MARILOU PUNONGBAYAN VISITACION, COMPLAINANT, VS. JUDGE MAXIMINO MAGNO LIBRE, RESPONDENT.

A.M. NO. RTJ-05-1918 (FORMERLY OCA I.P.I NO. 03-1834-RTJ). June 08, 2005

Ponente: TINGA, J.

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TINGA, J.:

This is an administrative complaint dated 12 August 2003 filed by complainant Ms. Marilou P. Visitacion (Marilou) against Judge Maximino Magno-Libre (Judge Magno-Libre), Presiding Judge of the Regional Trial Court (RTC) of Lanao del Norte, Branch 5, Iligan City, for gross ignorance of the law, misrepresentation, grave/gross misconduct and violation of Canon 1, Rule 1.02 and Canon 2, Rule 2.01 of the Code of Judicial Ethics.

Marilou reports that the offenses of Judge Magno-Libre were committed while he was handling Corporate Case No. 006 entitled "Sotero Punongbayan and St. Peter's College v. Danilo Punongbayan" (the Corporate Case) and the libel case against her entitled "People of the Philippines v. Marilou Punongbayan-Visitacion," docketed as Criminal Case No. 7939 (the Criminal Case).

The antecedent facts follow.

St. Peter's College, Inc. (the School), a non-stock and non-profit educational corporation with principal office in Iligan City, is the center of the controversy in the Corporate Case. The School is governed by the Board of Trustees composed of five (5) trustees who were the siblings Leonila A. Punongbayan (Leonila), Leonora A. Punongbayan (Leonora), Perfecto Punongbayan, Jr. (Perfecto), Danilo Punongbayan (Danilo), and their uncle Sotero Punongbayan (Sotero).[1]

Since the death of Leonila and Leonora in 1995, no Board of Trustees or membership meeting of the School was held.[2] Danilo, the incumbent president of the School, solely ran and managed its day-to-day business affairs while Perfecto and Marilou acted as treasurer and assistant treasurer/ corporate secretary, respectively.[3]

Avowedly to effect the change of the status quo and to protect the interest of the School, Sotero filed with the Securities and Exchange Commission (SEC) a petition praying, among other things, for the appointment of a Management Committee (MANCOM) to run and manage the affairs of the School (the SEC Case).[4] The SEC granted the application for the creation and/or appointment of a MANCOM.[5]

Meanwhile, with the enactment of Republic Act No. 8799, otherwise known as the Securities Regulation Code,[6] the SEC Case was transferred to the RTC, Branch 5 of Iligan City, presided by Judge Magno-Libre and there it was docketed as Corporate Case No. 006.[7]

In the Corporate Case, Sotero filed a motion to abolish the MANCOM and to require the three (3) remaining members of the Board of Trustees to reconvene and run the affairs of the School. Judge Magno-Libre denied the motion in an order dated 5 June 2001.[8] Instead, he ordered the reorganization of the existing MANCOM and directed Danilo, Sotero and Perfecto to submit three (3) nominees each, subject to the limitations mentioned in

Section 4 of the Interim Rules of Procedure governing intra-corporate controversies under R.A. No. 8799 (the Interim Rules).[9]

On 20 June 2001, respondent Judge Magno-Libre issued a second order appointing only Luis Lacar, Adelfa Silor, and Rico Quilab as members of the new MANCOM from the list of nominees submitted by Sotero, Danilo, and Perfecto.[10] Luis Lacar and Adelfa Silor, both nominees of Danilo, and Rico Quilab nominated by Perfecto, were chosen because they were the only nominees not suffering from any cause for disqualification under the Interim Rules.[11]

Believing that the newly constituted MANCOM of three (3) members was partial to Danilo, Perfecto filed a motion for the reconsideration of the order dated 20 June 2001, but the motion was not acted upon by Judge Magno-Libre as the same was a prohibited pleading under the Interim Rules.[12]

Hence, complainant Marilou and Perfecto filed before the Court of Appeals a petition for certiorari docketed as C.A. G.R. No. 65420 (the CA Case),[13] attributing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Magno-Libre in constituting a new MANCOM and appointing its members instead of convening the Board of Trustees.[14]

On 17 March 2003, by majority vote of four (4) justices as against a lone dissenting opinion, the Special Former Eighth Division of the Court of Appeals rendered a Decision[15] reversing and setting aside the orders of 5 and 20 June 2001 of Judge Magno-Libre in the Corporate Case.[16]

Meanwhile, Judge Magno-Libre issued another order in the Corporate Case on 30 July 2001 granting the motion of Danilo that an external auditor be appointed for the purpose of ascertaining and determining the veracity of Sotero's allegations in his pleadings charging Danilo, Perfecto and complainant Marilou of mismanagement, dissipation and wastage of corporate funds. A Certified Public Accountant was thereafter appointed as external auditor (auditor).[17]

The auditor and her staff, accompanied by the sheriff went back and forth many times to the accounting department of the School but to no avail because Marilou allegedly refused to comply with the court's order that she make available the records of the School to them. Hence, a petition for contempt of court was filed by the auditor against Marilou, et al.[18] As Marilou and her counsel, in the hearing of the incident for contempt of court, assured Judge Magno-Libre in open court that they will make available the records sought to be audited, the hearing of the contempt charge against Marilou was held in abeyance.[19]

Inspite of Marilou's assurances,[20] the records were still not made available as Marilou filed a motion to disqualify the auditor which Judge Magno-Libre denied as the auditor had all the qualifications and there was no cause for disqualification.[21]

With this development, the appointed auditor once more attempted to proceed with the audit of the School's financial records. Yet despite the lapse of practically two (2) years, no audit could be had allegedly due to the stubborn and unreasonable resistance of Marilou. Inspite of this, Marilou was never declared in contempt of court. Instead, Judge Magno-Libre issued an order dated 10 October 2002 directing the continuance of the pre-trial conference sans the submission of the needed external auditor report.[22]

The Criminal Case also raffled to the sala of the Judge Magno-Libre arose out of the bitter strife which swelled between the group of Marilou and Perfecto with the group of Carmelita Punongbayan, Danilo's wife and the School's acting President,[23] during the pendency of the Corporate Case. [24] On 31 March 1999, Marilou and Perfecto wrote a letter to Carmelita on the basis of which the Criminal Case for libel was filed by Carmelita against Marilou. The trial of this case took almost four (4) years for the court to decide. The records show that the

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unnecessary delay was due to the many postponements at the instance of the accused, Marilou.[25]

The RTC found Marilou guilty beyond reasonable doubt of the crime of libel and was sentenced to suffer a straight prison term of one (1) year. She was also adjudged to pay by way of civil liability, moral damages in the amount of Three Million Pesos (P3,000,000.00), and the costs of suit.[26] The promulgation of the judgment was held in absentia as Marilou allegedly failed to appear thereat despite notice.

Aggrieved by the RTC decision, Marilou elevated the case to the Court of Appeals via a special civil action for certiorari and prohibition with prayer for temporary restraining order and/or writ of preliminary injunction, docketed as C.A. G.R. SP No. 77040.[27] It is still pending final disposition in said court.

In the instant administrative complaint,[28] Marilou alleges that in the Corporate Case and in the Criminal Case, Judge Magno-Libre committed the following acts which were oppressive and biased, amounting to serious misconduct and gross ignorance of the law:

1) In the Corporate Case, Judge Magno-Libre re-organized the new MANCOM, and in the filling-up of positions, two (2) of Danilo's nominees were chosen while Perfecto had only one (1) and Sotero had none;

2) Judge Magno-Libre issued the orders compelling complainant to produce the books and other financial records to be audited by an external auditor who was not accredited by the SEC;

3) During the hearing of the contempt charge, Judge Magno-Libre required Marilou and her co-respondents to put up a bail bond, an exercise which is tantamount to punishment;

4) In the Criminal Case, Judge Magno-Libre allowed the admission of the prosecution's exhibits which were not listed in the pre-trial order;

5) During the reception of Marilou's evidence in the Criminal Case, when she took the witness stand, Judge Magno-Libre cross-examined her;

6) Judge Magno-Libre prejudged the Criminal Case when he made a ruling denying admission of Marilou's documentary exhibits;

7) In the rendition of judgment in the Criminal Case, Judge Magno-Libre meted out a one (1) year straight penalty, which was not in order, for he did not apply the Indeterminate Sentence Law;

8) Judge Magno-Libre promulgated the judgment in the Criminal Case in absentia notwithstanding that Marilou was not properly notified of the date of promulgation.[29]

Marilou prays, among other things, for the dismissal of the respondent Judge from the service with forfeiture of all his benefits and his perpetual disqualification to hold public office.[30]

In his Comment,[31] respondent Judge Magno-Libre vehemently denies all the charges against him which according to him are nothing but pure harassment designed to make him inhibit in the Corporate Case and in the Criminal Case, and which to his mind, is a typical scheme of forum-shopping.[32]

The Office of the Court Administrator (OCA) in its report[33] dated 4 October 2004, found that the grounds relied upon by Marilou in support of the administrative complaint do not constitute bias or partiality or gross ignorance of the law. It further reasoned that in view of the fact that an incident in the Corporate Case and the decision in the Criminal Case are pending final disposition in the Court of Appeals, the administrative complaint should be dismissed.[34]

In a Resolution dated 1 December 2004, the Court required the parties to manifest within ten (10) days from

notice, whether they are submitting the case for decision on the basis of the pleadings/records already filed. Both parties filed their respective manifestations both to the effect that they are willing to have the case so decided.[35]

After a careful review of the evidence on record, we find the recommendation of the OCA to be well-taken.

The records disclose that the filing of the instant administrative complaint is premature. Complainant Marilou admitted that she interposed an appeal from the decision of the respondent judge in the Criminal Case and that the appeal is now pending before the Court of Appeals.[36] Records also bear out that an incident in the Corporate Case which was elevated to the Court of Appeals[37] and which was decided on 17 March 2003 is now pending before the Third Division of the Court.[38] Under the circumstances, the administrative complaint must be dismissed.

An administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available such as the special civil actions of certiorari and prohibition resorted to in both the Corporate Case and the Criminal Case. If subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against him at all.[39] Marilou filed the instant administrative complaint before ascertaining the foundation therefor.

Moreover, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, would be nothing short of harassment and would make his position doubly unbearable. To hold 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. It is only where the error is so gross, deliberate and malicious, or incurred with evident bad faith that administrative sanctions may be imposed against the erring judge.[40]

Disciplinary proceedings and criminal actions against judges are not complementary or suppletory of, nor a substitute for, judicial remedies. Resort to and exhaustion of these remedies, as well as entry of judgment in the corresponding action or proceeding are prerequisites for the taking of other measures against the persons of the judges concerned, whether civil, administrative, or criminal in nature.[41] It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.[42]

The issues that may now be appropriately addressed by the Court are the propriety of the appointment of the auditor and the imposition of the bail bond in the contempt charge.

We find both charges to be devoid of merit.

The appointment of the external auditor was in order. The auditor was issued by the Board of Accountancy of the Professional Regulation Commission a certificate of registration which bestowed upon her the privilege to practice accountancy in public, in all its multifarious fields including that of conducting external audit of any corporate entity.[43] Judicially appointed external auditors need not be accredited by the SEC as they are not covered by the SEC Circular requiring such accreditation. Moreover, the SEC Circular invoked by Marilou was not in effect at the time of the appointment of the external auditor in 2001.[44]

Anent the imposition of a bail bond in the contempt charge, we find the same to be in accordance with the Rules of Court to ensure Marilou's attendance in the continuance of the hearing of the contempt charge. Sections 4, 5, and 6 of Rule 71 of the Rules of Court provide as follows:

> SEC. 4. How proceedings commenced. – Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

> In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.
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> SEC. 5. Where charge to be filed. – Where the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court. Where such contempt has been committed against a lower court, the charge may be filed with the Regional Trial Court of the place in which the lower court is sitting; but the proceedings may also be instituted in such lower court subject to appeal to the Regional Trial Court of such place in the same manner as provided in section 11 of this Rule.
>
> SEC. 6. Hearing; release on bail. - If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the court, for his appearance at the hearing of the charge. On the day set therefore, the court shall proceed to investigate the charge and consider such comment, testimony or defense as the respondent may make or offer. (Emphasis supplied)

In the case at bar, as the hearing of the contempt charge was scheduled for continuation on another date, it was necessary for Judge Magno-Libre to require Marilou to file a bond to serve as a guarantee for her appearance thereat. This is clearly sanctioned by the Rules of Court.

However, respondent Judge Magno-Libre is admonished to exercise proper care and restraint in his language. As can be gleaned from the transcript of stenographic notes, Judge Magno-Libre uttered intemperate, impatient and even haughty language during the proceedings of both the Corporate Case and the Criminal Case. In this regard, Sections 1 and 2 of Rule 3.04 of the Code of Judicial Conduct states that:

> SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.
>
> SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the judiciary. Justice must not merely be done but must also be seen to be done.

Although his use of intemperate language may be attributable to human frailty, Judge Magno-Libre's noble position in the bench demands from him courteous speech in and out of the court. Judges are demanded to be always temperate, patient and courteous both in conduct and language. In Judge Fineza v. Aruelo,[45] the Court stressed:

> ... (A)s a member of the Bench he should have adhered to that standard of behavior expected of all those who don the judicial robe: that of being a "cerebral man who deliberately holds in check the tug and pull of purely personal preferences and prejudices which he shares with the rest of his fellow mortals.[46]

Judge Magno-Libre should bear in mind that all judges should always observe courtesy and civility. He needs to be reminded that government service is people-oriented. Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding. Court personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.[47]

WHEREFORE, the present administrative complaint against Judge Maximino Magno-Libre is DISMISSED. However, he is ADMONISHED to exercise prudence and restraint in his language and STERNLY WARNED that a repetition of the same or similar offense will be dealt more severely.

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SO ORDERED.

Austria-Martinez, (Acting Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Rollo, p. 3.

[2] Id. at 4.

[3] Ibid.

[4] Ibid.; The case was docketed as SEC Case No. 10-96-5471.

[5] Rollo, p. 5.

[6] This transferred the jurisdiction over intra-corporate controversies from the SEC to courts of general jurisdiction or appropriate Regional Trial Courts.

[7] Rollo, pp. 5 and 351.

[8] Id. at 401-408.

[9] Id. at 5-6.

[10] Id. at 413-416.

[11] Id. at 6.

[12] Ibid.

[13] Entitled "Perfecto G. Punongbayan and Marilou Visitacion v. Hon. Maximiano Magno-Libre, Danilo Punongbayan, Rico Quilab, Luis Lacar and Adelfa Silor."

[14] Rollo, p. 6.

[15] Id. at 73-84. Penned by Associate Justice S. L. Pestaño and concurred in by Associate Justices D. Vidallon-Magtolis, B. Guerrero and M. Guariña III.

[16] Id. at 7-8, 617.

[17] Id. at 355 and 618.

[18] Id. at 356-358.

[19] Id. at 426-428, 618.

[20] Id. at 430; Marilou also wrote a formal letter addressed to Judge Magno-Libre informing him that the auditor may already begin the audit of the School's financial records.

[21] Id. at 358-359, 432-436.

[22] Id. at 359, 439-440.

[23] Pursuant to the MANCOM appointment sanctioned by the SEC; Rollo p. 619.

[24] Id. at pp. 363-366; id. at 619, 454-455.

[25] Id. at 366-372.

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[26] Id. at 519-535.

[27] Id. at 621.

[28] Id. at 1-71; Dated 12 August 2003.

[29] Id. at 620-621.

[30] Id. at 621-622.

[31] Id at 346-536 with annexes.

[32] Id. at 622.

[33] Id. at 615-623.

[34] Id. at 622.

[35] See Rollo, pp. 699-702, 704-705.

[36] Id. at 622.

[37] Id. at 2; Docketed as C.A.-G.R. SP. No. 77040, entitled "Marilou Punongbayan-Visitacion v. Hon. Maximino Magno-Libre, Presiding Judge of Regional Trial Court of Lanao del Norte, Branch 5, Iligan City."

[38] Id. at 2; Pending before the Third Division of the Supreme Court, docketed as G.R. No. 157671 entitled "Danilo Punongbayan v. Perfecto Punongbayan Jr."

[39] Cordero v. Enriquez, A.M. No. CA-04-36, 18 February 2004, 423 SCRA 181, 186; Mendova v. Afable, 441 Phil. 694, 701 (2002).

[40] Mendova v. Afable, 441 Phil. 694, 701 (2002).

[41] Cordero v. Enriquez, A.M. No. CA-04-36, 18 February 2004, 423 SCRA 181, 186.

[42] Flores v. Abesamis, 341 Phil. 299, 313 (1997).

[43] Rollo, pp. 435-436.

[44] Id. at 435.

[45] 434 Phil. 561 (2002).

[46] 434 Phil. 561, 563 (2002).

[47] Rodriguez v. Bonifacio, A.M. No. RTJ-99-1510, 6 November 2000, 344 SCRA 519, 536.

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