

SIMEON G. MACUSE, COMPLAINANT, VS. JUDGE GERVACIO A. LOPENA, MUNICIPAL CIRCUIT TRIAL COURT, TUBIGON-CLARIN, BOHOL, RESPONDENT.

A.M. No. MTJ-88-189. September 30, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Simeon G. Macuse, a Court Aide at the Municipal Circuit Trial Court (MCTC) of Tubigon - Clarin, Bohol filed with this Court a sworn letter complaint dated June 2, 1988 charging Judge Gervacio A. Lopena with dishonesty, oppression, gross misconduct and corrupt practices.

Complainant alleged that:

"x x x when he received in January 1986 a lump sum of six thousand (P6,000.00) pesos representing his salary for the months of September to December, 1985, Judge Lopena demanded from him four thousand five hundred (P4,500.00) pesos as compensation for the respondent's act of recommending his appointment and for personally handcarrying the check representing his salary. He said he begged off, giving respondent instead two thousand three hundred (P2,300.00) pesos.

"Complainant also alleged that upon learning that the aforesaid incident of 'unlawful exaction' had somehow leaked out, respondent Judge immediately imputed the blame on the herein complainant and allegedly attempted, in an unorthodox scheme, to remove the latter from his position as MCTC Aide.

"Complainant further claimed that respondent concocted a 'letter of resignation' purportedly signed and filed by him (complainant), informed the latter in writing of the acceptance of his resignation, furnished copies thereof to the Supreme Court offices concerned, and ordered the complainant not to report anymore for duty effective May 2, 1988. He denied having written or having filed such letter of resignation and asserted that the signature on the said letter is not his signature.

"Complainant likewise alleged that despite the respondent's directive, he continued to report for duty, filed with the Office of the Court Administrator a letter protest dated April 30, 1988 (Rollo, p. 10) relative to the resignation scheme, with a follow-up telegram dated April 29, 1988 (Rollo, p. 11) sent by his co-employees in support of his allegations. These further angered the respondent Judge, who, in a childish display of temper castigated the herein complainant and defaced the logbook wherein the latter's office attendance for the month of May, 1988 had been recorded.

"In addition, complainant informed that respondent Judge persisting with the resignation plot, wrote the Accounting Division of this Court, returning the salary of herein complainant, for the month of May, 1988, for the reason that he has already resigned effective April 22, 1988. Correspondingly, complainant informed the Office of DCA Meynardo A. Tiro of the falsity of the resignation plotted by the respondent." (Rollo, pp. 1-2)

In his answer dated August 27, 1988, respondent vehemently denied the charges and interposed the following defenses:

"He contended that he never exacted the amount of P2,300.00 from the complainant, in consideration for his appointment as MCTC Aide and for the purpose of buying a standard typewriter. The truth of the matter was complainant began showing signs of unreasonableness in the 1st week of April, 1988 when he received his check late in the amount of eight hundred fifty (P850.00) pesos. Respondent Judge claimed that in the afternoon of March 30, 1988, a Holy Wednesday, he fetched from the Post Office of Tubigon, Bohol, the salaries of his subordinates. As it has been his policy to personally hand over the checks to the employees concerned only the Clerk of Court and Clerk-Stenographer received their checks as the other employees, including herein complainant have already left the office. Since he also presides over MCTC Tubigon-Clarin, Bohol during Mondays to Wednesdays, he was able to give the check to complainant only the next Thursday. While the other employees made no qualms about the delay, complainant on the other hand became unreasonably angry.

"According to respondent, complainant has been telling his parents lately that he could not give them money because respondent borrowed three thousand (P3,000.00) pesos from the complainant. Respondent Judge denounced the aforesaid statement as a lie. He confronted complainant about the falsehoods, but complainant became angry and belligerent. He also claimed that he has reminded complainant about the undated irrevocable letter of resignation which the latter signed in 1985 when his appointment papers were being processed for submission to the Supreme Court, which may be accepted by him. However, complainant did not budge in his belligerency. Being greatly provoked, respondent dated the letter of resignation for April 22, 1988 and accepted it on even date.

"On the other hand, respondent admitted to have placed the words 'No More' and cross marks on the logbook of complainant for the month of May for he has been seeing the complainant in the office not performing his duties but continued placing on the logbook his time of arrival and departure. He further admitted that he is not aware of the fact that he has no authority to accept the resignation of court personnel and so he readily followed the directive of Atty. Orlando Carino, Assistant Chief, Administrative Services of this Court to reinstate complainant by requiring the latter to report back to duty and to file his leave of absence for the month of May, 1988. He likewise requested the Accounting Division to send back the salary check of complainant also for the month of May.

"Respondent finally claimed that the instant complaint is pure harassment as the same was instigated by Atty. Artemio Cabatos who has personal grudge against him." (Rollo, 78-79)

On September 15, 1988, complainant's counsel, Atty. Artemio Cabatos filed his "Appearance with Comment" averring that respondent's answer constitute general denials, confessions and avoidance and dwells lengthily on highly irrelevant matters, a case in point was respondent's malicious innuendoes and uncalled for personal attack against Atty. Cabatos who is not a party to the instant case.

Complainant likewise filed a "Supplemental Affidavit" dated August 4, 1989 alleging that respondent has shown personal enmity towards him. For instance, he was made to go overtime last July 14, 1989 just because he went out of the office for a while to buy medicine to relieve himself of headache.

Respondent in his Rejoinder dated August 9, 1989 claimed that the allegation of the complainant in his affidavit was preposterous and ridiculous.

In a resolution dated August 31, 1989, the Court En Banc referred the complaint against (1) Judge Gervacio Lopena to the Executive Judge, RTC, Bohol and (2) Atty. Artemio P. Cabatos to the Integrated Bar of the Philippines (IBP) to be docketed as Administrative Case No. 3379, both for investigation, report and recommendation.

Accordingly, Executive Judge Pacito A. Yape of the Regional Trial Court (RTC), Branch 3 of Tagbilaran City filed his report on February 11, 1991.

The investigating judge found that the charge of illegal exaction imputed against Judge Lopena has no sufficient basis. Complainant testified that after receiving from respondent Judge his eight (8) checks totalling P6,494.98 which the latter followed up at the Supreme Court, respondent asked from him some amount of money to buy a typewriter costing about P4,500.00. Complainant, however, gave only P2,300.00 as his share to defray the cost of the typewriter which was allegedly bought by the respondent at the Bohol Quality Store at Tagbilaran City. The investigating judge found no hard and substantial evidence to prove complainant's allegation that he gave P2,300.00 to the respondent. There was no proof of purchase of said typewriter. And no document to show that respondent received the money in question from the complainant.

However, the investigating judge found the acts of respondent in ousting the complainant as irresponsible and reprehensible. "Complainant vehemently denied having filed said letter of resignation and he disowned the signature above his typewritten name. The denial led the respondent to submit the questioned letter of resignation together with the other signed papers of complainant to the PC/INP Laboratory Service, Camp Sotero, Cabahug, Cebu City, to determine if the signature found in the letter of resignation is the complainant's genuine signature. The document expert testified that the signature appearing thereon was complainant's signature. The Investigating Judge Yape surmised that the letter of resignation was prepared by complainant after the issuance of Letter of Instruction No. 14-A issued by the late President Marcos on September 29, 1972. (The LOI required government employees to file their resignation letters within one (1) week from its publication). As admitted by respondent, the date appearing in the letter of resignation 'April 23, 1988' was placed by respondent after the money incident took place."

In view of the foregoing, the investigating Judge made the following recommendations, to wit:

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"1. To reprimand the respondent for his indiscreet acts of attempting to oust the complainant from his job without due process; and,

"2. To admonish and suspend for Three (3) Months without pay the complainant for want of respect to his superior by filing charges against the respondent without substantive evidence." (Rollo, p. 70)

After receiving the Executive Judge's Report and Recommendations, the complainant through counsel filed a manifestation with this Court which he entitled as "Sad Note on the Case." He manifested that the recommendation for three (3) months suspension for having filed the instant case against respondent showing "want of respect to his superior" indirectly suggest that:

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"(i) that, no matter how corrupt and incompetent a judge of this country is, no one should dare file charges against him;

"(ii) that anyone who files charges against a judge will stand to suffer punishment instead of relief;

"(iii) that, therefore, redress against misconduct and abuses of a judge is not within the realm of law and judicial processes; and

"(iv) that the country's legal and judicial processes are one-sided in favor of the powerful." (Rollo, p. 74)

The findings of the investigating judge are well-taken. Absent clearer proof of exaction of money from the complainant and considering the explanations by the Judge including the alleged instigation by a disgruntled lawyer, we cannot presume the guilt of the respondent. However, the Court disagrees with the recommendation of imposing the penalty of suspension on the complainant for his failure to substantiate his charges. It is possible that

the charges could be true but unfortunately cannot be proved. Therefore, we assume them without basis in the absence of proof.

The Court is inclined to agree with the observation of the Office of the Court Administrator that the complainant should not be penalized simply because he failed to present substantial evidence on his charge that respondent exacted money from him. Complainant is the most lowly employee in the court while the respondent is its presiding judge. The judge's position is intimidating enough. Considering complainant's position in court as against that of the respondent, it would indeed be very difficult for him to get witnesses in his favor. If such charges are not supported by evidence, then the administrative complaint filed against the judge shall be accordingly dismissed. (*Banawa v. de Jesus*, 114 SCRA 505 [1982]; *Lopez v. Fernandez*, 99 SCRA 603 [1980]; *Raquiza v. Castañeda*, 81 SCRA 235 [1978]).

Unless complainant is found to be in bad faith in filing the complaint, then it would not be in consonance with justice to subject him to penalty for his mere failure to substantiate the charges. In the report of the investigating judge, there is no showing that the complaint was maliciously filed. The fact that complainant was not in the position to prove all his charges does not merit a reprisal on our part to subject him to the penalty of suspension without pay.

On the other hand, the records clearly show that respondent judge had indeed mistakenly used his office in a vindictive and oppressive manner in retaliation to the complainant's accusations. The respondent admitted that he dated and accepted the letter of resignation which complainant filed pursuant to LOI 14-A. The letter was prepared in 1985 and should not be considered on its face value when it was accepted by the respondent on April 22, 1988. Undeniably, the complainant did not at all have any intention to resign from his office at this point in time. Nonetheless, the respondent considered him as resigned at this time; thus, he crossed out complainant's logbook for the month of May and wrote the words "No More". This is a childish behaviour unbecoming of a Judge. The respondent should have kept his cool. We agree with the investigating judge that it was obviously the respondent's anxiety and overzealousness to oust complainant which led him to forget that the country is no longer governed by Mr. Marcos and that the acceptance of a resignation of court personnel has never been a judge's prerogative. The respondent still persisted in his desire to oust the complainant when he recommended the latter's dismissal on the ground that complainant is not a civil service eligible. It indeed slipped the respondent's mind that the position of Court Aide needs no civil service eligibility.

The respondent also went to the extent of implicating the complainant's counsel as the real instigator of the complaint filed against him on the ground that the counsel lost his cases tried before respondent's court. In his 2nd Indorsement dated June 2, 1988 sent to DCA Tiro, the respondent even made mention of complainant's associations with respondent's uncle who happens to be "gay". Such insinuations are uncalled for and unbecoming.

By and large, the respondent's actuation and attitude is indeed unbecoming of a judge who is expected to exercise proper restraint and decorum in his dealings with people especially with the most lowly employee in his chambers. His position may be intimidating enough and to use his position in an oppressive and vindictive manner is certainly unwarranted. Respondent Judge Lopena deserves to be reprimanded.

Finally, we also agree with the investigating judge that the present controversy started from a personal and perhaps petty squabble between the two parties which has certainly been blown out of proportion. The parties must be aware that courts are already heavily burdened with clogged dockets and there are many worthwhile cases crying for attention. If only the parties were a little more circumspect with their actuations and dealings with one another then the time and effort of the court may not have been wasted on such petty bickerings between

court personnel. The protagonists should have settled their differences out of court in a spirit of forgiveness and reconciliation.

WHEREFORE, both the complainant and the respondent judge are hereby severely REPRIMANDED with the warning that another misconduct of this nature committed by either party should be dealt with more severely.

SO ORDERED.

Fernan, C.J., Narvasa, Bidin, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, and Sarmiento, JJ., agreed with Mme. Justice Aquino.

Grino-Aquino, J., agreed that respondent Judge should be reprimanded, but not the complainant.

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