

## SECOND DIVISION

[ **A.M. No. RTJ-10-2247 (Formerly OCA I.P.I. No. 09-3143-RTJ), March 02, 2011** ]

**JOCELYN DATOON, COMPLAINANT, VS. JUDGE BETHANY G. KAPILI, PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 24, MAASIN CITY, SOUTHERN LEYTE, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

Before this Court is a verified Complaint<sup>[1]</sup> filed on March 17, 2009, by complainant Jocelyn Datoon (*Datoon*) charging respondent Judge Bethany G. Kapili (*Judge Kapili*), Presiding Judge of Regional Trial Court Branch 24, Maasin City (*RTC*), with Conduct Unbecoming a Member of the Judiciary, and Gross Misconduct amounting to Violation of the Code of Judicial Conduct, relative to an incident which occurred at the Salvacion Oppus Yñiguez Memorial Hospital (*SOYMH*) in Maasin City, Southern Leyte.

On August 16, 2010, the administrative complaint was referred to the Executive Justice of the Court of Appeals, Cebu Station, for raffle among the Associate Justices thereat for investigation, report and recommendation in accordance with the recommendation of the Office of the Court Administrator (*OCA*).

Datoon testified on her own behalf but presented no other witnesses. She also submitted the following documents: her verified Complaint to which were attached the Incident Report of the guard-on-duty, her Affidavit, the Affidavit of her father, Jose Gagan; her verified Reply;<sup>[2]</sup> and verified Sur-Rejoinder.<sup>[3]</sup>

Judge Kapili also testified on his own behalf and presented, as additional witnesses, Judge Ma. Daisy Paler-Gonzales (*Judge Paler-Gonzales*), Efledo Hernandez (*Hernandez*), and Rodulfo Orit (*Orit*). He also submitted the following documents: the Affidavit<sup>[4]</sup> of Judge Paler-Gonzales, the Affidavit<sup>[5]</sup> of Hernandez and the Affidavit<sup>[6]</sup> of Orit.

The facts as borne out by the records and findings of the Investigating Justice are as follows:

Datoon averred that on December 11, 2008, at around 3:00 o'clock in the morning, she was in the labor room of SOYMH waiting to give birth. She was accompanied by her father, Jose Gagan (*Gagan*). Suddenly, they were disturbed by the appearance of Judge Kapili who appeared to her to be drunk as his face was reddish and his eyes were sleepy. She noticed a gun at his waist over his tucked-in t-shirt and she became nervous. Judge Kapili entered the labor room calling "Lor, Lor," looking for his wife, Dr. Lorna Kapili (*Dr. Kapili*), a practicing obstetrician-gynecologist. Not seeing his wife around, Judge Kapili left and entered the delivery room, but returned

to the labor room a few minutes later. Datoon was crying, as she was already having labor pains at the time. Judge Kapili then pointed his gun at her and asked "What's your problem?" This caused her to start crying hysterically while saying "Please don't sir, have pity." At this time, she was lying in bed while Judge Kapili was standing at the left side of the bed near her head. At that moment, a woman entered the room and informed Judge Kapili of the whereabouts of Dr. Kapili, after which he left. Datoon claimed that because of this incident, she was unable to go through normal delivery of her baby and had to undergo caesarian operation instead. Her testimony appeared in the records as follows:

- Q: When you saw the man who was carrying a gun, what was your reaction?
- A: I was frightened.
- Q: You said earlier he went inside the delivery room. Before he went inside the labor room and then he went inside the delivery room. After the delivery room, what happened next?
- A: A little later, he went inside the labor room.
- Q: What happened next when the man went back inside the labor room?
- A: I looked at the man and he pointed the gun at me and uttered the words, "Unsa man, ha?" So I pleaded, "Ayaw tawon, sir, maluoy ka." Then I heard someone saying, "Dra. was in the other room."
- Q: After uttering those words, "Unsa man, ha," your reply was?
- A: "Ayaw tawon, sir, maluoy ka."
- Q: When the man pointed the gun at you, where were you then?
- A: I was in bed, lying.
- Q: Where was the man positioned when he pointed the gun at you?
- A: He was standing at the left side of the bed near my head.
- Q: When the man pointed the gun at you and you said, "Ayaw tawon, sir, maluoy ka," what happened next?
- A: The gun was still pointing at me when I heard somebody said, "Si doctora, toa sa pikas nga room."
- Q: When you heard the voice saying, "si doctora, toa sa pikas nga room," what happened next?
- A: He went outside.
- Q: You said your father was inside the labor room. Where was your father at that time?
- A: He was opposite my bed.<sup>[7]</sup>

In his Comment,<sup>[8]</sup> Judge Kapili admitted being at SOYMH on December 11, 2008, but denied having a gun. He related that he received several phone calls from a woman patient who was looking for his wife, Dr. Lorna Kapili. He tried to contact his wife by telephone, but she failed to answer, prompting him to proceed to the hospital to look for her with his security escort, PO2 Jimmy Ganosa (*PO2 Ganosa*), whose Affidavit<sup>[9]</sup> was attached to the Comment. At the hospital, Judge Kapili instructed PO2 Ganosa to proceed to his mother-in-law's house to check if his wife

was there. He then proceeded to the labor room where he saw Datoon who appeared to be in pain and was surprised by his appearance. He was irked by her reaction so he approached her to ask what her problem was.

Judge Kapili further asserted that he did not have a gun and was only carrying a clutch bag, which Datoon might have mistaken as containing a firearm. He also stated that Gagan was not in the labor room and the only persons present were Datoon and a midwife named Ermelinda Costillas, who was the woman who informed him that his wife was resting in the doctors' lounge and whose Affidavit<sup>[10]</sup> was attached to the Comment. He was unaware that he had created any disturbance as he had not received any notice of such until more than four months later, or on April 16, 2009, when he received a copy of the Complaint.

Judge Kapili was of the belief that the complaint might have been orchestrated and financed by the hospital administrator, Cielveto Almario (*Almario*), in retaliation for the various letters he wrote to the hospital management and to various government agencies criticizing the services of the hospital.

In her verified Reply, Datoon stated that Judge Kapili came from an influential family and had been sending emissaries to convince her to drop the complaint. She noted that Judge Kapili did not make any categorical denial of her claim that he was drunk on the night of the incident.

In his Rejoinder, Judge Kapili claimed that Datoon told a co-worker, Flordeliza Marcojos (*Marcojos*), that he did not really point a gun at her and that Datoon was made to sign a prepared complaint in exchange for employment in the government office in the Province of Southern Leyte. He admitted sending persons to contact Datoon and her father, but explained that it was for the purpose of meeting them, and not to harass or bribe them. He added that, according to Orit, it was Gagan who insinuated that they be paid P150,000.00 for the dropping of the case. The affidavits of Marcojos<sup>[11]</sup> and Orit<sup>[12]</sup> were attached to his Rejoinder.

In her Verified Sur-Rejoinder, Datoon denied entering into any agreement with the hospital administrator, Almario, in exchange for the filing of the complaint. She insisted that she fully understood the allegations in the complaint and denied the assertion that she was only trying to extort money from Judge Kapili.

Judge Paler-Gonzales of RTC, Branch 25, Maasin City, testified that she went to see Datoon in the Provincial Library where the latter was working at the time; that Datoon told her that the Complaint and Affidavit were already prepared by Almario; and that she could not be certain if what was stated in her affidavit was true because she was experiencing labor pains at that time.

In support of Judge Kapili's position, Hernandez, Executive Assistant to the Governor of Maasin City, stated in his Affidavit and testified that he talked to Datoon upon the Governor's instructions to verify the report that certain persons were extorting money from Judge Kapili. During their conversation, Datoon was said to have stated that Judge Kapili was carrying a clutch bag but never pointed a gun at her and she did not know who prepared the affidavit for it was only brought to her for her signature.