

## EN BANC

**[ A.M. OCA IPI No. 07-2630-RTJ, April 23, 2010 ]**

**FRANCISCO P. OCAMPO, COMPLAINANT, VS. JUDGE EVELYN S. ARCAYA-CHUA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENT.**

**[A.M. NO. RTJ-07-2049]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE EVELYN S. ARCAYA-CHUA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENT.**

**[A.M. NO. RTJ-08-2141 (FORMERLY A.M. NO. 07-5-263- RTC/ RE: INITIAL REPORT ON THE JUDICIAL AUDIT CONDUCTED AT THE REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY)]**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. JUDGE EVELYN S. ARCAYA-CHUA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, AND COURT STENOGRAPHER VICTORIA C. JAMORA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENTS.**

**[A.M. NO. RTJ-07-2093]**

**SYLVIA SANTOS, COMPLAINANT, VS. JUDGE EVELYN S. ARCAYA-CHUA, REGIONAL TRIAL COURT, BRANCH 144, MAKATI CITY, RESPONDENT.**

## D E C I S I O N

### PER CURIAM:

These consolidated cases<sup>[1]</sup> stemmed from the administrative complaints filed against respondent Judge Evelyn S. Arcaya-Chua. A decision has been rendered in A.M. No. RTJ-07-2093, entitled *Sylvia Santos v. Judge Evelyn S. Arcaya-Chua*, from which the respondent sought reconsideration. The immediately preceding case was consolidated with the subsequent administrative complaints filed against respondent Judge in a Resolution dated April 14, 2009 of the Court *en banc*.

### A.M. OCA IPI No. 07-2630-RTJ

In A.M. OCA IPI No. 07-2630-RTJ (*the Ocampo Case*), Francisco P. Ocampo charged respondent Judge Arcaya-Chua with harassment, grave abuse of authority, gross ignorance of the law, gross misconduct, manifest partiality and/or conduct prejudicial to the best interest of the service.

In his letter-complaint dated April 24, 2007 to the Office of the Court Administrator (OCA), Francisco Ocampo stated that he was the respondent in Special Proceedings (SP) No. M-6375, entitled *Milan Arceo Ocampo v. Francisco P. Ocampo*, which was pending before the sala of respondent Judge Arcaya-Chua.

On November 27, 2006, Francisco Ocampo's wife, Milan Arceo Ocampo, filed a petition claiming the sole custody of their minor daughters, namely, Ma. Francesca P. Ocampo (Francesca), born on June 1, 1994, and Ma. Fatima Patricia A. Ocampo (Fatima), born on October 13, 1995. Summons was served upon Francisco Ocampo on December 12, 2006 and the case was set for hearing the following day, December 13, 2006.

During the hearing, upon agreement of the parties, respondent Judge issued an Order enjoining Francisco Ocampo from taking their minor daughters out of the country without the court's permission and directing him to allow his wife, Milan, visitation rights over their minor daughters in their residence in Meycauayan, Bulacan. Since then, Milan exercised visitation rights over the minors and communicated with them through their cellular phones. Francisco Ocampo filed a motion to dismiss on the ground of lack of jurisdiction, alleging that he and Milan were residents and registered voters of Meycauayan, Bulacan. He then served written interrogatories to his wife, and presented testimonial and documentary evidence to prove that his wife was not really a resident of Makati City.

In an Order dated March 22, 2007, respondent Judge denied the motion to dismiss. Francisco Ocampo questioned the dismissal of his motion since Milan never presented any evidence to controvert the evidence which he submitted in support of his motion to dismiss.

Francisco Ocampo, thereafter, filed a motion for reconsideration, which was likewise denied by respondent Judge Arcaya-Chua in an Order dated April 3, 2007. On even date, respondent Judge issued a Temporary Protection Order (TPO), requiring complainant Ocampo to turn over the custody of their minor daughters to his wife, to stay away from his wife's residence at 1211 West Ayala Condominium, 252 Gil Puyat Ave., Makati City, to refrain from committing acts that would harass, intimidate or threaten and create an unreasonable risk to the health, safety or welfare of their minor daughters and his wife, and to provide monthly support of P50,000.00 to their minor daughters and his wife, exclusive of expenses for medication and education.

Francisco Ocampo faulted respondent Judge Arcaya-Chua for issuing the TPO as the period to file his answer had not yet expired when respondent Judge issued the said Order. Moreover, he was directed to give monthly support of P50,000.00 to his wife and minor daughters, even if his wife alleged that he is not the father of the said minors and in the absence of any factual finding as to the resources of the giver and the necessities of the recipient. In directing the payment of support to his wife, respondent Judge also ignored the factual circumstances relating to the adulterous relations of his wife and the pendency of the legal separation case based on his wife's sexual infidelity and abandonment.

Francisco Ocampo further alleged that respondent Judge caused the implementation of the TPO as if it was a matter of life and death. When her branch sheriff was not available, respondent Judge dispatched another sheriff to implement the Order.

Around 6:00 a.m. on April 5, 2007, a Maundy Thursday, the sheriff dispatched by respondent Judge barged into the home of Francisco Ocampo's parents in Baguio City and woke up all the occupants therein. At that time, Francisco Ocampo, his minor daughters and family were having their Holy Week vacation. The sheriff went inside the house and opened the rooms against the will of the occupants and without regard to their privacy. When the sheriff learned that Francesca and Fatima were still sleeping, he demanded that they be roused from their sleep, even as Ocampo assured him that he will peacefully bring his minor daughters to his wife. The sheriff also insisted that Francisco Ocampo pay the support of P50,000.00 right there and then, although he was told by Francisco that he did not have such amount of money. Francesca and Fatima refused to go with the sheriff, but because of the court order, Francisco Ocampo told them to go with him.

Francisco Ocampo then filed a motion for inhibition, as well as an urgent *ex parte* motion to recall or rectify the Order dated April 3, 2007, but both motions were denied by respondent Judge in an Order dated April 13, 2007.

The irregular acts attributed to respondent Judge Arcaya-Chua are as follows: (1) she denied the motion to dismiss filed by Francisco Ocampo, respondent therein, despite overwhelming evidence submitted that therein petitioner was not a resident of Makati City; (2) she scheduled the hearing of the case immediately a day after the summons was served on therein respondent; (3) she issued a TPO despite the fact that therein respondent's period to file an Answer had not yet lapsed; (4) she ordered the payment of support without sufficient basis; and (5) she caused the implementation of the TPO over-zealously, even designating a special sheriff to serve it in Baguio City on a Maundy Thursday. These, coupled with complainant Ocampo's account that respondent Judge demanded money from his wife, constitute the first set of charges filed against her.

In her Comment,<sup>[2]</sup> respondent Judge explained that the order setting SP No. M-6375 for hearing on the petitioner's application for a TPO and Hold Departure Order was issued on December 8, 2006, a Friday, and was received for service by the Process Server on the same day. Based on the officer's return, the Order was attempted to be served twice by the Process Server on December 11, 2006, a Monday, at complainant Francisco Ocampo's house, but nobody was there. On December 12, 2006, substituted service was resorted to by the Process Server.

Respondent Judge stated that the hearing could not have been set earlier since the court calendar was full, nor later, because December 13, 2006 was the last hearing date, before the court went on Christmas recess, for cases requiring the presence of the public prosecutor. While Francisco Ocampo may have felt harassed by the suddenness of the court hearing, respondent Judge professed that she did not have such intention. The nature of therein petitioner's prayers required immediate action by the court and the December 8, 2006 Order could have been served on him on December 11, 2006, but, as previously mentioned, was unsuccessful.

Respondent Judge pointed out that had complainant Ocampo really felt harassed by the suddenness of the hearing, he could have complained during the hearing of December 13, 2006. Nonetheless, he never brought such issue to the attention of the court, until the filing of the administrative complaint, or four (4) months after the fact. At any rate, the scheduled hearing on December 13, 2006 did not push through because Francisco Ocampo filed a motion to dismiss on the same day.

Francisco Ocampo himself set the hearing of his motion for reconsideration of the Order dated March 22, 2007 Order (which denied the Motion to Dismiss) on April 3, 2007, a Holy Tuesday. For utter lack of merit, reconsideration was denied and the TPO was issued on the same day.

Respondent Judge stated that the issuance of the TPO was anchored on the provision of Section 5 of Republic Act (R.A.) No. 9262. The Court also took into account the provisions of Articles 176 and 220 of the Family Code, which deal with the right of the mother to exercise parental authority over illegitimate children and her right to keep them in her company. Moreover, Francisco Ocampo's contention in his Answer that he was not contesting his wife's claim that the subject minors were not his children bolstered the propriety of the award of custody over the subject minors to his wife, Milan.

Respondent Judge asserted that she was not over-zealous in causing the implementation of the TPO, as the law itself mandates that the court order the immediate personal service of the TPO on the respondent. The Order that directed the implementation of the TPO was dated April 4, 2007, and it was received by Milan's counsel on the same day. Sheriff Manuel Q. Tangangco was deputized to serve it since the Branch Sheriff was not available. Milan Ocampo herself and her counsel coordinated with the sheriff regarding its service, also on the same day. Respondent Judge Arcaya-Chua explained that had she opted to defer action on Milan's prayer for the issuance of a TPO as well as its implementation, it would have been Milan who would have charged her administratively, considering that the Petition was filed as early as November 23, 2006, but the proceedings on the merits were delayed due to the filing by Francisco Ocampo of a Motion to Dismiss. In fact, therein petitioner, Milan Ocampo, filed on February 1, 2007 an Omnibus Motion (To Resolve Petitioner's Application for a Permanent Protection Order, etc.), claiming that Francisco Ocampo's motion to dismiss was purely dilatory.

As regards the date, time and manner the TPO was served by the sheriff, respondent Judge maintained that she was not privy to it, since the said TPO would have been served on April 4, 2007, pursuant to the Order bearing the same date. The sheriff's arrogance, if any, was his personal accountability.

Respondent Judge noted that the Sheriff's Report and handwritten notation on the lower portion of the Order dated April 3, 2007, which was also signed by Kagawad Artemio S. Zaporita of Baguio City and SP04 Arthur A. Curno of the Baguio City Police, stated that respondent Francisco Ocampo voluntarily turned over the custody of subject minors to the petitioner. During the hearing on May 10, 2007, the subject minors themselves belied the claims of Francisco Ocampo regarding the alleged arbitrary manner the TPO was served by the sheriff. Respondent Judge also pointed out that the court did not receive any complaint from Francisco Ocampo or anyone concerned about the manner the TPO was served. It was only in the present administrative complaint that the same was raised, leading to the inference that Francisco Ocampo's claims were concocted.

Respondent Judge maintained that it was irrelevant that the subject minors may not have been in danger, but were safe in the custody of complainant Francisco Ocampo. The court arrived at a preliminary determination that Milan, being the biological mother and the subject minors being her illegitimate children, was entitled to custody over them. Moreover, Milan may have been granted and was exercising

visitation rights over subject minors, yet the duration thereof, as stated in the Order dated December 13, 2006, was only until the court resolved complainant Ocampo's Motion to Dismiss, which was resolved with finality on April 3, 2007. Further, there is a whole of a difference between exercise of visitation rights and custody. During the hearing on May 10, 2007, subject minors, who were over seven years old, declared that they preferred to stay with their mother, Milan Ocampo, and likewise confirmed the physical violence committed by complainant Francisco Ocampo against Milan Ocampo.

According to respondent Judge, Milan Ocampo's prayer for the issuance of a TPO and a Permanent Protection Order (PPO) was anchored mainly on R.A. No. 9262. Section 15 of R.A. No. 9262 is explicit that the TPO should be issued by the court on the date of the filing of the application after *ex parte* determination that such order should be issued. Milan's prayer for the issuance of a TPO and a PPO, based on R.A. No. 9262, was incorporated in the Petition that was filed as early as November 23, 2006. Thus, it was not necessary for the court to await the filing of complainant Ocampo's Answer or the expiry of the period within which to file it before issuing the TPO.

Respondent Judge explained that the award of support was in favor of Milan alone as the legal wife of complainant Ocampo. This was clarified in an Order dated April 16, 2007. Among Milan's prayers in her Petition was for an award of monthly support of not less than P150,000.00, but the court awarded only P50,000.00, as that was the amount found reasonable by it. At any rate, the support granted by the court was only temporary. Likewise, although complainant Francisco Ocampo had not yet complied with the directive to give support as alleged by Milan, the court did not impose a sanction against him precisely because the court was then completing the hearing for the issuance of a TPO. Moreover, Francisco Ocampo had really no reason to complain about the award of support, because the directive to provide monthly support was already held in abeyance in the Order dated May 2, 2007.

Respondent Judge stated that Francisco Ocampo's allegations regarding Milan's adulterous relationships and the legal separation case do not have any bearing on SP No. M-6375.

She further asserted that, as can be gleaned from the records, the courses of action taken by the counsel of complainant Francisco Ocampo did not conform to normal rules of procedure. One, on April 10, 2007, he filed a Motion for Voluntary Inhibition, but two days later, or on April 12, 2007, he still filed an Urgent *Ex Parte* Motion to Recall or Rectify Order dated April 3, 2007. Two, on April 24, 2007, he filed the instant administrative complaint, but two days later, or on April 26, 2007, he still filed an Opposition to Petitioner's Motion dated April 23, 2007 with *Ex Parte* Motion for Examination of the Minors, and a day later, on April 24, 2007, filed a Second Motion to Inhibit. Respondent Judge Arcaya-Chua asseverated that from all appearances, the administrative complaint was filed for the sole objective of compelling her to inhibit herself from handling SP No. M-6375. Three, on May 11, 2007, he filed a Motion to Terminate Proceedings, which was an indication that complainant Ocampo did not really have any genuine administrative cause of action against her. As things turned out, all that complainant Ocampo wanted to hear from the subject minors was their declaration that they preferred to stay with their mother.