

## SECOND DIVISION

**[ A.M. No. MTJ-11-1786 [Formerly OCA IPI No. 10-2262-MTJ], June 22, 2011 ]**

**FELICISIMA R. DIAZ, COMPLAINANT, VS. JUDGE GERARDO E. GESTOPA, JR., MUNICIPAL TRIAL COURT, NAGA, CEBU, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before us is an administrative complaint filed by complainant Felicisima R. Diaz against Judge Gerardo E. Gestopa, Jr., Municipal Trial Court (MTC), Naga, Cebu, for incompetence, gross ignorance of the law, neglect of duty, and conduct unbecoming of a judge relative to Civil Case No. R-595 entitled *Felicisima Rivera-Diaz v. Spouses Ruel & Diana Betito and Isidro Pungkol*.

The antecedent facts are as follows:

Complainant alleged that on April 27, 2009, she filed an unlawful detainer case before the MTC of Naga, Cebu, entitled *Felicisima Rivera-Diaz v. Spouses Ruel & Diana Betito and Isidro Pungkol*, docketed as Case No. R-595. On July 8, 2009, the case was scheduled for pre-trial conference. Since complainant cannot attend the conference because of her heart ailment, she instead sent her nephew, Elmer Llanes, to appear in her behalf.

During the conference, Judge Gestopa recommended the case for *barangay* conciliation, pursuant to Section 408 (g) of the Local Government Code. <sup>[1]</sup> Complainant's counsel objected and moved for mediation instead. However, respondent judge insisted that he has the authority to refer it back to *barangay* for conciliation.

Judge Gestopa concluded that since the subject property is in Naga, and that complainant has always been a resident of Naga, it is therefore proper to refer the case for *barangay* conciliation. Complainant, on the other hand, claimed that she is no longer a resident of Naga.

Complainant moved for reconsideration. She argued that the referral of the case to the *lupon* is a violation of the Rules on Summary Procedure. She stressed that she is no longer a resident of Naga and is now actually residing in Dumlog, Talisay City, Cebu. Complainant further pointed out that the case had already been previously referred to the *lupon*. In fact, a Certification to File Action in court had been issued on May 20, 2008. She further admitted that she did not attach the certificate to the complaint since she believed that the same was not required anymore, considering that the parties are not residents of the same *barangay* or municipality.

On July 20, 2009, Judge Gestopa denied the motion for reconsideration.

Dissatisfied, complainant filed the instant administrative complaint against Judge Gestopa. Complainant alleged that respondent judge exhibited gross ignorance of the law in referring the case back to *barangay* conciliation when clearly she is not a resident of Naga. She accused respondent judge of unduly delaying for months the resolution of the case. She further claimed that respondent judge appeared to be biased, thus, she requested that the case be transferred to another court.

On May 5, 2010, the Office of the Court Administrator (OCA) directed Judge Gestopa to submit his Comment on the complaint against him.

In his Comment dated August 2, 2010, Judge Gestopa argued that the referral of the case to the *barangay* for conciliation was made in good faith, to give way for the possible amicable settlement of the parties. He insisted that complainant was just trying to circumvent the *Katarungang Pambarangay Law*. Respondent judge pointed out that while complainant denied that she is a resident of Naga, she however actually sought *barangay* conciliation, as evidenced by the Certification to File Action dated May 20, 2008, which was issued by *Barangay North Poblacion* and attached to the complainant's motion for reconsideration.

Respondent judge, however, admitted that on November 16, 2009, the members of the *Lupong Tagapamayapa of Barangay North Poblacion* declared that *barangay* conciliation between the parties failed to reach a settlement. Thus, an Order was issued directing the parties to appear before the Philippine Mediation Center (PMC) for mediation. On February 17, 2010, the PMC submitted the Mediator's Report of "Unsuccessful Mediation."

In a Memorandum dated January 12, 2011, the OCA found Judge Gestopa guilty of gross ignorance of the law and procedure, and recommended that he be fined in the amount of Forty Thousand Pesos (P40,000.00). The instant administrative case was, likewise, recommended to be redocketed as a regular administrative matter against Judge Gestopa.

### ***RULING***

The findings of the OCA are well taken.

There is no doubt that Civil Case No. R-595 was a case of unlawful detainer covered by the Revised Rules on Summary Procedure.

The Rule on Summary Procedure clearly and undoubtedly provides for the period within which judgment should be rendered. Section 10 thereof provides:

SEC. 10. *Rendition of judgment.* - Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters to be clarified, and require the parties to submit affidavits or