

## EN BANC

**[ A.M. No. RTJ-11-2266 [FORMERLY A.M. OCA IPI NO. 09-3320-RTJ], February 15, 2011 ]**

**JOSEPHINE JAZMINES TAN, COMPLAINANT, VS. JUDGE SIBANAH E. USMAN, REGIONAL TRIAL COURT, BRANCH 29, CATBALOGAN, SAMAR, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

By a verified November 22, 2009 Complaint,<sup>[1]</sup> Josephine Jazmines Tan (complainant) charges Judge Sibannah E. Usman (respondent), Presiding Judge of Branch 28,<sup>[2]</sup> Regional Trial Court, Catbalogan, Samar, with abuse of power and authority, conduct unbecoming a judicial officer, mental dishonesty, grave misconduct, gross ignorance of the law and knowingly rendering an unjust order, and bribery and corruption, in connection with Civil Case No. 7681<sup>[3]</sup> and Criminal Case No. 6536.<sup>[4]</sup>

It appears that complainant, together with his co-plaintiffs in the civil case/co-accused in the criminal case, filed a Motion for Inhibition<sup>[5]</sup> against respondent. The movants attached to their motion the Affidavit<sup>[6]</sup> of complainant.

Complainant claims that during the hearing of the Motion for Inhibition, respondent became very emotional, coerced her to testify without the assistance of counsel and demanded a public apology from her; and that while she requested to refer the motion to the Executive Judge, respondent interrogated her relentlessly following which he issued an Order<sup>[7]</sup> of August 28, 2009 finding her guilty of Direct Contempt and ordered her detention. Thus respondent disposed in his Order:

IN VIEW THEREOF, premises considered, in order to set as an example for anyone not to make fabricated charges against the Court employees and judges, and also to restore the integrity of the Court, the affiant, Josephine Jazmines Tan is hereby cited of Direct Contempt of Court and thus ordered detained at the Samar Provincial Jail until she divulges the name of the informant/employee of the Court or publicly apologize to the employees of the Court, the Presiding Judge and the Executive Judge, but the period of **detention shall not exceed more than thirty (30) days** beginning from her service of confinement. Mrs. Perla Santiago, PO3 Marlon Villanueva and PO3 Doroteo Montejo are hereby directed to escort the affiant, Josephine Jazmines Tan, to the Samar Provincial Jail for detention.<sup>[8]</sup> (emphasis supplied; underscoring partly in the original, partly supplied)

Complainant was in fact detained from August 28, 2009 until September 16, 2009<sup>[9]</sup> or for a total of 19 days.

In his January 14, 2010 Answer<sup>[10]</sup> to the complaint, respondent explained that during the hearing of the Motion for Inhibition, the employees of the court appeared before complainant but she failed to name any of them as having allegedly told her that Jaime Cui, Jr. "was bragging that they have disbursed a substantial amount of money" to him (respondent); that Atty. Lee M. Zosa, the private prosecutor in the criminal case, and Atty. Benly Frederick Bergonio, counsel for the PNB in the civil case, moved that complainant be cited for Direct Contempt of Court and that she be detained until she divulges the name of her informant; and that Atty. Jose M. Mendiola, complainant's lawyer, failed to give any comment because, according to him, complainant did not consult him about the filing of the Motion for Inhibition.<sup>[11]</sup>

Respondent went on to explain that since he issued his August 28, 2009 Order in an official capacity, the remedy of complainant was to file a motion for reconsideration or an appeal, not an administrative case; that he gave complainant a maximum of 30 days detention to give her "a wider opportunity to either apologize or divulge the name of her informant, so that even before the expiration of the period, the court can lift the Order of Contempt."<sup>[12]</sup>

By Report of November 25, 2010,<sup>[13]</sup> the Office of the Court Administrator (OCA) came up with the following evaluation of the Complaint:

The instant administrative case is partly meritorious.

Complainant Tan failed to prove that respondent Judge Usman committed an Act Unbecoming a Judge by shouting at her at the hearing on the Motion for Inhibition. Aside from her allegation, there is nothing on record to support her claim. The TSN did not contain any inappropriate language. Neither did it reflect any observation/manifestation from the lawyers present, (who are presumably aware and vigilant of their duties as officers of the court) of any untoward incident. Complainant Tan countered that given the limitations of the TSN, i.e., its inability to capture the nuance of speech and project emotions vividly, the fact that respondent Judge Usman shouted expletives cannot be erased or rendered nonexistent by this limitation. Downplaying the TSN's significance by highlighting its limitation is not the same as saying that respondent Judge Usman did in fact shout at her. In other words, she cannot rely on the TSN's limitation and present it as proof that respondent Judge Usman shouted at her.

The charge of Mental Dishonesty has no merit. When respondent Judge Usman included other court employees and the Executive Judge in his discourse on the charge of bribery/corruption against him, he was not twisting the facts but was merely discussing the projected overall effect of the complainant Tan's accusation. The perception that a particular employee of the judiciary is corrupt, eventually, engulfs the entire institution.

Hence, complainant Tan failed to prove by substantial evidence her charge of Knowingly Rendering an Unjust Order. The records bear nothing to show that a competent court had previously adjudged respondent Judge Usman guilty of the crime of Knowingly Rendering an Unjust Order in Civil Case No. 7681 and/or Criminal Case No. 6536.

Complainant Tan likewise failed to prove the charge of Bribery/Corruption. Bare allegation alone is insufficient to hold respondent Judge Usman liable. Complainant Tan admitted the deficiency of her proof when, at the outset, she reserved her right to submit other proofs in support of this particular charge.

Based on the evidence presented, **respondent Judge Usman gravely abused his authority and is grossly ignorant of the rule on Direct Contempt of Court....**

x x x x

. . . [I]n the Order dated 28 August 2009, respondent Judge Usman directed that complainant Tan be detained for a period not exceeding thirty (30) days. No amount of rationalization can reconcile the limit of the 10-day period of imprisonment for Direct Contempt of Court set in section 1, Rule 71 of the Rules of Court with the 30-day (maximum period of) imprisonment that respondent Judge Usman fixed in the *Order*. This Office finds nothing in the rule, which suggests, however remotely, the theory that the 10-day period of imprisonment in Section 1, Rule 71 is pliable enough to validly stretch to 30 days. By virtue of his office, respondent Judge Usman knows or should have known this so basic a rule. The glaring clarity of the rule tripped respondent Judge Usman to commit a glaring error, which was made even more flagrant by the fact that complainant Tan was **actually imprisoned for 19 days**.

Further, respondent Judge Usman failed to indicate in the Order the amount of bond as required under Section 2, Rule 71 of the Rules of Court. Due to this omission, complainant Tan's option to stay the execution of the judgment had been rendered nugatory, and a result thereof caused her immediate detention. An order of direct contempt is not immediately executory. Respondent Judge Usman's error, however, made it so.

Respondent Judge Usman wielded power abusively by depriving complainant Tan her liberty for **nine (9) days** without due process of law. Lest any misperception of this institution thrive, this regretful incident must be decisively addressed.<sup>[14]</sup> (emphasis partly in the original, partly supplied; italics in the original; underscoring supplied)

In its Report, the OCA also listed the other administrative complaints filed against respondent<sup>[15]</sup> and their respective status, viz:

x x x Per Alphalist as of 30, June 2010, respondent Judge Usman was the subject of other administrative complaints, to wit:

RTJ-91-777		Irregular Financial Support	Complaint Dismissed (3.23.93) Fine 2 mos. Salary (3.5.02)
03-1744-RTJ RTJ-02-1713	w/	Violation of R.A. No. 3019, knowingly rendering unjust orders, bias and partiality, etc.	Suspension 2 mos. & Fine 10T (10.25.05)
RTJ-08-2098 (05-2170-RTJ)		Falsification of Certificate of Service and Dishonesty	Fine 2T (1.16.08)
RTJ-07-2053 (05-2171-RTJ)		Grave abuse of discretion, dishonesty	Suspension 1 mo. (11.27.08)
RTJ-02-1713 (01-1257-RTJ)		Graft and Corruption, incompetence, gross ignorance of the law, dishonesty, and partiality, absenteeism	Suspension 2 mos. & Fine 10T (10.25.05)
RTJ-05-1922 (02-12-18-SC)		(per instruction of Court En Banc)	Suspension 2 mos. & Fine 10T (10.25.05)
RTJ-05-1923 (03-3-157-RTC)		(per instruction of Court En Banc)	Suspension 2 mos. & Fine 10T (10.25.05)

Thus, the OCA *recommended* that this case be re-docketed as a regular administrative matter and that

- a. the administrative complaint . . . for Conduct Unbecoming a Judicial Officer, Mental Dishonesty, Grave Misconduct, Knowingly Rendering an Unjust Order and/or Bribery/Corruption be DISMISSED for lack of merit;
- b. respondent Judge Usman be found guilty of Gross Ignorance of the Law for which he should be ordered to pay a FINE in the amount of TWENTY ONE THOUSAND PESOS (P21,000.00) to be paid within fifteen (15) days from finality of the Resolution of the Court[.]<sup>[16]</sup> (underscoring supplied)

Rule 71 of the Rules of Court provides:

SECTION. 1. *Direct contempt punished summarily.* "€ A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when