

## THIRD DIVISION

**[ A.M. No. RTJ-13-2350 (Formerly OCA IPI No. 10-3507-RTJ), July 23, 2018 ]**

**SPS. ALBERTO AND LILIAN PACHO, COMPLAINANTS, VS. JUDGE AGAPITO S. LU, REGIONAL TRIAL COURT, BRANCH 88, CAVITE CITY, RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

Complainants Spouses Alberto and Lilian Pacho (Spouses Pacho) brought their administrative complaint charging respondent Judge Agapito S. Lu (Judge Lu), the former Presiding Judge of the Regional Trial Court (RTC), Branch 88, in Cavite City with undue delay in the rendition of the judgment in Civil Case No. N-7675 entitled *Sps. Lilian and Alberto S. Pacho v. Sps. Eric and Roselie Manongsong*.<sup>[1]</sup>

#### Antecedents

The Office of the Court Administrator (OCA) summarized the antecedents and contentions of the parties, as follows:

Complainant Sps. Pacho alleges that the complaint for ejectment they filed against spouses Eric and Roselie Manongsong on 12 February 2004 was raffled to the Municipal Trial Court in Cities, Branch 1, Cavite City, presided over by Judge Amalia Samaniego-Cuapiaco. On 9 June 2004, Judge Samaniego-Cuapiaco rendered a Judgment dismissing the complaint for lack of jurisdiction. Complainant Sps. Pacho appealed the judgment to the Regional Trial Court, which was raffled to the court of respondent Judge Lu.

On 30 August 2004, respondent Judge Lu rendered a Decision setting aside the appealed judgment and remanding the case for further proceedings. On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision dismissing the case for the second time for lack of jurisdiction.

Complainant Sps. Pacho elevated the decision of the lower court to the Regional Trial Court, which case was again raffled to respondent Judge Lu. Although the case was already submitted for decision, the appeal remained unresolved. Two (2) motions for early resolution, 9 July 2007 and on 21 November 2007, respectively, and almost weekly follow-ups thereafter, remained unacted upon.

In a letter-comment dated 14 December 2010, respondent Judge Lu alleged that on 30 August 2004, he rendered a decision setting aside the judgment of the lower court and then remanded the case for further

proceedings.

On 26 January 2005, Judge Samaniego-Cuapiaco, by way of 1<sup>st</sup> Indorsement to respondent Judge Lu, insisted that remanding the case serves no useful purpose for the parties have already presented their evidence. By reason of this, respondent Judge Lu issued an Order on 16 February 2005, directing the former to resolve the issue of possession and all incidental issues.

On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision, dismissing the ejectment case for the second time for lack of jurisdiction. The appeal was again raffled to respondent Judge Lu who immediately drafted a Decision sometime December 2005. Anticipating Judge Samaniego-Cuapiaco's relentless defiance and the likelihood that the case would again find its way to his *sala* in a "judicial ping-pong", respondent Judge Lu deemed it more prudent not to finalize the draft of the Decision.

Further, respondent Judge Lu explained to Mrs. Lilian Pachó that he cannot give due course to their appeal as the Rules of Court proscribes a second appeal of the same case. He advised Mrs. Pachó to file an administrative complaint against Judge Samaniego-Cuapiaco instead. He also told Mrs. Pachó that he would **"defer action on her second appeal because if [he] immediately deny due course to or dismiss the appeal and the dismissal of the appeal becomes final, she may lose her right and opportunity to seek judicial relief."**

Lastly, respondent Judge Lu adopts his letter-comment as an administrative complaint against Judge Samaniego-Cuapiaco for Gross Ignorance of the Law, Grave Abuse of Discretion and for disregarding the hierarchy of courts.<sup>[2]</sup>

After hearing, the OCA issued its report and recommendation dated April 15, 2011, and recommended as follows:

Respectfully submitted for the consideration of the Honorable Court the recommendations that:

- (a) The instant administrative complaint be **RE-DOCKETED** as a regular administrative complaint;
- (b) Hold Judge Agapito S. Lu of Regional Trial Court, Branch 88, Cavite City, be found **GUILTY** for the less serious charge of delay in rendering judgment, for which he should be **FINED** P11,000.00; and
- (c) To APPRISE respondent Judge Lu to file the appropriate **verified** complaint against Judge Amalia Samaniego-Cuapiaco should he decide to pursue his complaint against the latter.<sup>[3]</sup>

In support of its recommendation, the OCA explained thusly:<sup>[4]</sup>

Respondent Judge Lu virtually admitted the delay in rendering a decision in Civil Case No. N-7675 and that he failed to act on complainant Sps. Pacho's appeal within the three (3) month period prescribed in the Constitution. His statement to wit: ***"But now that Mrs. Pacho has filed a complaint against me, I will immediately act on her second appeal."*** Imparts a mere intention to act in the future thus, reinforcing the fact of delay. From the **later part of 2005** (when the parties have already submitted their respective memorandum thus deeming the appeal submitted for resolution) up to the purported date of his letter-comment on **14 December 2010**, respondent Judge Lu has yet to act on the appeal. Had it not been for the instant complaint, further delay in resolving the case is not too remote a possibility.

Presuming that, respondent Judge Lu drafted a Decision on December 2005, such draft Decision did not interrupt the period for rendering a decision. A draft decision is a mere draft, not "the Decision" contemplated in the Constitution. While the draft Decision may entail that Judge Lu did a positive act, [it] had no official bearing on the case as the litigants still remain in limbo for their unsettled differences.

While the Court takes note of the heavy caseload of judges, and to ease the burden, grants motions for extension of time to resolve cases, respondent Judge Lu, failed to indicate that he ever filed any. His concern over the probable loss of Mrs. Pacho's right and opportunity to seek judicial relief is commendable but speculative. Besides, complainants Sps. Pacho's efforts to pursue their case as manifested by their two (2) motions for early resolution, the almost monthly follow-ups, and this administrative complaint, negate such situation. Hence, the fact remains that a decision on complainant Sps. Pacho's appeal is long overdue. Passing the blame to Judge Samaniego-Cuapiaco, cannot absolve him from liability.

Section 9 (1) in relation to Section 11 (B), both of Rule 140 of the Rules of Court classify delay in rendering a decision as a less serious offence, penalized with suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; **or** a fine of more than P10,000.00 but not exceeding P20,000.00. Considering the peculiar circumstances in this case, and the fact that respondent Judge Lu initially acted on the first appeal, not to mention his fast approaching retirement on 27 June 2011, this Office recommends that respondent Judge Lube fined P11,000.00 for delay in rendering a decision.

In the meantime, the respondent Judge compulsorily retired from the service. In its resolution dated June 28, 2017,<sup>[5]</sup> the Court resolved to withhold a total of P40,000.00 from his retirement benefits to answer for any administrative liability arising from this or any other complaint.

### **Ruling of the Court**

The Court **ADOPTS** the recommendation of the OCA.

Article VIII, Section 15(1) of the 1987 Constitution mandates that the first and