

## THIRD DIVISION

[ A.M. No. RTJ-98-1403, August 14, 2000 ]

**MAMERTO T. PACRIS, COMPLAINANT, VS. JUDGE ADRIAN N. PAGALILAUAN, RESPONDENT.**

### DECISION

**PURISIMA, J.:**

At bar is an administrative complaint of Mamerto T. Pacris (complainant) against Judge Adrian N. Pagalilauan (respondent) of Branch 12, Regional Trial Court, Sanchez Mira, Cagayan, for serious misconduct, gross ignorance of the law, inefficiency and falsification of monthly certificate of service.

Complainant charges respondent as follows:

“THE CHARGES

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During the pendency of Election Case No. 1807-S, entitled ‘Federico Q. Galapia, protestant, versus Mamerto T. Pacris, protestee,’ which was tried and submitted for decision before respondent judge, and during the campaign of (sic) the 1995 elections, wherein the protestant and the protestee were again among the candidates for mayor in Sanchez Mira, Cagayan, the protestant in his campaign speeches told the public that he will sit as the Mayor-elect of Sanchez Mira on April 14, 1995. So the protestee approached the respondent judge in his chambers to inquire from him if he has (sic) already rendered his decision in the election protest involving the protestant and the protestee and stated to him what the protestant had been publicly telling the people, but respondent judge told protestee not to believe the protestant and to convince protestee, he showed his unsigned decision dismissing Election Case No. 1807-S.

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In the early morning of April 20, 1995, the undersigned before going to Tuguegarao, Cagayan, to see the Governor on official matters, he decided to see first the respondent judge in his chambers, which he was using it (sic) at that time as his sleeping quarters without the permission of the Supreme Court because he left his boarding house after he was caught peeping at the daughter of his landlady while taking a bath, to ascertain from him if it is (sic) true what protestant had been telling the public that he will (sic) sit that day, April 20, 1995, as the mayor-elect of Sanchez Mira and he admitted that he had changed his unsigned decision dismissing the election protest and invalidated the ballots with undetached coupons.

When protestee arrived home from Tuguegarao in the afternoon, he was informed that the respondent judge had promulgated his decision (Annex 'A') in the election protest and the Comelec Officer of Sanchez Mira had already received his copy of the decision from whom protestee got an immediate xerox copy as the basis of his perfection of an appeal with the COMELEC on April 22, 1995.

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That respondent judge, as part of his plan, design or scheme to make protestant win the election protest, intentionally violated the COMELEC Rules of Procedure in his desire to favor the protestant, by not setting a date for the promulgation of the decision wherein due notice must be given to the parties, but instead he immediately promulgated the same on the very day it was rendered, in violation of Rule 35, Sec. 19 of the COMELEC Rules of Procedure and the case of Alejo vs. Tanada, 238 SCRA 60 (1994).

That respondent judge, intentionally and persistent-disregarded (sic) well-known law, legal rules and jurisprudence or stare decisis to the prejudice of the protestee and knowing it as the only possible means to make protestant win his election protest, declared invalid one hundred twenty one (121) ballots with undetached upper coupons cast in favor of protestee in violation of Sec. 211 of the Omnibus Election Code, which provides:

'27. Failure to remove the detachable coupon from a ballot does not annul such ballot.'

and the settled doctrine that voters shall not be deprived by (sic) their votes by mere failure of the election officer to comply with the formal prerequisites of voting (Valenzuela vs. Carlos, 42 Phil. 428).

To justify his illegal, unlawful and fraudulent act in declaring invalid 121 ballots with undetached upper coupons, respondent judge opined:

'xxx the protestee cit(ed) the case of Valenzuela vs. Carlos, 42 Phil. 428. The Court agrees with this, for it is but fair and reasonable in so far as simple, innocent and honest omission (sic) of election officers are concerned. The court however doubts whether the rules should cover all kinds of omission (sic) by election officers be it deliberate or not and irrespective of whether or not the omission (sic) defeats the secrecy of the voter's vote. xxx.'

contrary to the Supreme Court ruling in Albert vs. Court of First Instance of Manila (Br. VI), 23 SCRA 948, which states:

'So it is, that in Martiniano P. Vivo vs. Hon. Gaudencio Cloribel, et al., L-23239, November 23, 1966 (18 Supreme Court Reports Anno. 713,726), this Court stressed the need for trial judges to take cognizance of the rulings of the Supreme Court. xxx' (Underscoring supplied)

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and Circular No. 13, dated July 1, 1987, of the Supreme Court, providing general guidelines for all members of the judiciary, that judges should keep abreast of the rulings and doctrines laid down by the Supreme Court and apply them to appropriate cases regardless of their personal opinion.

That respondent judge, to buttress his decision making protestant win in the election protest, which exposes his complete ignorance of the law, not only invalidated the 121 ballots with undetached upper coupons but also considered said ballots as marked contrary to the settled doctrines in elections (sic) contest that the mark which shall invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter. In other words, a mark placed (sic) on the ballot by a person other than the voter himself does not invalidate [the ballot] as marked (Tajanlangit vs. Cazenias, G.R. No. L-18894, June 30, 1962, 5 SCRA 567). Hence, the ballots which (sic) upper coupons were not detached by the Chairman of the Board of Inspectors are not marked ballots.

That respondent judge, either as a part of his plan, design or scheme to make protestee lose in the election protest or in evident bad faith and/or partiality, also declared invalid six (6) ballots cast in favor of the protestee which were not signed by the Chairman of the Board of Inspectors. However, he did not declare invalid the twenty five (25) ballots cast in favor of the respondent. In the case of Lucero vs. De Guzman, 45 Phil. 852, 875, the Court held that 'xxx It is a well settled rule that a voter shall not be deprived of the franchise by mere failure of the election officials to comply with some provisions or another statute relative to the acts to be done exclusively by the officer'.

The respondent judge, not supported by evidence or with conscious and deliberate act to do an injustice against the protestee, stated in his decision that, 'after a careful scrutiny of the Book of Voters and List of Voters, the Court finds', among others, the following three (3) of the eight voters to be invalid:

'Precinct No. 23

'1. Acdal, Orlino P voted, but at the back of his voters affidavit it is marked 'deceased';

'2. Cabulisan, Pacito (policeman) voted but according to information he had been dead before the election.'

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'Precinct No. 22-B

'1. Alegado Nancita - voted but no name in Book of Voters.'

Orlino P. Acdal died on December 12, 1992 (Annexes B-B1, while Pacito Cabulisan died on June 2, 1992 (Annex C) after the elections on May 11, 1992. The annotations 'deceased' at the back of their voters affidavit were entered by the Comelec Officer when he requested the court during the trial of the election protest for the return to his Office the Book of

Voters of the aforesaid precincts preparatory to the May 8, 1995 elections.

Nancita Alegado is a classroom teacher in Barangay Tokitoc, Sanchez Mira, Cagayan and is a registered voter of Precinct 35 therein (Annex D). She was assigned and served as a member of the Board of Inspectors of Precinct 22-B of Barangay Masisit and she voted in said precinct pursuant to Sec. 169 of the Omnibus Election Code allowing members of the board of election inspectors to vote in the polling place where they are assigned on election day.

That respondent judge, to further fortify his plan, design or scheme to make protestee lose the election protest and with deliberate intent to cause injustice on the part of the protestee and a clear violation of Sec. 14, Art. VIII, 1987 Constitution, dismissed for lack of merit protestee's counter-protest without taking into account the facts and evidence alleged in his counter-protest and without expressing therein clearly and distinctly the facts and law on which the dismissal was based.

Considering the facts that protestant had been publicly telling the people that he has plenty of money; that he will do everything within his resources to win his election protest; that he will sit as the mayor-elect of Sanchez Mira on April 20, 1995, the date of the questioned decision of respondent judge; that respondent judge had prepared an unsigned decision dismissing the election protest; that he was enticed to prepare another decision dated April 20, 1995, which he promulgated on the same day, declaring protestant as the winner in the May 11, 1992 elections for mayor of Sanchez Mira, Cagayan, in complete disregard to (sic) the decisions and rules and regulation of the Supreme Court, the principle of *res ipsa liquitor* (sic) be applied to him. (*People vs. Valenzuela*, 135 SCRA 712).

That respondent judge, since appointment to the judiciary, as presiding judge of the Regional Trial [Court], Second Judicial Region, Branch 12, Sanchez Mira, Cagayan, up to the present, has not been reporting for duty and hearing cases every Mondays, Thursday afternoons and Fridays of the week. He arrives in his station from Tuguegarao, Cagayan, where he resides, in the morning of Tuesday and leaves his station after lunch of Thursday, thereby affecting his integrity and efficiency.

That respondent judge, despite the fact that he does not report for duty and hold session on Mondays, Thursday afternoons and Fridays, he certified in his Monthly Certificate of Service that he rendered complete service for the month, which is a clear case of falsification of monthly certificate of service since he became a judge up to the present."<sup>[1]</sup>

In compliance with the First Indorsement<sup>[2]</sup> dated July 9, 1997 of Court Administrator Alfredo L. Benipayo, respondent submitted his Comment<sup>[3]</sup> stating, among others:

"3. That from the time I assumed office as the presiding judge of the Regional Trial Court, Branch 12, Sanchez Mira, Cagayan I became aware, for the first time, of the existence and pendency of Election Case No.

1807-S before the said Court when it was included in the July 29, 1993, calendar of the Court, at which time the committee on revision of ballots and recounting of votes had not yet submitted its report of the result of the revision and recounting of votes in the precincts covered by the protest and counter-protest xxx.

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10. That thereafter several incidents were submitted by the parties for resolution by the Court and after hearing, resolving all the incidents, the Court issued an order dated February 21, 1995, a copy of which is hereto attached as ANNEX '15' giving the parties twenty (20) days within which to submit their respective memorandum and on March 13, 1995, the protestee submitted his memorandum personally signed by him;

11. That on April 20, 1995, the undersigned, as presiding judge of the court, rendered a decision on the merits. All the foregoing facts and incidents aptly demonstrate that I was not really inefficient in disposing of Election Case No. 1807-S wherein retired Judge Mariano T. Pacris is the protestee and counter-protestant. Much of the delay is attributable to the protestee and counter-protestant himself and his counsel.

12. That as regards the alleged delay in the elevation of the record of the case as pointed in the Comelec resolution cited in the letter-complaint, such delay, if there was any, was entirely called for and fully justified by the events and incidents which took place in connection with the case after the promulgation and filing of the notice of appeal by the protestee, such as:

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Consequently, it is most respectfully submitted that the delay if there is any, in the elevation of the record of the case to the Comelec called for and fully justified by the incidents and events that took place after the promulgation of the decision and the filing of a notice of appeal by the protestee;

13. That in so far as the alleged campaign speeches of the protestant, Federico Q. Galapia, during the campaign period immediately preceding the May 12, 1995 local elections, stating, among others, that he would sit as Mayor elect of Sanchez Mira on April 14, 1995 and/or on April 20, 1995 I have absolutely nothing to do with the same, the truth of the matter being that I never had any occasion to talk to him or any of his two counsels, Attys. Victoriano G. Pascua and Abuan regarding the case; hence the reason why I told the protestee, Mamerto T. Pacris, when he approached me for the first time asking me if I had already rendered my decision in the case and on the occasion of which I told him I have not yet finished making the decision in the case, which was then absolutely true, the truth of the matter being that I was still in the process of writing the draft of the decision. Hence, contrary to the imputation contained in the letter-complaint, I never showed him any decision, unsigned or otherwise, in the case, much less dismissing the election case;