

## FIRST DIVISION

**[ A.M. No. MTJ-07-1666 (Formerly A.M. OCA I.P.I. No. 05-1761-MTJ), September 05, 2012 ]**

**GERLIE M. UY AND MA. CONSOLACION T. BASCUG,  
COMPLAINANTS, VS. JUDGE ERWIN B. JAVELLANA, MUNICIPAL  
TRIAL COURT, LA CASTELLANA, NEGROS OCCIDENTAL,  
RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This administrative case arose from a verified complaint<sup>[1]</sup> for “gross ignorance of the law and procedures, gross incompetence, neglect of duty, conduct improper and unbecoming of a judge, grave misconduct and others,” filed by Public Attorneys Gerlie<sup>[2]</sup> M. Uy (Uy) and Ma. Consolacion T. Bascug (Bascug) of the Public Attorney’s Office (PAO), La Carlotta District, against Presiding Judge Erwin<sup>[3]</sup> B. Javellana (Javellana) of the Municipal Trial Court (MTC), La Castellana, Negros Occidental.

Public Attorneys Uy and Bascug alleged the following in their complaint:

First, Judge Javellana was grossly ignorant of the Revised Rule on Summary Procedure. Public Attorneys Uy and Bascug cited several occasions as examples: (a) In Crim. Case No. 04-097, entitled *People v. Cornelio*, for Malicious Mischief, Judge Javellana issued a warrant of arrest after the filing of said case despite Section 16 of the Revised Rule on Summary Procedure; (b) In Crim. Case No. 04-075, entitled *People v. Celeste, et al.*, for Trespass to Dwelling, Judge Javellana did not grant the motion to dismiss for non-compliance with the *Lupon* requirement under Sections 18 and 19(a) of the Revised Rule on Summary Procedure, insisting that said motion was a prohibited pleading; (c) Also in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint even when the same was patently without basis or merit, as the affidavits of therein complainant and her witnesses were all hearsay evidence; and (d) In Crim. Case No. 02-056, entitled *People v. Lopez, et al.*, for Malicious Mischief, Judge Javellana did not apply the Revised Rule on Summary Procedure and, instead, conducted a preliminary examination and preliminary investigation in accordance with the Revised Rules of Criminal Procedure, then set the case for arraignment and pre-trial, despite confirming that therein complainant and her witnesses had no personal knowledge of the material facts alleged in their affidavits, which should have been a ground for dismissal of said case.

Second, Judge Javellana gave the impression that he was a co-agent in a surety company with a certain Leilani “Lani” Manunag (Manunag). Judge Javellana had conveyed to the public on several occasions that Manunag was in a special position to influence him in granting provisional liberty to the accused. <sup>[4]</sup> In different cases, Judge Javellana (a) instructed the wife of an accused to file the Motion to Reduce

Bond prepared by the PAO with Manunag, leading the wife to believe that Manunag was a court personnel, hence, said Motion was never filed with the MTC and, instead of the cash bond the accused intended to post, the accused was released on a surety bond issued by Manunag's company for which the accused still had to pay premium;<sup>[5]</sup> (b) reduced the bail from P40,000.00 to P30,000.00, consistent with the reduced bail amount Manunag instructed the representative of the accused to seek, not to P10,000.00 as prayed for by the PAO in the Motion for Reduction of Bail or to P20,000.00 as recommended by the Chief of Police;<sup>[6]</sup> (c) did not warn Manunag against getting involved in court processes as she was engaged in surety insurance and did not even question a counter-affidavit of an accused prepared by "Lani;"<sup>[7]</sup> (d) instructed the relatives of the accused to go to Manunag who knew how to "process" an affidavit of desistance, and when said relatives did approach Manunag, the latter charged them fees;<sup>[8]</sup> (e) did not set the Motion to Reduce Bail for hearing but granted the same because it was filed by "the intimate friend of judge who is an agent of surety" and took cognizance of the amount of premium for the surety bond in determining the amount of bail;<sup>[9]</sup> (f) denied the Motion to Extend Time to File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail facilitated by Manunag even when it was filed in violation of the same rule;<sup>[10]</sup> and (g) issued warrants of arrest under questionable circumstances, more particularly described in the immediately succeeding paragraph, in which cases, the bail bonds of the accused were facilitated by Manunag.

Third, Judge Javellana violated Section 6(b), Rule 112 of the Revised Rules of Criminal Procedure and issued warrants of arrest without propounding searching questions to the complainants and their witnesses to determine the necessity of placing the accused under immediate custody. As a result, Judge Javellana issued warrants of arrest even when the accused had already voluntarily surrendered or when a warrantless arrest had been effected.

Fourth, Judge Javellana failed to observe the constitutional rights of the accused as stated in Section 12(1), Article III of the Constitution. Judge Javellana set Crim. Case No. 03-097, entitled *People v. Bautista*,<sup>[11]</sup> for preliminary investigation even when the accused had no counsel, and proceeded with said investigation without informing the accused of his rights to remain silent and to have a counsel.

Fifth, Judge Javellana was habitually tardy. The subpoena in Civil Case No. 05-001, entitled *Villanueva v. Regalado*,<sup>[12]</sup> only stated that the hearing would be "in the morning," without indicating the time. Judge Javellana failed to arrive for the pre-trial of the case set in the morning of April 14, 2005. Judge Javellana was still a no-show when the pre-trial was reset in the morning of April 15, 2005 and May 3, 2005. Finally, anticipating Judge Javellana's tardiness, the pre-trial was rescheduled at 1:30 in the afternoon of another date.

Sixth, Judge Javellana whimsically or inconsistently implemented laws and rules depending on stature of the parties, persons accompanying the parties, lawyers of the parties, and his personal relations with the parties/lawyers. Judge Javellana, in several cases,<sup>[13]</sup> denied or refused to receive Motions for Extension of Time to File Counter-Affidavits signed only by the accused, yet in other cases,<sup>[14]</sup> granted such motions. In another case,<sup>[15]</sup> Judge Javellana denied the Motion to Extend Time to

File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail, which was in violation of the same rule. Judge Javellana's inconsistent and irregular ruling could be due to the fact that the former motion was filed by Public Attorney Bascug, with whom Judge Javellana had an axe to grind, while the latter motion was facilitated by Manunag.

Seventh, Judge Javellana also adopted the mantra that the "litigants are made for the courts" instead of "courts for the litigants." In Crim. Case No. 03-104, entitled *People v. Fermin*, the accused, assisted by Public Attorney Uy, pleaded guilty to the crime of attempted homicide. The accused filed a Petition/Application for Probation, prepared by the PAO but signed only by the accused. Judge Javellana refused to accept said Petition/Application and required the father of the accused to return the Petition/Application all the way from the MTC in La Castellana to the PAO in La Carlota, despite the great distance between these two cities. The PAO already adopted the practice of preparing the motions for extension of time to file counter-affidavit, motions for release of minor, or applications for probation, but letting the accused themselves or their parents (in case the accused were minors) sign the motions/applications, thus, enabling the PAO to serve as many clients as possible despite the lack of lawyers. Such practice is not prohibited considering that under Rule 138, Section 34 of the Rules of Court, a party may conduct his litigation in a municipal court "in person, with an aid of an agent or friend appointed by him for the purpose or with aid of an attorney."<sup>[16]</sup>

Eighth, Judge Javellana did not observe the proper procedure in airing his complaints against public attorneys. Judge Javellana rebuked the public attorneys in the Orders he issued. In one such Order,<sup>[17]</sup> Judge Javellana misleadingly stated that Public Attorney Uy "has already express[ed] her desire not to attend today's hearing," when Public Attorney Uy actually waived her personal appearance at said hearing as she had to attend the hearing of a criminal case at the MTC of Pontevedra. In another Order,<sup>[18]</sup> Judge Javellana reported, prior to confirmation, that the PAO lawyer refused to prepare the motion for extension of time to file counter-affidavit, thus, prompting the accused to hire a special counsel. Additionally, Judge Javellana improperly filed his complaints against the public attorneys appearing before his court with the Department of Justice or the District Public Attorney (DPA) of Bacolod City, instead of the appropriate authorities, namely, the DPA of La Carlota City or the PAO Regional Director. Moreover, Judge Javellana had required Public Attorney Bascug to explain why she allowed the accused in Crim. Case No. 03-090, entitled *People v. Earnshaw*, to sign the Motion for Extension of Time to File Counter-Affidavits, even when she was the one who prepared said Motion. Judge Javellana did not verify first whether it was indeed Public Attorney Bascug who prepared the Motion in question, thus, violating her right to due process. Also, Judge Javellana was already encroaching upon the domain of the PAO. It is the concern of the PAO and not the court "[a]s to how the Public Attorney's Office will be managed, specifically, what policies to use in the acceptance of cases brought to its Office, how one could avail of its legal services, at what point in time one is considered a client of said Office x x x [.]"<sup>[19]</sup>

Lastly, to support their complaint, Public Attorneys Uy and Bascug attached a handwritten note<sup>[20]</sup> relating the observations of an anonymous member of Judge Javellana's staff, viz:

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1. Honorable Judge reports to duty at past 11:00 A.M. and hurriedly conducts preliminary investigations or preliminary examinations after making party litigants wait from 8:00 A.M. until 11:00 A.M. There had been occasions when litigants became impatient for waiting for several hours for the Judge's arrival and would leave the court. Judge then would forego the examination.

2. Judge spends more time conversing in cafeterias than stay in the court. Litigants who are in a hurry to go home would bring the affidavits to the cafeteria for Judge's signature.

3. Most of the time, in Court, in front of litigants as audience and even while solemnizing civil marriage Judge would keep repeating these remarks:

I am a criminal lawyer.

I did not come from the DAR or the COMELEC.

I am an intelligent Judge.

I am the counsel of the famous Gargar-Lumangyao and Spider Hunter cases and I have caused the execution of Col. Torres.

I am not under the Mayor or the Chief of Police.

and other remarks as if he is the only intelligent, credible and qualified judge in the whole world.

4. Judge tolerates the negligence of duty of his court utility [w]orker. Said utility worker never reports to open or close the court; he never cleans the courtroom; most of the time he stays in his Karaoke bar which is some few meters away from the MTC of La Castellana. As a matter of fact the MTC of La Castellana is the dirtiest of all the courtrooms in the whole province.

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5. Motion for Extension of Time to File Counter Affidavit in CC 03-090-Pp. vs. Efraim Earnshaw made by Atty. Bascug was denied by Judge on the ground that it was the accused who signed the Motion and Atty. Bascug was ordered to explain. Other motions had been denied for not meeting the 3-day rule but others were granted.

6. Motion to Reduce Bail received by court on January 7, 2004 was not set for hearing but was ordered granted because it was filed by the intimate friend of the judge who is an agent of Surety. This did not meet the 3-day rule CC 03-108 Pp. vs. Lowell Panaguiton for "Homicide."

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1. Criminal Case No. 03-102- Julius Villanueva "Frustrated Homicide" Urgent Motion to Stay Transfer to Provincial Jail - Filed 1/21/2004 was not heard but order was issued January 21, [20]04 also.

2. Criminal Case No. 03-090- Efraim Earnshaw "Less Serious Physical Injuries" January 26, 2004 - Scheduled for arraignment but upon order of Judge on affidavit of Desistance of Melanie Pabon and Motion to Dismiss was filed and case dismissed.

3. Deonaldo Lopez Case - Motion for Extension of Time to File Counter Affidavit dated 10-3-02 was signed by accused namely Deonaldo Lopez, Jojo Balansag, Junnel Jorge, and Bernie Bello - granted by judge.[21]

Based on the foregoing, Public Attorneys Uy and Bascug prayed that Judge Javellana be removed from the MTC of La Castellana.

In his Comment[22] on the complaint against him, Judge Javellana discounted the allegations of Public Attorneys Uy and Bascug as "baseless, untruthful, intrigues, malicious and a harassment tending to intimidate [him]," and countered as follows:

First, Judge Javellana asserted that he was not grossly ignorant of the rules of procedure and explained his actions in particular cases: (a) In *People v. Cornelio*, Judge Javellana issued a warrant of arrest for the two accused charged with Malicious Mischief in the exercise of his judicial discretion, and the necessity of holding the accused in detention became evident when it was revealed during trial that the same accused were wanted for Attempted Homicide in Crim. Case No. 04-096; (b) In *People v. Celeste, et al.*, Judge Javellana insisted that referral of the dispute (involving an alleged Trespass to Dwelling) to the *Lupong Tagapamayapa* was not a jurisdictional requirement and the Motion to Dismiss on said ground was a prohibited pleading under the Revised Rule on Summary Procedure; (c) Still in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint as prayed for by Public Attorney Uy as the Judge had to accord due process to the complainant in said case; and (d) In *People v. Lopez, et al.* another case for Malicious Mischief, Judge Javellana reiterated that a motion to dismiss is a prohibited pleading under the Revised Rule on Summary Procedure and added that he could not dismiss the case outright since the prosecution has not yet fully presented its evidence.

Second, Judge Javellana denied acting as the co-agent of Manunag. Manunag was an Authorized Surety Bond Agent of Commonwealth Insurance and Surety Bond Company, a bonding company duly accredited by the Office of the Court Administrator (OCA). The relationship between Judge Javellana and Manunag was "purely on official business." That Manunag influenced Judge Javellana in fixing the amount of bail in several cases was a malicious and deliberate lie, based on mere speculation and suspicion. Judge Javellana had consistently granted the reduction of the amount of bail to only 75%, and not as low as 25%, of the amount stated in Department Circular No. 89 dated August 29, 2000 of the Department of Justice (DOJ). Judge Javellana even chided Public Attorneys Uy and Bascug that as officers of the court, said public attorneys were duty bound not to demand outrageous