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THIRD DIVISION

[A.M. No. RTJ-06-1973 (Formerly OCA IPI No. 05-2329-RTJ), March 14, 2008]

ASUNCION REYES, Complainant, vs. JUDGE RUSTICO D. PADERANGA, Regional Trial Court, Branch 28, Mambajao, Camiguin, Respondent.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is an Administrative Complaint filed by Asuncion Reyes (complainant) dated July 14, 2005 charging Judge Rustico D. Paderanga (respondent), Presiding Judge of the Regional Trial Court (RTC), Branch 28, Mambajao, Camiguin, with bias, ignorance of the law and procedure, antedating orders, failure to resolve cases within the reglementary period and refusal to inhibit in several cases pending before his court.[1]

The charges emanate from five civil cases, as follows:

(1) In Civil Case No. 676, entitled *"Spouses Jose and Dorothy Reyes v. Asuncion Reyes and Adrianne Ebcas,"* appeal for Ejectment and Damages.

Complainant avers that respondent was guilty of gross ignorance of the law particularly of Section 9, Rule 39 of the Rules of Court[2] when he ordered the garnishment of complainant's Dollar Deposit Account with the Philippine National Bank (PNB) in the amount of US$10,000.00 when the judgment debt was only P100,000.00; and undue delay in resolving a motion, as it took him 105 days to resolve complainant's motion to withdraw deposit in excess of P100,000.00. Complainant asserts that such delay was aggravated by the fact that she told respondent that the reason she filed the motion was to be able to buy medicines for her 98-year old ailing mother. She claims that initially, respondent refused to act on the motion to withdraw, saying that he would not allow the withdrawal of any amount as long as the other party would object. When complainant filed a Motion to Inhibit on December 13, 2004, citing Section 9, Rule 39 of the Rules of Court, however, respondent was prompted to grant complainant's motion to withdraw, which he dated as December 6, 2004 but mailed on December 17, 2004, to make it appear that said order was not a reaction to the Motion to Inhibit. Complainant further asserts that respondent rendered his decision in this case only on May 18, 2005 or 1 year and 14 days after the case was submitted for decision. Finally, complainant states that respondent was biased and prejudiced, and that he acted with vengeance on account of complainant's Motion to Inhibit.[3]

(2) In Civil Case No. 517, entitled *"Julio Vivares, as Executor of the Estate of Torcuato Reyes and Mila Reyes-Ignalig, as heir v. Engr. Jose J. Reyes,"* for Partition.

Complainant claims: It was only when respondent judge handled the case, *i.e.,* seven years from the filing of the complaint, that defendant's counsel, who is respondent's relative within the fifth civil degree, filed a motion for preliminary hearing of defendant's affirmative defenses. Respondent refused to inhibit himself despite obvious bias and prejudice, and dismissed the case, through a Resolution dated December 9, 2004, in spite of vehement opposition from complainant and the pendency of a petition before the Supreme Court regarding the matter of receivership, manifesting respondent's gross ignorance of the law. Respondent antedated the December 9, 2004 Resolution as shown by the fact that it was mailed only on December 21, 2004. And he delayed resolving the motion to dismiss, as he rendered the same only 2 years and 49 days after it was submitted for resolution.[4]

(3) In Civil Case No. 683, entitled *"Asuncion Reyes v. Spouses Jose and Dorothy Reyes,"* for Reconveyance, Declaration of Nullity of OCT No. P-10146 and Damages.

Complainant alleges that respondent took 105 days to resolve a motion to dismiss, and that he was guilty of bias, hostility and ignorance of the law,[5] without elaborating, however, on the reasons therefor. In a letter to then Chief Justice Hilario Davide, Jr., dated January 14, 2005, complainant also claimed that respondent antedated the Orders dated December 6, 7, and 9, 2004, as shown by the fact that they were mailed days after their issuance.[6]

(4) In Civil Case No. 681, entitled *"Arturo Jacot v. Delia Nacasabog and Pacita Mabilanga,"* for Appeal for Forcible Entry with Damages.

Complainant narrates that respondent initially disqualified himself from trying the case because the opposing counsel, Atty. Avelino P. Orseno, Jr., is respondent's nephew;[7] respondent, however, recalled his inhibition when Atty. Orseno withdrew his appearance, with his appointment as Attorney III in the Department of Agrarian Reform (DAR); complainant moved for reconsideration seeking respondent's inhibition from the case, as well as the disqualification of appellee's new counsel, Atty. Charlito Sabuga-a, on the ground that Atty. Sabuga-a was also a DAR lawyer and he could not be disassociated from Atty. Orseno; respondent, however, denied the said motions.[8]

(5) In Civil Case No. 687, entitled *"Delia Jacot-Mabilanga and Pacita Jacot v. Arturo, Ronnie and Ricky, all surnamed Jacot,"* for Quieting of Title of Real Property with Damages.

Complainant claims that respondent displayed manifest bias when, without any request for extension, respondent *motu proprio* issued an Order on January 17, 2005 giving defendants' counsel additional 15 days within which to submit their memorandum. The original lawyer of the defendants was Atty. Orseno, respondent's nephew. Complainant asserts that respondent's refusal to inhibit himself constituted a violation of Section 1, Rule 137 of the Rules of Court, notwithstanding the withdrawal of Atty. Orseno in the appeal.[9]

Respondent submitted his Comment refuting the charges against him.[10] Complainant thereafter filed a Reply reiterating her claims.[11]

The Court assigned Associate Justice Teresita Dy-Liacco Flores of the Court of Appeals (CA) Cagayan de Oro City to investigate and submit her report and recommendation.[12]

On September 12, 2007, the Court received Justice Dy-Liacco Flores's report finding that, of the many charges hurled against respondent, only two were duly proven: gross ignorance of the law and procedure for dismissing Civil Case No. 517; and delay in resolving a motion in Civil Case No. 676, for which the imposition of fines in the amounts of P20,000.00 and P15,000.00, respectively, is recommended.[13]

The Court's Ruling

The Court agrees with the findings and recommendation of the Investigating Justice with certain modifications.

Preliminarily, let it be stressed that in administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of her complaint. Substantial evidence is such evidence which a reasonable mind will accept as sufficient to support a conclusion.[14] If complainant fails to discharge said burden, respondent cannot be held liable for the charge.[15]

On the charge of bias

Complainant charges respondent with bias in all the civil cases subject of the present administrative complaint. Apart from the averments in her complaint, however, she was not able to present any clear and convincing proof that would show that respondent was intentionally acting against her. Mere suspicion of partiality is not enough. There must be sufficient evidence to prove the same, as well as a manifest showing of bias and partiality stemming from an extrajudicial source or some other basis. A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial.[16] As there is no substantial evidence to hold respondent liable on this point, the Investigating Justice correctly recommended the dismissal of this charge against him.

On the charge of refusal to inhibit

Closely related to the charge of bias is the charge of refusal to inhibit. Again, the Investigating Justice correctly recommended the dismissal of this charge against respondent, because when a case does not fall under the instances covered by the rule on mandatory disqualification of judges as expressly enumerated in Section 1, Rule 137 of the Rules of Court, which provides:

> Section 1. *Disqualification of judges*. No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or **to counsel within the fourth degree,** computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all

parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied)

inhibition is discretionary and primarily a matter of conscience and sound discretion on the part of the judge.[17] This discretion is an acknowledgment of the fact that judges are in a better position to determine the issue of inhibition, as they are the ones who directly deal with the litigants in their courtrooms.[18]

As aptly explained by respondent in his Comment, the grounds mentioned by complainant in her motions to inhibit are not mandatory grounds for disqualification. He is related to Atty. Hermosisima, counsel in Civil Case No. 517 only by the fifth degree of affinity, which relationship is not included in Rule 137. Complainant failed to cite any specific act that would indicate bias, prejudice or vengeance warranting his inhibition from the cases.[19]

On the charge of antedating orders

On this point, the Investigating Justice correctly observed that a gap of few days from the date of the order and the date of mailing is a weak circumstance from which a conclusion of antedating may be drawn.[20] Respondent's explanation in his Comment that the mailing of orders was not promptly done during the period of December 6 to 21, 2004 because his court at the time was undermanned and overburdened with work[21] is very plausible. In the face of a weak accusation, such explanation must be considered sufficient to dismiss the charge.

On the charges of gross ignorance of the law

Of the several charges of gross ignorance of the law, Investigating Justice Dy-Liacco Flores found basis to hold respondent administratively liable therefor anent his issuance of the December 9, 2004 Resolution in Civil Case No. 517.

Civil Case No. 517 for Partition and Recovery of Share of Real Estate was filed by Julio Vivares (Julio) as Executor of the Estate of Torcuato Reyes and Mila Reyes-Ignalig (Mila), heir of Torcuato, against Jose Reyes (Jose) on August 17, 1995 seeking the partition of the Estate of Spouses Severino Reyes, parents of Torcuato and Jose.[22] Jose filed an Answer with Affirmative Defenses and Counterclaim on September 22, 1995 invoking prematurity, among others.[23] Julio and Mila filed a Reply,[24] and several incidents took place thereafter -- pre-trial,[25] partial judgment based on the partial settlement between Jose and Mila,[26] constitution of a commission of three to identify the properties already adjudicated to Torcuato and Jose,[27] appointment of a receiver,[28] and filing of a petition with the CA and thereafter with the Supreme Court on the issue of receivership.[29]

Seven years after the filing of the case, respondent assumed office as Presiding Judge of RTC Branch 28 where the case was pending.[30] On July 30, 2002, Jose, for the first time, filed a Motion to Hear Affirmative Defenses.[31] On November 6,

2002, respondent issued an order suspending the proceedings in the case "as a gesture of respect to the Supreme Court," where a petition on the issue of receivership was pending.[32] A year and a half later, or on July 16, 2004, Julio and Mila filed a Motion to Set the Case for Hearing and to Resolve all Pending Issues, claiming that Jose continued to appropriate and enjoy the fruits of the common properties, to their prejudice.[33] Jose filed a Comment asserting that his Motion to Hear Affirmative Defenses should first be passed upon, as it raised the question of the prematurity of filing the case.[34] On October 5, 2004, respondent issued a Joint Order in Civil Case Nos. 517, 676 and 683, as it involved the same parties and practically the same subject matter, calling them to a conference for the purpose of seeking an amicable settlement.[35] Failing to reach an agreement in the joint hearing on November 19, 2004, respondent set another hearing for January 10, 2005.[36]

Before January 10, 2005, however, that is, on December 9, 2004, respondent issued a "Resolution (On the Motion to Hear Affirmative Defenses)" dismissing Civil Case No. 517. In the said resolution respondent sustained Jose that the case should be dismissed, since a condition precedent had not been complied with , *i.e.* no determination of the debts, if any, of the estate of the Spouses Severino Reyes, whose properties were sought to be partitioned, had yet been made, which under Rule 90 of the Rules of Court, should first be complied with; and the failure of the complaint to allege that the estate of Spouses Severino Reyes left no debts made it vulnerable to dismissal for failure to state a cause of action.[37]

The Court agrees with the Investigating Justice in finding respondent guilty of ignorance of the law. Jose actively participated in pre-trial which thereafter led to a partial settlement of the properties; and since he benefited in the partial judgment rendered by the court, Jose can no longer move for the dismissal of the action. Respondent is aware of the pendency of the action before the Supreme Court regarding the issue of receivership, as he in fact earlier issued an order suspending the proceedings of the case only to reverse himself thereafter by dismissing the main case, effectively mooting the case before the Supreme Court. The resolution caught the parties by surprise, as there was still a scheduled hearing for January 10, 2005.[38]

It is basic that the active participation of a party in a case pending against him before a court is tantamount to recognition of that court's jurisdiction and a willingness to abide by the resolution of the case which will bar said party from later on impugning the court's jurisdiction. While it is true that failure to comply with a condition precedent can be a basis for dismissing an action, the defendant must raise such matter in a motion to dismiss and not file an answer and actively participate in the trial of the case; otherwise, he shall be deemed to have waived said defense.[39]

In Civil Case No. 517, defendant Jose's active participation in the case was manifested by the following incidents: the order of then Presiding Judge Sinforoso V. Tabamo, Jr. on October 17, 1996 stated that "by agreement, defendant Jose is directed to release to plaintiff Julio A. Vivares the sum of P3,000.00 with which to finance the procurement of the documents needed."[40] Records also show that Jose entered into a partial settlement with Mila, his mother and siblings on January 17,