

## THIRD DIVISION

[ A.M. No. RTJ-07-2034, October 15, 2008 ]

**ATTY. NENITA CENIZA- LAYESE, COMPLAINANT, VS. JUDGE ENRIQUE C. ASIS, REGIONAL TRIAL COURT, BRANCH 16, NAVAL, BILIRAN, RESPONDENT.**

### R E S O L U T I O N

**REYES, R.T., J.:**

RESPONDENT Judge Enrique C. Asis stands charged with breach of procedure/ignorance of the law and knowingly asserting falsehood in his orders relative to the following cases he heard in his court:

- (a) Civil Case No. B-1062 - *Bethsua Limpiado v. Camilo Mission, et al.*, for Recovery of Possession;
- (b) Civil Case No. B-1168 - *Camilo Mission v. Bethsua Limpiado*, for Annulment of Title; and
- (c) Crim. Case No. 2268 - *People of the Philippines v. Bethsua Limpiado*, for Perjury.

Complainant Nenita Ceniza-Layese is the counsel for Camilo Mission and his sibling in the civil cases. She is also the private prosecutor in the criminal case, where the private complainant is Fernito Mission, brother of Camilo.

In her letter-complaint<sup>[1]</sup> dated July 29, 2004, addressed to then Chief Justice Hilario G. Davide, Jr., thru then Court Administrator Presbitero J. Velasco, Jr.,<sup>[2]</sup> complainant Atty. Layese of Mandaue City charged respondent with several infractions constituting ignorance of the law, breach of procedure, and knowingly rendering unjust orders.

Acting on the letter-complaint, Court Administrator Velasco, Jr. required respondent to submit his comment. On September 30, 2004, respondent submitted to the Office of the Court Administrator (OCA) his comment.<sup>[3]</sup> On the other hand, complainant filed her Reply<sup>[4]</sup> to the comment on November 5, 2004.

The OCA submitted to this Court on January 4, 2007 its Report<sup>[5]</sup> with the following recommendations:

- 1) The administrative matter be formally docketed as an administrative complaint against respondent Judge Asis; and
- 2) Judge Asis be fined in the amount of twenty-one thousand pesos (P21,000.00) with a warning that a repetition of the same or similar act in the future shall be dealt with severely.

In its Resolution<sup>[6]</sup> of February 7, 2007, the Court resolved to redocket the matter as an administrative complaint against respondent judge and to refer the same to Justice Remedios Salazar-Fernando of the Court of Appeals for investigation, report and recommendation.

Complying with the Court's directive, Justice Fernando notified the parties of the hearing on March 26, 2007. On March 26, 2007, the parties manifested that they were not submitting additional evidence. Thus, Justice Fernando ordered them to submit their respective memoranda within five (5) days.

Both parties complied with the Order. On May 15, 2007, Justice Fernando issued her Final Report exonerating respondent judge from three (3) charges, but finding him liable for dishonesty and grave misconduct constituting violations of the Code of Judicial Conduct with respect to the three (3) other charges.

Justice Fernando submits that respondent judge is not administratively liable for:

- a) allowing witness Fajardo Limpiado to testify as witness for the plaintiff although his name is not listed as such in the pre-trial order;
- b) Suspending the proceedings in Civil Case No. B-1062 while defendant's petition for *certiorari* was pending in the Supreme Court; and
- c) Acting on plaintiff's *ex parte* motion to present witness Fajardo Limpiado for cross-examination (a litigious motion) without notice to defendant (complainant's clients).

She pointed out that complainant did not impute bad faith, malice, or corrupt motives to respondent. She found no evidence of them, too.

We agree. Respondent cannot be faulted for acting on plaintiff's *ex parte* motion to present witness Limpiado for cross-examination. The motion is indeed not litigious and may be heard *ex parte*. Moreover, respondent acted on the motion after the denial by the Supreme Court of the defendants' petition for *certiorari*.

We likewise find no bad faith, malice, or corrupt purpose attributable to respondent when he suspended the proceedings and allowed Fajardo Limpiado to testify as a substitute witness. The suspension of the proceedings was a mere error in judgment. It was also well within the judicial discretion of respondent to allow said witness to take the witness stand.

The acts of a judge which pertain to judicial functions are not subject to disciplinary action unless they are committed with fraud, dishonesty, corruption, or bad faith.<sup>[7]</sup> A judge may not be administratively charged for mere errors of judgment in the absence of showing of any bad faith, malice, or corrupt purpose on his part.<sup>[8]</sup> Only judicial error tainted with bad faith, fraud, dishonesty, gross ignorance or deliberate intent to do an injustice will be administratively sanctioned.<sup>[9]</sup>

However, Justice Fernando finds respondent administratively liable for:

- 1) precipitately deciding the appeal of accused-appellant in Criminal Case No. 2268 based solely on his appeal

memorandum and while the period given to private complainant to file his own memorandum had not yet expired;

- 2) adversely ruling against defendants in Civil Case No. B-1062 by declaring that on January 22, 2004 their right to cross-examine witness Fajardo Limpiado had been considered waived and the testimony of said witness shall remain as part of the records; and omitting in the Order of January 2003 the fact that Fajardo Limpiado is already dead; and
- 3) knowingly asserting falsehood in the Orders dated March 10, 2003 and September 10, 2003.

It is obvious that there was unusual haste on the part of respondent to decide the appeal in Criminal Case No. 2268 without private complainant's memorandum. The decision was promulgated while the period given to private complainant to file memorandum had not yet expired. For violating private complainant's basic right to due process guaranteed by no less than the Constitution, respondent should be held accountable. Respondent's excuse that when he decided the appeal, the same was already ripe for decision, holds no water.

It also appears that when respondent issued the January 22, 2004 Order, he was fully aware that the witness Fajardo Limpiado had already passed away on January 10, 2004. Yet he omitted this fact in his Order and instead ruled adversely against defendants. Defendants and their counsel arrived late for the hearing on January 22, 2004. Verily, the cross-examination of Fajardo Limpiado was not possible under the circumstances.

Said omission betrays respondent's lack of candor and fairness. His intention to conceal a material fact is apparent. Certainly, a declaration that Fajardo Limpiado is already dead would render the Order nugatory.

It is worth stressing that respondent also stated in his comment that he considered defendant's right to cross-examine Fajardo Limpiado as waived upon motion of plaintiff. However, the transcript of stenographic notes of the assailed proceedings on January 22, 2004 reveals that no such motion was filed by plaintiff's counsel.

Respondent claims that his statement in the Order dated March 10, 2003 that "while the petition for *certiorari* was pending in the Supreme Court, witness Fajardo Limpiado died without having been cross-examined,"<sup>[10]</sup> was only due to inadvertence.

Fajardo Limpiado's testimony was vehemently objected to by the defendants in the Regional Trial Court. They even questioned respondent's Order allowing the presentation of said witness *via* a petition for *certiorari* in the Supreme Court. This made the deceased witness Fajardo Limpiado somehow a controversial substitute witness for plaintiff. Thus, the fact of Limpiado's death, being material and relevant to the case, cannot easily slip away from respondent's mind.

Also, respondent made the following inconsistent statements: "While it is true that Benito (corrected as Benecio) Dublin was the one mentioned in the pre-trial as second witness for the plaintiff, respondent allowed the presentation of Fajardo