in the Vito Borromeo intestate estate proceedings, makes the following allegations in his complaint for disbarment:

- That Mr. Justice Fernan, in Civil Case No. R-7646 filed with Branch III of the then Court of First Instance of

Cebu, appeared as counsel for the three (3) instituted heirs (i.e., Fortunato, Tomas and Amelia, all surnamed Borromeo) and despite having already accepted his appointment as an Associate Justice of the Court, "continues to be counsel for the instituted heirs";

- That Mr. Justice Fernan "had exerted personal efforts to take away from the Supreme Court en banc, the First and Second Divisions of the Tribunal, the Vito Borromeo proceedings to his Office as Chairman of the Third Division to enable him to influence the decision or the outcome of the Vito Borromeo proceedings";

- That Mr. Justice Fernan "has operated his Office in Cebu City as a Star-Chamber to fabricate fake and fictitious heirs of Vito Borromeo", an action which will not only dilute and diminish the distributive shares of complainant's clients, but "will prolong indefinitely the agony of Miguel Cuenco and Judge Fernando Ruiz to have their attorney's fees paid";

- That Mr. Justice Fernan has "practically abolished and crippled the legitimate functions of the Court of Appeals in C.A.-G.R. No. 08093, knowingly (sic) that the claims for attorney's fees of Movant Miguel Cuenco and Judge Fernando Ruiz are pending in the Court of Appeals", thereby "render[ing] impossible the payment of Miguel Cuenco's attorney's fees for his services rendered to the Vito Borromeo Estate";

- That Mr. Justice Fernan's "strong and unyielding determination to collect big sums of money in payment of his legal services rendered to his clients" had induced the Honorable Justice, as Chairman of the Court's Third Division, to unduly influence the Members thereof into dismissing Atty. Cuenco's complaint (Administrative Matter No. R-593-RTJ) against Judge Francisco P. Burgos, then the trial judge in the intestacy proceedings, thereby resurrecting the claim of the three (3) instituted heirs over the thirteen (13) commercial lots subject of Civil Case No. R-7646; and

- That Mr. Justice Fernan "had wilfully, persistently, stubbornly and systematically violated his Oath of Office as a lawyer which imposes upon him the duty not to delay any man for money or malice".

We find complainant's charges against Mr. Justice Fernan completely unsupported by the facts and evidence of record.

- We have found nothing in the record of the Vito Borromeo estate proceedings -- and complainant Cuenco has failed to point to anything therein -- to indicate that Mr. Justice Fernan had appeared as counsel in such proceedings in representation of instituted heir and claimant Fortunato Borromeo, who was represented in those proceedings, as early as 19 January 1953, by Atty. Juan Legarte Sanchez. Mr. Justice Fernan did enter his appearance on 7 August 1965 as counsel, in collaboration with Atty. Crispin Baizas, for claimants Tomas and Amelia Borromeo in Special Proceedings No. 916-R.[1] The record, however, reveals that Mr. Justice Fernan withdrew, as such counsel as early as 19 February 1968.[2] The records of this case are bereft of any suggestion that Mr. Justice Fernan had represented any of these instituted heirs in any other case or proceeding arising from or related to Special Proceedings No. 916-R. Complainant Cuenco has submitted nothing at all to support his accusation that Mr. Justice Fernan "continues to be counsel for the instituted heirs". It is entirely clear that Mr. Justice Fernan's professional involvement in Special Proceedings No. 916-R had ceased long before his appointment to this Court in April of 1986.

- Prior to the appointment of Mr. Justice Fernan to the Court, the aforementioned five (5) consolidated petitions had already been assigned for preliminary study to Mr. Justice Hugo E. Gutierrez, Jr., the ponente of the disputed Decision in G.R. Nos. L-41171, 55000, 62895, 63818 and 65995 and a Member then of the Court's First Division. The subsequent designation of Mr. Justice Fernan as Chairman of the Court's Third Division and the assignment of Mr. Justice Gutierrez along with three other Members of the Court to said Third Division, after the 1987 Constitution went into effect, were determined and carried out by the Chief Justice in accordance with the time-honored procedures followed by the Court in those matters and were, thus, circumstances of pure coincidence. Mr. Justice Gutierrez brought the Vito Borromeo estate cases (and all other pending cases previously assigned to him) along with him to the Third Division of the Court when the Third

Division was organized in accordance with procedures agreed upon by the Court en banc. Mr. Justice Fernan inhibited himself from participating in the deliberations on the Vito Borromeo estate cases and, in fact, did not take part in the resolution thereof; this was made explicit by the annotation appearing beside his signature: "No part -- I appeared as counsel for one of the parties". This express statement on the record has been totally ignored by complainant Cuenco. Thus, not only has complainant Cuenco failed to submit anything at all to support his accusation that Mr. Justice Fernan "had exerted personal efforts" to have the Vito Borromeo estate cases assigned to the Third Division "to enable him to influence the outcome" thereof; complainant Cuenco is simply and clearly wrong in charging that Mr. Justice Fernan had anything to do with the assignment of those estate cases to the Third Division of the Court. The record is bare of any suggestion that complainant Cuenco made any effort to inform himself on the procedures followed by this Court in constituting itself into three (rather than two) Divisions, before making his accusation.

- The principal opposing parties in the Vito Borromeo intestate estate proceedings are, on the one hand, the group of heirs instituted under the will (i.e., Fortunato, Tomas and Amelia, all surnamed Borromeo) and, on the other hand, the group of heirs -- a number of whom are represented by complainant Cuenco -- declared as such by the trial court subsequent to the declaration of nullity of said will. One of the main reasons that said proceedings had dragged on for such a long period of time is that the three (3) instituted heirs had sought, as early as 1954, the exclusions, from the inventory of the late Vito Borromeo's estate, of thirteen (13) parcels of land over which the three claimed rights of ownership, and which rights continued to be asserted against the other heirs-claimants. As far as the records show, there are no other persons claiming successional rights adverse to those of either of the two major groups of heirs in the intestacy proceedings.

Viewed in the light of the foregoing, Mr. Justice Fernan could not have, as claimed by complainant Cuenco, "fabricate[d] fake and fictitious heirs of Vito Borromeo". The Court is unable to see how Mr. Justice Fernan, whose involvement in the Vito Borromeo estate proceedings began on 7 August 1965 and ended on 19 February 1968, could have had any control or influence over the actions of the instituted heirs (Fortunato, Tomas and Amelia Borromeo) either in 1952 when Special Proceedings 916-R for probate of the will was instituted, or in 1954 when said heirs claimed rights of ownership over the aforementioned thirteen (13) parcels of land and sought to exclude them from the estate of the decedent. We think it clear, that complainant Cuenco was here making, once again, a totally baseless accusation which he made no effort to support as he could not support it.

- The dispositive portion of our Decision in the consolidated estates cases states in part:

"x x x The lawyers should collect from the heirs--distributees who individually hired them, attorney's fees according to the nature of the services rendered but in amounts which should not exceed more than 20% of the market value of the property the latter acquired from the estate as beneficiaries."

It is evident that the "legitimate functions" of the Court of Appeals in C.A.-G.R. No. 08093 -- where complainant Cuenco has filed a claim for payment of attorney's fees -- have not been "abolished and crippled" by the mere fact that the maximum amounts, expressed in a percentage of the market value of the distributive shares received from the estate, of attorney's fees had been determined and set by this Court. This is a matter well within the competence and authority of the Court. Furthermore, the Court is unable to see how payment of complainant Cuenco's attorney's fees for services rendered in the Vito Borromeo estate case has been "rendered impossible"; while final settlement of the decedent's estate may have to be awaited, payment of such fees may nevertheless be expected in due course.

- In Administrative Matter No. R-593-RTJ, complainant Cuenco charged Judge Francisco P. Burgos, former trial judge in the Vito Borromeo intestate estate proceedings, with "gross incompetence and manifest negligence" for allegedly having intentionally delayed settlement of the estate of the late Vito Borromeo. In an En Banc Resolution dated 19 November 1987, this Court, having found that the delay complained of was caused by several factors beyond the control of respondent judge, dismissed that complaint for lack of merit.

The Court is completely unable to understand the claim of complainants Cuenco that dismissal of Administrative Matter No. R-593-RTJ has "resurrected, rejuvenated and reinvigorated" the claims of the three (3) instituted heirs (Fortunato, Tomas and Amelia Borromeo) over the aforementioned thirteen (13) parcels of land. The Court is also baffled by complainant Cuenco's assertion that such dismissal "has a great money value in itself" and would result in "the big increase of assets of the Vito Borromeo Estate". As pointed out above, complainant Cuenco's complaint in A.M. No. R-593-RTJ was dismissed by a Resolution of the Court en banc, not of the Third Division as Cuenco apparently believes. In any case, the Members of the Third Division of the Court expressly reject complainant Cuenco's assertion or insinuation that they were unduly influenced by any consideration other than the simple lack of merit of the complaint in A.M. No. R-593-RTJ.

- There is nothing in the record, other than the undocumented assertions of complainant Cuenco, that would suggest that Mr. Justice Fernan has violated his oath of office as a lawyer either during the time when he was collaborating counsel for Tomas and Amelia Borromeo in the proceedings below or thereafter, and since joining this Court. Complainant Cuenco has offered not a shred of evidence to support his serious accusations against Mr. Justice Fernan. Indeed, complainant Cuenco is either unaware of the seriousness of the charges he made against Mr. Justice Fernan, or complainant Cuenco, if he is aware of the nature of the charges he has brought, has acted with bad faith.

Of his own accord, Mr. Justice Fernan made a statement to the Court en banc and embodied that in a Memorandum given to the Members of the Court on 17 December 1987. In this Memorandum, Mr. Justice Fernan invited attention to his written Appearance and Motion to Withdraw as Counsel (already referred to above) and stressed that he had ceased a long time ago to act as counsel for the two Borromeos mentioned earlier and that he did not in any way take part in the deliberations and decision of G.R. Nos. 41171, etc.

By a telegram dated 6 January 1988, complainant Cuenco asked for leave to file a "Clarificatory Memorandum based on official court records already filed in Supreme Court before and after Honorable Fernan was appointed Justice of the Supreme Court ---" by 24 February 1988. By a Resolution dated 14 January 1988, the Court granted complainant Cuenco leave to file a "Clarificatory Memorandum" within a non-extendible period of ten (10) days from notice thereof. Complainant Cuenco received a copy of this Resolution of the Court on 26 January 1988. To date, no memorandum has been filed by complainant Cuenco. On 5 February 1988, the Court received the following telegram from complainant Cuenco:

"Received UST Hospital to [sic] resolutions S.C. En Banc comma first resolution giving me February five file clarificatory memorandum and second setting February twentyfour file memorandum stop aye prefer February twentyfour file memorandum paragraph memorandum affects Salud Borromeo and Asuncion Borromeo signers Judge Laya's order of August 15 1969 which is res judicata comma died long time ago paragraph Marcial Borromeo signer Judge Laya's order died long time ago comma by agreement of parties approved by Judge Gomez substituted by heirs of Marcial Borromeo semicolon Cosme Borromeo one of Marcial Borromeo's heirs reported dead living children stop aye cannot remember names of one or two daughters of Marcial Borromeo stop am confident Supreme Court EnBanc exercising inherent power can order substitution new parties give them due process stop it can also issue proper orders have correct names of Marcial Borromeo daughters aye cannot remember stop my preferences for February 24 deadline is due aye had not typist during January 18 election long holidays stop my hospitalization also delays my legal work stop many thanks."

From the above quoted telegram (to the extent the Court can understand it), it appears that complainant Cuenco believes that he is preparing a memorandum addressing, not the administrative charges he has preferred against Mr. Justice Fernan, but rather the merits of the consolidated petitions in G.R. Nos. L-41171, etc. There appears no reason therefore why the Court should entertain this second request of complainant Cuenco.

The Court could have dismissed outright the complaint of Mr. Cuenco, since the Court could have simply taken judicial notice of the record of the consolidated petitions filed before the Court and since the other charges made

relate to matters peculiarly within the knowledge of Members of the Third Division of the Court. The Court has, nevertheless, gone into substantial detail in dealing with the accusations so freely made by complainant Cuenco, apparently in his concern over the amount of the attorney's fees he can hope to claim and collect from some of the distributees of the Vito Borromeo Estate. The Court has done so precisely because the person charged is a Member of this Court. The record of this case suggests strongly, however, that those accusations were not only instituted without any basis but were also made recklessly without regard for the good name and reputation of Mr. Justice Fernan. Indeed, those charges fly in the face of the record itself, which complainant has casually chosen to ignore.

There is another reason why the complaint for disbarment here must be dismissed. Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Article XI [2], Constitution). To grant a complaint for disbarment of a Member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution. Precisely the same situation exists in respect of the Ombudsman and his deputies (Article XI [8] in relation to Article XI [2], *id.*), a majority of the members of the Commission on Elections (Article IX [C] [1] [1] in relation to Article XI [2], *id.*) and the members of the Commission on Audit who are not certified public accountants (Article XI [D] [1] [1], *id.*), all of whom are constitutionally required to be members of the Philippine Bar.

ACCORDINGLY, the Court Resolved to DISMISS the charges made by complainant Cuenco against Mr. Justice Fernan for utter lack of merit.

The Court, further, Resolved to REQUIRE complainant Cuenco to show cause why he should not be administratively dealt with for making unfounded serious accusations against Mr. Justice Fernan within ten (10) days from notice hereof.

SO ORDERED.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Fernan, J., as respondent did not participate in the deliberations.

Grino-Aquino, J., No part. Did not participate in previous deliberations.

[1] Appearance dated 7 August 1965, Sp. Proc. No. 916-R; Rollo, pp. 22-23.

[2] Motion To Withdraw As Counsel dated 19 February 1968, Sp. Proc. No. 916-R; Rollo, pp. 24-25.

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