

PRISCILLA IMBING, COMPLAINANT, VS. JUDGE BENJAMIN C. TIONGSON, METROPOLITAN TRIAL COURT, BRANCH 5, MANILA, RESPONDENT.

A.M. No. MTJ-91-595. February 07, 1994

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PER CURIAM:

A magistrate has to live by the example of his precepts. He cannot judge the conduct of others when his own needs judgment. It should not be "do as I say and not what I do." For then the court over which he is called to preside will be a mockery, one devoid of respect.[1] This the Court once quoted for guidance; this we now repeat with sanctions.

In a letter[2] dated July 25, 1991 addressed to former President Corazon C. Aquino which was endorsed to the Office of the Court Administrator on September 6, 1991 by the Office of the President, respondent Judge Benjamin C. Tiongson was charged with alleged abandonment and non-support of his two children with complainant Priscilla Imbing. Attached thereto was a copy of a sworn letter-complaint addressed to then Chief Justice Marcelo B. Fernan dated May 9, 1991, with attachments.[3]

In her aforesaid sworn letter-complaint, Priscilla Imbing claims that on November 1, 1981, she was married to respondent Judge Benjamin C. Tiongson, then City Judge of Pagadian City, in accordance with the rites, customs and traditions of the Subanen tribe of which she is a member, at Lapuyan, Zamboanga del Sur, and which marriage was solemnized by the tribal head, Lantay Imbing. After the marriage, they lived in Pagadian City and, in the succeeding years, had two children, namely, Anna Freya and Benjamin, Jr., who were born on September 19, 1982 and December 6, 1983, respectively.

When respondent was assigned as City Judge in Manila, he brought along his family. However, after a time, complainant and her two children were abandoned by respondent judge for another woman. There being no financial support coming from herein respondent, complainant was forced to go back to her hometown in Zamboanga del Sur together with her two children.

Complainant prays that this Court deduct the amount of P5,000.00 monthly from the salary of respondent judge and, in the event of the latter's retirement from the service, that she be given at least one-third of his retirement benefits for the education of their children. Attached to the letter-complaint are the following documents, viz.: (1) affidavit of Thimuay Langhap Lantay Imbing, chief of the Subanen tribe, who solemnized the marriage between complainant and respondent judge; (2) joint affidavit of Tambilawan Lumilay, then incumbent municipal councilor; Tias Kangad, a former barangay councilman; and Tindusan Singgo, a former municipal councilor, all of Lapuyan, Zamboanga del Sur, who stood as witnesses during the ceremony; (3) unsworn affidavit of Cesar B. Sulong, who stood as one of the principal sponsors during the baptism of Anna Freya Tiongson, on January 30, 1983; (4) certificates of live birth and of baptism of Anna Freya Imbing Tiongson; (5) certificate of live birth of Benjamin Imbing Tiongson, Jr.; and (6) two photographs, as will hereafter be explained.

The letter-complaint and its annexes were referred by the Office of the Court Administrator for consideration by

this Court which thereafter issued a resolution on February 13, 1992, requiring respondent judge to comment within ten days from notice thereof.

In his comment,[4] dated March 21, 1992, respondent emphatically denied that he and complainant were married; that he is the father of Benjamin, Jr.; and that he neglected to support Anna Freya. Attached thereto was his first letter dated July 7, 1991,[5] addressed to then Chief Justice Marcelo B. Fernan, wherein respondent judge declared that it was impossible for him to have married complainant Priscilla Imbing. He contended that it was of public knowledge that the latter was married to and had a child with another man at the time of the alleged marriage on November 1, 1981, and that as a matter of fact her husband and her child were living in the same municipality where the complainant lived.

He, however, acknowledged his paternity of Anna Freya but denied that of Benjamin, Jr. who was born on December 6, 1983. He alleged that it was highly improbable that Benjamin, Jr. is his son considering that he was assigned to Manila in January, 1983 at which time he had supposedly already stopped seeing herein complainant. Respondent theorizes that Benjamin, Jr. could have been the child of somebody else since complainant allegedly cohabited with two other men after her separation from him.

Finally, respondent denied that he had neglected and abandoned his daughter, Anna Freya, insisting that he had been sending P1,000.00 monthly for her sustenance. He further alleged that the P5,000.00 monthly support being demanded by complainant is too much, considering that his salary as a judge is just enough to support his family and his mother who are all dependent on him. He suggested deferment of any discussion on complainant's demand for one-third of his retirement as the same was premature and he had no intention of retiring.

Thereafter, on March 26, 1992, the Office of the Court Administrator received a letter[6] from complainant Priscilla Imbing dated March 23, 1992, addressed to the Justices of the Supreme Court, stating that she had decided to withdraw her complaint against respondent judge because they had already settled their differences and the latter had agreed to increase their financial support.

Notwithstanding her letter of desistance, the Court issued a resolution on July 21, 1992 referring the case to the Executive Judge of the Regional Trial Court of Manila for investigation, report and recommendation within sixty days from receipt of the records. The same were received on August 21, 1992 by then Executive Judge (now Associate Justice of the Court of Appeals) Bernardo P. Pardo who thereafter requested and was granted an extension of sixty days within which to submit his report and recommendation. A notice of investigation dated October 13, 1992 was sent to the parties informing them of the hearing scheduled on November 13, 1992.

However, in a communication dated November 13, 1992 sent by Executive Judge Pardo to the Court Administrator, the former recommended the designation of a judge of the Regional Trial Court of Pagadian City to take the deposition of the complainant in Pagadian City, for the reason that "(b)y telegram(s)[7] sent to the Executive Judge, Regional Trial Court, Manila, on November 9, 1992, the complainant Ms. Priscilla Imbing requests postponement of the hearing set on Friday, November 13, 1992, and that a judge in Pagadian City be designated to take her deposition because she is unable to come to Manila due to the expenses to be incurred and the threats made by respondent judge." The telegrams referred to invoked "security reasons," allegedly "because Judge Tiongson threatened to kill me if I go to Manila to pursue my complaint," to justify complainant's request.

Accordingly, this Court, in a resolution dated July 22, 1993, designated Executive Judge Franklyn A. Villegas of Branch 19, Regional Trial Court of Pagadian City, to take the deposition of complainant Imbing.

On September 23, 1993, Executive Judge Villegas issued an Order[8] of this import:

"When the above-entitled case was called for the taking of the deposition of complainant Priscilla Imbing this

afternoon, respondent Judge Benjamin Tiongson appeared for himself without any counsel assisting him. Complainant Priscilla Imbing appeared without counsel. When asked whether she has a counsel of her own to assist her during the taking of the deposition, she said that she does not need a counsel because she has decided to dismiss her complaint against respondent Judge Benjamin Tiongson.

"At this juncture, respondent Judge Tiongson submitted to the Court a machine copy of a letter dated March 23, 1992, allegedly signed by complainant Priscilla Imbing addressed to the Honorable Justices of the Supreme Court wherein it was mentioned in the letter, among others, of the desire of complainant to withdraw her complaint and to disregard her previous letters. When asked by the undersigned to confirm on (sic) whether or not she has signed the said letter produced by respondent Judge Tiongson to (sic) Court, after perusing and reading the same, complainant Priscilla Imbing confirmed that the signature above her printed name Priscilla Imbing in the letter is her signature, and reiterated her desire to close the investigation and to dismiss her complaint against respondent Judge Tiongson. When asked on whether or not she would still want her deposition to be undertaken this afternoon, she manifested that she would no longer want her deposition to be undertaken as she has decided to have the administrative case against Judge Tiongson be (sic) dismissed.

"WHEREFORE, in view of the foregoing, let the original and copies of this order be forwarded to Honorable Judge (sic) Bernardo P. Pardo, Court of Appeals Manila, for his guidance and information."

Thereafter, the corresponding report and recommendation[9] dated October 14, 1993 was submitted to the Court, finding respondent judge guilty of grossly immoral conduct and recommending his dismissal from the service, with prejudice to re-employment in the government service, including government-owned or controlled corporations, and with forfeiture of retirement benefits, if any.

As we have heretofore stressed, the Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety, not only with respect to his performance of his judicial duties but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality; a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times.[10] His personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach,[11] for no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary.[12] These are judicial guideposts too self-evident to be overlooked.

In his aforesaid letter of July 7, 1991, respondent made the following averments:"

"1. Alleged marriage with me. Ms. Imbing had a husband and child at the time of the alleged marriage on November 1, 1981. This is of public knowledge in the place where she resides. So how could she contract another marriage with me when she had a valid and existing marriage with another man?

Her husband and child live in the same municipality as she does. It will be easy for your good office to verify this fact first hand among the residents of Lapuyan, Zamboanga del Sur.

x x x

2. Alleged two (2) children with me. I acknowledge paternity of Anna Freya who was born on September 19, 1982.

On the other hand, I regret I cannot claim paternity of Benjamin Jr. I was reassigned to Manila in January 1983, at which time, I and Ms. Imbing stopped seeing each other. It is highly improbable therefore that I fathered Benjamin Jr., who was born on December 6, 1983.

There is a plausible explanation to this. After our separation in January 1983, she had been seeing other men. In fact, she cohabited with two other men after our separation."

Herein respondent had no qualms over the fact that he indeed fathered a child with a woman who, as hereinafter explained and which could not have been unknown to him, was not his lawful wife. He obviously could not deny paternity since he was aware that the unassailed birth certificate^[13] of Anna Freya carries his name and signature as the "father of the child." We have also taken judicial notice of respondent's 201 (or personal) file in this Court which shows that in his GSIS Information for Membership, dated February 3, 1983, respondent mentioned Anna Freya as his daughter, in addition to his two other children, Maria Regina Pia and Erwin Francis. As earlier stated, complainant also attached two pictures to her letter-complaint, one showing respondent carrying his daughter Anna Freya, and the other being a group picture taken when she was baptized.^[14]

What makes the situation more abhorrent, however, is the fact that, by respondent's own admission, at the time he was having an affair with complainant, he was fully aware that she was married to and had a child with another man and that, in fact, the latter were residing in the same municipality where she lived. Such fact alone could undeniably make respondent guilty of adultery. This arrant insensitivity and mockery of the moral norms of society exhibited by herein respondent betrays a demeaning contempt of the societal standards of morality voluntarily assumed by, exacted from and expected of members of the Judiciary.

We now turn to the matter of the marriage of respondent and complainant reportedly celebrated on November 1, 1981. According to complainant, she was married to respondent on said date in accordance with the customs and traditions of the Subanen tribe. As hereinbefore noted, this was supported by the affidavit^[15] of Lantay Imbing, chief of the Subanen tribe who officiated at the marriage ceremony, and the joint affidavit^[16] of Tambilawan Lumilay, Tias Kangad and Tindusan Singgo who arranged and were witnesses at the wedding. Respondent judge assertively contends that it would be impossible for him to contract marriage with complainant considering that it was of public knowledge that the latter was already married to somebody else at that time. This situation ironically illustrates the apothegm that to successfully prevaricate, one should have a good memory. For, respondent judge appears to have forgotten that in the birth certificate of Anna Freya,^[17] where his signature, name and address identify him as the informant who supplied all the data therein contained, these entries are indicated: "Date and Place of Marriage of Parents: November 1, 1981; Municipality: Lapuyan; Province: Zambo del Norte;" and with the typewritten explanation: "Subano Rights," obviously meaning Subanen rites. The Court is accordingly satisfied that such a marriage did indeed take place.

This is not to say that said marriage would have been valid were it not for the legal impediment that either or both contracting parties had a subsisting marriage with another spouse. That would, further, make respondent liable for bigamy. However, Article 78 of the Civil Code, the governing law at that time, provided that marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. That provision, therefore, could not validate the marriage between complainant and respondent because, for one, the records show that the former is a Protestant while the latter is a Catholic. What is distressing, nonetheless, is that respondent judge could not have been unaware that the marriage he was contracting was invalid. The irresistible conclusion is that he knowingly availed of such rites as a scheme or subterfuge to enable him to avail of supposed connubial rights with complainant under the guise of a state of marital coverture.

From the extant documents in respondent's personal file, it is not explicitly stated that respondent was married at the time of his amorous relationship with complainant. However, in his Personal Data Sheet therein, it is specifically stated that respondent was married to Estrellita R. Tiongson on March 10, 1963 and that they had two children, namely, Erwin, born on August 25, 1966, and Ma. Regina Pia, born on July 15, 1971, who were respectively eight and four years old at that time. There is no showing that the marriage was dissolved or annulled, or that Estrellita Tiongson was already dead at about the time of respondent's sexual dalliance with

complainant and when Anna Freya was born. The presumption that a thing once proved to exist continues as long as is usual with things of that nature[18] not having been rebutted, it would therefore be safe to conclude that the first marriage of respondent was still subsisting when he had an affair with complainant.

Also, in his aforementioned GSIS Information for Membership form signed in Manila on February 3, 1983, respondent definitely indicated his civil status as "separated" and not as "widower," although there were specific spaces provided therein for putting the corresponding and true status of the member. All these give substance to the finding in the investigation report that "at the time respondent judge sired Anna Freya with complainant Priscilla Imbing, respondent judge x x x was a much married man."

Without taking up the issue of whether respondent judge had committed concubinage, for purposes of this administrative case, however, we find that respondent's gross immorality has been undoubtedly proven. Now, it will be remembered that he was at the time a city judge and, as such, a high government official in the community of assignment. Consequently, being in direct contact with the people thereof, he cannot but be expected to be above and beyond reproach, not only in his private life but also in his public or official conduct, dealings and actuations. He, therefore, ought to be a person of exemplary character, if not a model citizen -- attributes so necessary if the citizenry is to keep faith in the proper and impartial administration of justice. By committing the immorality in question, respondent violated the trust reposed in his high office, and utterly failed to live up to the noble ideals and the strict standards of morality required of the law profession.[19]

In *Sicat vs. Alcantara, et al.*,[20] wherein the respondent judge was charged with immorality for having an illicit affair with a married female court employee, this Court trenchantly declared:

"The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a Judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the Judiciary."

In another case where a municipal judge was charged with having illicit relations with a concubine under scandalous circumstances, we there stated that if good moral character is required of a lawyer, with more reason should that requirement be exacted of a member of the Judiciary who at all times is expected to observe irreproachable behavior and is bound not to outrage public decency.[21] Thus, even as an ordinary lawyer, respondent judge has to conform to the strict standards of conduct demanded of members of the profession. Definitely, fathering a child with a woman other than his lawful wife fails to meet these standards. A judge suffers from moral obtuseness or has a weird notion of morality in public office when he labors under the delusion that he can be a judge and at the same time have a mistress in defiance of the mores and sense of morality of the community.[22]

One more thing. In a sworn letter dated March 23, 1992, the Court was informed by complainant that she was formally withdrawing her complaint against respondent judge because she "was motivated and compelled to complain against Judge Tiongson based on a wrong information," without realizing "that the misunderstanding brought about by (her) indiscretion would have its toll on the innocent, and would adversely affect (them) all." She expressed her desire to drop her complaint "after Judge Tiongson agreed to increase the support."

The fact that complainant has lost interest in prosecuting the administrative case against herein respondent judge will not necessarily warrant a dismissal thereof. Once charges have been filed, the Supreme Court may not be divested of its jurisdiction to investigate and ascertain the truth of the matter alleged in the complaint. The Court has an interest in the conduct of members of the Judiciary and in improving the delivery of justice to the people,

and its efforts in that direction may not be derailed by the complainant's desistance from further prosecuting the case he or she initiated.[23]

To condition administrative actions upon the will of every complainant, who may, for one reason or another, condone a detestable act, is to strip this Court of its supervisory power to discipline erring members of the Judiciary.[24] Definitely, personal interests are not material or controlling. What is involved here is a matter of public interest considering that respondent is no ordinary citizen but an officer of the court whose personal behavior not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.[25]

Besides, we are not inclined to accept the validity of the explanation advanced by herein complainant nor the implied representation that the same was made with intelligence and voluntariness. It must be remembered that herein complainant was prompted to request that her deposition be taken in Pagadian City because of the threats made by respondent that she would be killed if she pursued her case. This was one of the bases of then Executive Judge Pardo for recommending that her request be granted. Furthermore, a perusal of the order issued by Judge Villegas of Pagadian City discloses that on the date set for the taking of complainant's deposition, respondent appeared in his court together with complainant who was not even assisted by counsel. It was then manifested by complainant that she was withdrawing the case against respondent and that she was no longer giving her deposition in court. Judge Villegas did not even bother to ask complainant to expound on the reasons for her change of heart. The dubious and suspicious circumstances under which complainant's acquiescence to withdraw the case was obtained only serve to reinforce our misgivings thereon.

We are also neither prepared nor disposed to pass upon the question of whether of not Benjamin, Jr. is a child of respondent, no evidence having been presented to sufficiently establish his true filiation. That is a matter to be determined in an appropriate proceeding in the proper forum. Furthermore, our disposition of this administrative case is understood to be without prejudice to the obligation of respondent to give continuing support to Anna Freya as regulated by law.

WHEREFORE, on the foregoing premises, we find respondent Judge Benjamin C. Tiongson guilty of gross immorality. He is hereby **DISMISSED** from the service and, pursuant to Section 9, Rule 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987),[26] such dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in the government-service, all without prejudice to criminal or civil liability.

Respondent is hereby **ORDERED** to cease and desist immediately from rendering any judgment or order, or continuing any judicial action or proceeding whatsoever, effective upon receipt of this decision.

SO ORDERED.

Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Melo, Quiason, Puno, and Vitug, JJ., concur.
Narvasa, C.J., and Bellosillo, J., no part.
Nocon, J., on leave.

[1] *Viojan vs. Duran*, Adm. Case No. 248, February 26, 1962, 4 SCRA 390.

[2] *Rollo*, 2.

[3] *Ibid.*, 3-11.

[4] *Ibid.*, 15.

- [5] Ibid., 16.
- [6] Ibid., 14.
- [7] Ibid., 31 and 32.
- [8] Ibid., 34-35.
- [9] Ibid., 38.
- [10] Castillo vs. Calanog, Jr., A.M. No. RTJ-90-447, July 12, 1991, 199 SCRA 75.
- [11] Javier, et al. vs. De Guzman, Jr., A.M. No. RTJ-89-380, December 19, 1990, 192 SCRA 434.
- [12] Association of Court Employees of Panabo, Davao vs. Tupas, etc., et al., A.M. No. RTJ-87-141, July 12, 1989, 175 SCRA 292; National Intelligence & Security Authority vs. Tablang, etc., Adm. Case No. R-94-RTJ, July 31, 1991, 199 SCRA 766.
- [13] Rollo, 9.
- [14] Ibid., 4 and 5.
- [15] Ibid., 6.
- [16] Ibid., 7.
- [17] Ibid., 9.
- [18] Sec. 3(ee), Rule 131, Rules of Court.
- [19] Viojan vs. Duran, supra., Fn. 1.
- [20] A.M. No. R-6-RTJ, May 11, 1988, 161 SCRA 284.
- [21] Leynes vs. Veloso, A.M. No. 689-MJ, April 13, 1978, 82 SCRA 325.
- [22] Nicolas vs. Yuzon, A.M. No. RTJ-89-303, Resolution En Banc, August 14, 1990.
- [23] Cabandong vs. Calderon, A.M. No. RTJ-89-343, Resolution En Banc, February 20, 1990.
- [24] Ramirez vs. Corpuz-Macandog, A.M. No. R-351-RTJ, September 26, 1986, 144 SCRA 462.
- [25] Arban vs. Borja, A.M. No. R-281-RTJ, August 26, 1986, 143 SCRA 634.
- [26] See Zuño, Sr. vs. Dizon, A.M. No. RTJ-91-752, Resolution En Banc, October 21, 1993.

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