

THIRD DIVISION

[**A.M. OCA IPI No. 09-3243-RTJ, April 01, 2013**]

**JOHNWELL W. TIGGANGAY, COMPLAINANT, VS. JUDGE
MARCELINO K. WACAS, REGIONAL TRIAL COURT, BRANCH 25,
TABUK CITY, KALINGA, RESPONDENT.**

R E S O L U T I O N

VELASCO JR., J.:

Before Us is a letter-complaint charging respondent Judge Marcelino K. Wacas (Judge Wacas) with Impropiety and Partiality for not inhibiting himself, in violation of the Code of Judicial Conduct, from hearing an electoral protest case pending before him and for attending the victory party of a party-litigant in said electoral case.

Judge Wacas is the Presiding Judge of the Regional Trial Court (RTC), Branch 25 in Tabuk City, Kalinga. Complainant Johnwell W. Tiggangay (Tiggangay) was the losing protestant in an electoral protest case before the sala of Judge Wacas, docketed as Election Case No. 40, entitled *Johnwell W. Tiggangay v. Rhustom L. Dagadag*.

Tiggangay ran for the mayoralty position of Tanudan, Kalinga in the May 14, 2007 election but lost to Rhustom L. Dagadag (Dagadag) by a slim margin of 158 votes. Following Dagadag's proclamation, Tiggangay filed an electoral protest which was raffled to the sala of Judge Wacas.

On August 8, 2008, Judge Wacas rendered a Decision finding Dagadag to have won the protested election but at a reduced winning margin of 97 votes. Tiggangay appealed the RTC Decision before the Commission on Elections (COMELEC) Second Division which dismissed the appeal through an Order issued on November 4, 2008. Tiggangay's motion for reconsideration of the COMELEC Second Division's dismissal of his appeal was likewise rejected by the COMELEC *En Banc* on January 12, 2011 on the ground of mootness.

On July 31, 2009, Tiggangay filed his verified letter-complaint charging Judge Wacas with Impropiety and Partiality. Tiggangay alleged that, during the course of the proceedings in Election Case No. 40, he learned that Judge Wacas is Dagadag's second cousin by affinity, the former's aunt is married to an uncle of Dagadag. The relationship notwithstanding, Judge Wacas did not inhibit himself from hearing said electoral case in violation of the New Code of Judicial Conduct and Rule 137 of the Revised Rules of Court. Moreover, after ruling in favor of Dagadag, so Tiggangay alleged, Judge Wacas and his wife attended the victory party of Dagadag held on August 23, 2008 at Dagadag's ranch in Spring, Tabuk City. To bolster his allegation, Tiggangay submitted the affidavit of his driver, Fidel Gayudan (Gayudan),^[1] who attested Judge Wacas and wife were fetched by a red Toyota Surf owned by Dagadag and were brought to the victory party. Further, Tiggangay alleged—citing

the affidavit of Corazon Somera^[2] (Somera), an alleged close friend of Judge Wacas and his spouse—that Judge Wacas’ sister-in-law, Rebecca Magwaki Alunday (Alunday), allegedly said in the presence of Somera and Judge Wacas and wife that Tiggangay will win the protest if he has much money. Tiggangay stated that “Judge Wacas never bothered x x x to rebuke his sister-in-law for such ‘uncalled for’ statement, or to outrightly deny or affirm such statement x x x.”^[3]

In his Comment, Judge Wacas denied being related by affinity to Dagadag, adding that Tiggangay made the allegation on the basis of “some reliable sources,” not from his personal knowledge. Moreover, Judge Wacas maintained, Tiggangay never moved for his inhibition during the entire proceedings in Election Case No. 40 if, indeed, Tiggangay doubted his fairness, integrity and independence. Judge Wacas vehemently denied his alleged attendance in the victory party of Dagadag on August 23, 2008 and asserted that he was with his family in a clan gathering on that day in the house of Rafael Maduli at Purok 5, Bulanao, Tabuk City, Kalinga, where he stayed from about 8:00 a.m. until about 3:00 p.m. Thus, he submitted the affidavits of Blezilda Maduli Palicpic^[4] (Palicpic) and Alunday^[5] attesting to such fact aside from his own affidavit^[6] and the affidavit of his wife, Rosalina Magwaki Wacas (Mrs. Wacas).^[7]

On June 13, 2011, acting on the recommendation^[8] of the Court Administrator, the Court referred the matter to the Court of Appeals (CA), through Associate Justice Socorro B. Inting (Justice Inting), for investigation and report with appropriate recommendations.

Justice Inting held a preliminary conference on October 3, 2011, where the parties stipulated, *inter alia*, that:

- 11) During the proceedings of the protest case, complainant did not file a motion to inhibit Judge Marcelino Wacas.
- 12) No written Motion to Inhibit was filed in Court during the proceedings of the protest case.
- 13) The letter-complaint dated February 19, 2009 was filed only after the decision dated August 8, 2008 was rendered by the RTC and after the Comelec in its Order dated November 4, 2008 dismissed the appeal.
- 14) That Fidel Gayudan, one of the witnesses, is a constant companion of the complainant.
- 15) That Corazon Somera is the sister of the mother of the complainant.^[9]

Thereafter, Justice Inting conducted hearings on December 9, 2011,^[10] January 27, 2012,^[11] March 2, 2012,^[12] and June 22, 2012.^[13] For the prosecution of the instant case, only Tiggangay and Gayudan testified on December 9, 2011. As Somera did not appear to testify, her affidavit appended to the complaint was expunged from the records. On the other hand, for the defense, Palicpic testified on March 12, 2012, while Sarado Aggal (Aggal), Mrs. Wacas and Judge Wacas testified on June 22, 2012.

Submission of Memoranda followed.

On October 18, 2012, Justice Inting transmitted to the Court her Report, recommending the dismissal of the instant complaint for lack of substantial evidence.^[14]

We adopt the findings of Justice Inting supportive of her recommendations and accordingly dismiss the instant administrative complaint.

When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.^[15] In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant.^[16] In the instant case, Tiggangay failed to present substantial evidence to prove his allegations. One who alleges a fact has the burden of proof and mere allegation is not evidence.^[17]

The supposed relationship between Judge Wacas and Dagadag, unsubstantiated as it were by the required substantial relevant evidence, remains a mere allegation of Tiggangay. In his testimony on December 9, 2011, Tiggangay tried to assert that Judge Wacas and Dagadag are related within the sixth degree by affinity in that the aunt of Judge Wacas is married to the uncle of Dagadag. Tiggangay even drew a sketch to show the affinity. The fact, however, is that no substantial evidence was presented to prove the relationship angle.

We can grant *arguendo* that the aunt of Judge Wacas is married to the uncle of Dagadag. But such reality is not a ground for the mandatory inhibition of a Judge as required under Sec. 1^[18] of Rule 137, Revised Rules of Procedure, since there is actually no relation of affinity between Judge Wacas and Dagadag.

Affinity denotes "the relation that one spouse has to the blood relatives of the other spouse."^[19] It is a relationship by marriage or a familial relation resulting from marriage. It is a fictive kinship, a fiction created by law in connection with the institution of marriage and family relations.^[20] Relationship by affinity refers to a relation by virtue of a legal bond such as marriage. Relatives by affinity, therefore, are those commonly referred to as "in-laws," or stepfather, stepmother, stepchild and the like.^[21]

Affinity may also be defined as "the relation which one spouse because of marriage has to blood relatives of the other. The connection existing, in consequence of marriage between each of the married persons and the kindred of the other. The doctrine of affinity grows out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation by affinity to his wife's blood relatives as she has by consanguinity and vice versa."^[22]

Indeed, "there is no affinity between the blood relatives of one spouse and the blood relatives of the other. A husband is related by affinity to his wife's brother, but not to the wife of his wife's brother. There is no affinity between the husband's brother and the wife's sister; this is called *affinitas affinitatis*."^[23]