

EN BANC

[A.M. No. RTJ-18-2514 (Formerly A.M. No. 16-10-387-RTC), January 30, 2018]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, V.
JUDGE HECTOR B. SALISE, PRESIDING JUDGE, BRANCH 7,
REGIONAL TRIAL COURT, BAYUGAN CITY, AGUSAN DEL SUR,
RESPONDENT.**

D E C I S I O N

PER CURIAM:

This case is pursuant to the judicial audit conducted in the Regional Trial Courts (RTC), Branch 6, Prosperidad and Branch 7, Bayugan City, both in the Province of Agusan del Sur. At that time, respondent Judge Hector B. Salise was the Acting Presiding Judge of Branch 6 and the Executive Judge of Branch 7.

The following are the factual and procedural antecedents of the instant case:

For Branch 6, RTC, Prosperidad, the judicial audit team found that the court allowed substituted service of summons when, under Section 6^[1] of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages, the modes of service of summons are only: a) personal service or service in person on defendant; and b) service by publication. In Criminal Case No. 8172, entitled *People v. Peter*, for Qualified Theft, in which no bail was recommended, the court granted the Urgent Petition for Bail without first conducting a hearing to prove that the evidence of guilt against the accused was strong despite the offense charged being a capital offense, in violation of Sections 7^[2] and 8,^[3] Rule 114 of the Rules of Criminal Procedure. In Criminal Case No. 8155, entitled *People v. Lopez, Jr.*, for Illegal Possession of an Explosive, in which no bail was again recommended as the offense charged is considered a capital offense under Presidential Decree (P.D.) 1866,^[4] as amended by Republic Act (R.A.) 9516,^[5] the court once again granted the reduction of bail in the amount of P20,000,00 even if there was no showing that a bail hearing was conducted.

In Civil Case No. 1639, a case for Declaration of Nullity of Marriage, Judge Salise prematurely rendered a decision granting the petition, without ruling on the petitioner's motions to dispense with the presentation of her last witness and to admit her Formal Offer of Exhibits, and even though the case was still set for hearing in a month's time.

The manner by which Judge Salise dismissed several cases before this court would suggest impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law and procedure. Notably, Judge Salise ordered the dismissal of Criminal Case Nos. 7912, 7999, and 8000 before the scheduled day of arraignment, while Criminal Case No. 8028 was dismissed prior to the scheduled hearing on the Motion to Suppress Illegally Seized Evidence and without the accused

filing a motion for said dismissal. The court personnel of Branch 6 likewise testified that Judge Salise would call cases, although they were not included in the calendar of cases for hearing, even to the point of dismissing these cases.

Judge Salise also issued a Resolution dated September 5, 2014 in a case which was never docketed in Branch 6 for failure to pay the required docket fee. The court staff only came to know about this when someone filed a Motion for Reconsideration of said Resolution sometime in September 2014.

For Branch 7, RTC, Bayugan City, Judge Salise may be considered to have railroaded the proceedings for a number of cases for declaration of nullity of marriage. In Civil Case No. 1887, Judge Salise rendered a decision granting the petition barely eight (8) months since the case was filed on July 14, 2014, without conducting the mandatory pre-trial, and worse, without petitioner presenting his evidence before the court. In Civil Case No. 1770, he proceeded with the hearing of the case and later penned a decision granting the petition although the court did not acquire jurisdiction over the person of the respondent as the summons was returned to the court unserved. Similarly, in Civil Case No. 1888, he proceeded to hear the case until the same was submitted for decision even if there was a serious question on the court's jurisdiction over the case. In Civil Case No. 1806, he proceeded with and decided the case without complying with the mandatory requirements under the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages such as the investigation report of no collusion between the parties from the public prosecutor, the pre-trial, and the notice to the respondent. In other cases, he proceeded with and decided the case without due notice to the respondents. In Civil Case No. 1506, he again decided the case in favor of the petitioner without the mandatory investigation report of no collusion between the parties from the public prosecutor. And lastly, Judge Salise would allow substituted service of summons in most cases for declaration of nullity of marriage and annulment of voidable marriage before the court in violation of Section 6 of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages.

In Special Proceeding No. 1741 for Cancellation of Affidavit of Legitimation, Judge Salise issued an Order directing the then OIC-Clerk of Court of Branch 7, a non-lawyer, to receive evidence *ex parte*, in violation of the rule^[6] that the court may delegate the reception of evidence to its clerk of court, who is a member of the bar. Also, in several criminal cases, the issuance of warrants of arrest was extremely delayed, taking four (4) to eight (8) months from the time the case was filed.^[7]

For his part, Judge Salise apologized for whatever procedural lapses he has committed. He explained that his actions were all done in good faith and judges would sometimes deviate from the rules on a case-to-case basis. He, likewise, claimed that the reported irregularities were mostly due to inadvertence, but he did them in good faith and without malice. He fervently asked for the kind indulgence and consideration of the Court for the lapses, delays, negligence, and inadvertence, and promised to be more circumspect in the future.

On October 21, 2016, after an extensive review and evaluation of the case, the Office of the Court Administrator (OCA) recommended the imposition of the extreme penalty of dismissal, thus:

PREMISES CONSIDERED, we respectfully recommend for the consideration of the Court that:

1. the Joint Judicial Audit Report by way of a Memorandum dated 10 September 2015 be **TREATED** as an administrative complaint against Judge Hector B. Salise, Executive Judge, Branch 7, Regional Trial Court, Bayugan City, and formerly Acting Presiding Judge, Branch 6, Regional Trial Court, Prosperidad, both in the Province of Agusan del Sur;
2. the letter dated 13 November 2015 and the twin compliance letters, both dated 16 November 2015, all of Judge Salise be **NOTED**; and
3. Judge Salise be **ADJUDGED GUILTY** of serious misconduct prejudicial to the integrity and dignity of the judiciary, and be **DISMISSED** from the service, with forfeiture of all or part of the benefits as the Court may determine, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations.

Respectfully submitted.^[8]

The Court's Ruling

The Court finds no logical reason to depart from the findings and recommendations of the OCA.

At the outset, the Court stresses that Judge Salise never refuted, much less denied the aforementioned judicial audit findings and observations. In fact, he even admitted that:

- a. he granted bail to some accused charged with capital offenses in criminal cases in which no bail was recommended, without conducting the mandatory bail hearing. He merely mentioned excuses such as "there is an ongoing settlement," "private complainant is open to settlement," the prosecution did not object to the motion for bail," "to decongest jail," "upon agreement of the parties," or "it was done without malice or bad faith";
- b. with his permission, the court interpreter drafted the Decision in Civil Case No. 1887, granting the petition for declaration of nullity of marriage based solely on the petition and the psychological report, and there were no copies of the Pre-trial Order, the Order showing that petitioner had been presented, and the minutes. No transcript of stenographic notes could likewise be seen in the records at the time of the judicial audit;
- c. he erred in proceeding to hear the case in Civil Case No. 1770 (for declaration of nullity of marriage) when the return of the summons states that it is unserved. He decided the case in favor of the petitioner despite the court's lack of jurisdiction over the defendant;
- d. his act of proceeding to hear the case in Civil Case No. 1888 (for declaration of nullity of marriage) despite the question on the court's jurisdiction was due to the words of the petitioner's lawyer that his client was able to find a job in Bayugan and that he was renting a house in Purok II, Poblacion, Bayugan City;
- e. he failed to issue an Order directing the public prosecutor to conduct a background check in Civil Case Nos. 1506 and 1806, both for declaration of nullity of marriage, due to a mere oversight and the same was without malice; and

- f. he allowed plea-bargaining in cases for violation of R.A. 9165 or the Dangerous Drugs Act of 2002, with the consent of the prosecution in order to decongest the jails.

Furthermore, Judge Salise failed to refute several factual circumstances, showing an implied admission of their truthfulness and accuracy. It was established that he rendered a premature decision in Civil Case No. 1639 (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise dismissed criminal cases on his own initiative, supposedly "for paucity of proof arid dearth of evidence," even after he had already determined, expressly or impliedly, that there was probable cause against the accused. He ordered the dismissal of these cases after either the accused had been arraigned or after the cases had been set for arraignment.

Judge Salise also dismissed cases based on fabricated grounds. For instance, he issued an Order in Criminal Case No. 7994, for illegal possession of firearm and ammunition, dismissing the case on the ground that "this case has not been moving for almost three (3) years," when in reality, said case was dismissed on May 17, 2013 or less than two (2) months after the same had been filed on March 26, 2013. In Criminal Case No. 8011 for acts of lasciviousness, he dismissed the case *motu proprio* "considering that private complainant x x x has not been appearing in this court since the scheduled hearing of this case." However, an examination of the records of the case would reveal that following the filing of the Information on July 13, 2013, there had only been four (4) settings of the case before it was ordered dismissed on March 24, 2014. Out of those four (4) settings, three (3) were cancelled due to the absence of the defense counsel, ongoing plea-bargaining, and "as there was no showing that private complainant x x x has been notified of the day's setting." Verily, those cancellations could not reasonably be attributed to the private complainant.

Moreover, there were also irregularities in the manner by which Judge Salise disposed of or dismissed criminal cases for violation of R.A. 9165. Supposedly to "decongest the jail," he allowed plea-bargaining as early as 2012, which was still prohibited then under Section 23,^[9] Article II of R.A. 9165. In Criminal Case No. 3441 for possession of dangerous drugs under Section 11, with an imposable penalty of twelve (12) years to life imprisonment and a fine of P300,000.00 to P500,000.00, he allowed the accused to plead guilty to possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of P10,000.00. In Criminal Case No. 3488 for violation of Section 5, he allowed the two (2) accused to plead guilty to the lesser offense of use of *shabu* and sentenced them to a straight penalty of six (6) months of imprisonment and to pay a fine of P10,000.00. In Criminal Case No. 4450 for possession of dangerous drugs under Section 11, he again allowed the accused to plead guilty to possession of drug paraphernalia and sentenced him to suffer a straight penalty of one (1) year of imprisonment and to pay a fine of P5,000.00.

Judge Salise also dismissed similar cases under highly questionable circumstances and without due regard to the applicable procedural rules, to wit:

1. Criminal Case No. 3833 for violation of Section 5, Article II of R.A. 9165 was ordered dismissed "for paucity of proof" even after he had earlier issued an Order finding probable cause against the accused.