

## EN BANC

**[ A.M. No. P-08-2469 (Formerly OCA IPI No. 07-2509-P), April 24, 2009 ]**

**ERLINA P. JOLITO, COMPLAINANT, VS. MARLENE E. TANUDRA, COURT STENOGRAPHER II, MUNICIPAL TRIAL COURT IN CITIES (MTCC), VICTORIA CITY, NEGROS OCCIDENTAL, RESPONDENT.**

**[A.M. OCA IPI NO. 08-2857-P]**

**ERLINA P. JOLITO, COMPLAINANT, VS. GEORGE E. GAREZA, PERALTA, AND SHERIFF II, MUNICIPAL TRIAL COURT IN CITIES (MTCC), VICTORIA CITY, NEGROS OCCIDENTAL, RESPONDENTS.**

### RESOLUTION

#### PER CURIAM:

This case arose from a Complaint<sup>[1]</sup> filed by Erlina P. Jolito (Jolito) on June 2, 2006, against Marlene E. Tanudra (Tanudra), a Court Stenographer II of the Municipal Trial Court in Cities (MTCC), Victorias City, Negros Occidental, for grave misconduct.

The facts of the case:

Jolito alleged that sometime in April 1995, she purchased, from the Heirs of Emilia Vda. de Zaldarriaga, two parcels of land situated at Juan Luna Street, Cadiz City, Negros Occidental.

Sometime in February 2005, Jolito called her nephew Voltaire Jolito and his friend George E. Gareza (Gareza), a Sheriff of the MTCC, Victorias City, to assist her in the transfer of title to her name.

On March 3, 2005, Gareza introduced Jolito to Tanudra, who posed as an expert in legal matters such as the process pertaining to the transfer of ownership and titling of lots with the Office of the Register of Deeds of Cadiz City.

Sometime in May 2005, Jolito went to the office of Tanudra and gave the latter PhP20,000.00, which Tanudra required for the processing of the titles including the payment for the transfer of ownership of the lots.

After more than one year, Jolito did not receive any news from Tanudra. Jolito then confronted Tanudra who said that she was still processing the transfer of titles.

Later on, Jolito became frustrated and thus demanded from Tanudra the return of the money and the documents the former gave the latter. Jolito sent three demand letters to Tanudra dated February 6, 2006, February 28, 2006 and April 7, 2006. Jolito however did not receive any reply from Tanudra.

On May 15, 2006, Gareza executed an affidavit stating that he introduced Jolito to Tanudra and that he was present when Jolito handed to Tanudra PhP20,000.00 for expenses for transaction. In addition, Gareza claimed that when Tanudra was confronted with the status of the transaction, the latter replied that she was still getting in touch with her "contacts" in the Registry of Deeds. Moreover, Gareza claimed that he went to the Registry of Deeds to follow up the status of the transaction and learned that no application for transfer of ownership was filed in the said office by Tanudra.<sup>[2]</sup>

Thus, the instant complaint supported by the affidavit of Gareza.

Upon recommendation of the Court Administrator, Tanudra was required to file a comment in response to the complaint lodged against her.

Tanudra's comment states:

x x x x

My comment to this complaint of Ms. Jolito against me is that it is fabricated, unfounded, malicious as well as libelous as it bears no truth in it, thus, giving me a besmirched reputation. I cannot gamble my 27 years of employment with the judiciary for that amount of money.

I don't have any intention not to return her documents and money but my delay in doing so was coupled by the fact that up to the present, part and parcel of the same amount is in the possession of GEORGE GAREZA, he having borrowed it.

Even before I received her requests to return back the documents and money, which was wrongfully alleged by her to be in the amount of P20,0000.00, I was already preparing to return them back to her as I was informed that the TRANSFER OF TITLE IN HER NAME could not be done because the same property sought to be transferred upon her request had long been FORECLOSED BY THE CENTRAL BANK which is also of her knowledge, thus, she likewise misled me.

I am therefore wrongfully charged by MISS JOLITO for Grave Misconduct and Dishonesty because in the first place she is dishonest in herself by insisting to help her in the transfer of said title.

I was just made by them an instrument to that sale she had executed of said property to another person and thus a poor victim of injustice.

With his comment I am therefore requesting that the ADMINISTRATIVE CASE filed against me by Ms. Jolito be DISMISSED, and hereby respectfully seeks for any other legal relief and remedies in the premises.

<sup>[3]</sup>

On April 20, 2007, the Senior Deputy Court Administrator recommended that the complaint be referred to Executive Judge Felipe G. Banzon (Judge Banzon), Regional Trial Court, Silay City, Negros Occidental for further investigation.<sup>[4]</sup>

In compliance with this Court's Third Division Resolution<sup>[5]</sup>, Judge Banzon submitted his Investigation Report<sup>[6]</sup> on October 23, 2007. The report contained the following findings/observations as summarized by the Office of the Court Administrator (OCA):

1. For quite a period of time from the date of purchase (1995), the transfer of titles of the two parcels of land to complainant's name was not effected, and the complainant gave no reason why this is so. Respondent asserts it is because the parcels of land had long been foreclosed by the Central Bank.
2. Respondent Tanudra admits the allegations made by complainant, though she claims she received only Php19,000.00. She states she wanted to return the money but a significant portion thereof (Php9,000.00) was taken by Gareza, who now denies having taken the said sum.
3. Atty. Meddie Arbolado, the Register of Deeds of the City of Cadiz, where the two parcels of land were registered, told the court that said parcels of land were and still are registered with the Registry of Deeds of Cadiz City in the name of the Intestate Estate of the late Antonio Monfort. The named vendors in the Deed of Absolute Sale of complainant are not the registered owners of said land.
4. Atty. Arbolado categorically states that respondents has not made any application on the matter of the transfer of titles of said parcels of land, nor was there an attempt by the respondent to do the same.
5. Judge Banzon believes that respondent Tanudra and Gareza eventually discovered that the vendors named in the Deed of the Absolute Sale were not the registered owners of the land, yet they demanded and received from complainant the sum of Php20,000.00 for "expenses of transfer".<sup>[7]</sup>

Judge Banzon found that Tandura made no denial of her participation in the series of incidents that eventually resulted in the prejudice of Jolito and thus recommended that administrative proceedings be filed against Tanudra for "Grave Misconduct" and "Gross Dishonesty." Moreover, Judge Banzon also found that Gareza was an active participant in and direct beneficiary of the proceeds of the incident and thus recommended that administrative proceedings also be filed against him for "Grave Misconduct" and "Gross Dishonesty."<sup>[8]</sup>

The OCA in a Memorandum<sup>[9]</sup> dated May 2, 2008 concurred in the finding of Judge Banzon that Tanudra be administratively charged, but not for grave misconduct and gross dishonesty as recommended by Judge Banzon.

For its part, the OCA made the following recommendations, to wit:

1. That the instant administrative matter be RE-DOCKETED as a regular administrative complaint against respondent Marlene E.

Tandura, Court Stenographer II, MTCC, Victorias City, Negros Occidental;

2. That respondent Tanudra be found GUILTY of conduct prejudicial to the best interest of the service and be meted with a penalty of SUSPENSION for six (6) months and one (1) day without pay effective immediately with a stern warning that a repetition of the same or similar offense shall be dealt with more severely;
3. That the complaint of Erlina P. Jolito dated 02 June 2006 be TREATED as an administrative complaint against George E. Gareza, Sheriff II, MTCC, Victorias City, Negros Occidental, and that the latter be directed to submit his COMMENT thereto within thirty (30) days from notice hereof.<sup>[10]</sup>

In compliance with this Court's Order dated June 4, 2008, Gareza submitted his Comment<sup>[11]</sup> where he contended that during the time Jolito was demanding from Tanudra the return of the money and documents, Tanudra never mentioned anything about Gareza having borrowed the money. Gareza claimed that Tanudra only involved him in the mess because of his decision to be a witness in favor of Jolito. Thus, Gareza denied having received half of the money in dispute as claimed by Tanudra.<sup>[12]</sup>

On November 19, 2008, this Court's Third Division issued a Resolution noting the comment filed by Gareza and referring the same to the OCA for evaluation, report and recommendation.

On January 27, 2009, the OCA submitted its Memorandum<sup>[13]</sup> where, upon a second look at the evidence on record, it recommended that Tanudra be instead dismissed from service and that the administrative complaint against Gareza be dismissed for lack of evidence.

The OCA in its Memorandum considered the fact that Jolito sent demand letters to Tanudra, but the latter offered no reply. The OCA ruled that Tanudra should have at least informed Jolito that she could not return the money because half of it was with Gareza. It was only after Gareza made an affidavit in support of the complaint that Tanudra alleged that the portion of what she received from Jolito was borrowed by Gareza. Thus, the OCA concluded that Tanudra's claim was self-serving and a mere afterthought, as she tried to shift the blame to Gareza only after a formal complaint was filed against her.

In summary, the OCA found the following circumstances tantamount to dishonesty and gross misconduct to justify the dismissal of Tanudra from service: Tanudra's acts of (a) accepting money as facilitation fee; (b) refusing to return the same, although she had failed to perform her obligation; (c) blaming someone else for such failure.

The findings of the OCA are well-taken.

This Court notes the finding of Judge Banzon that Tanudra admitted the allegations made by Jolito, to wit: