

## **THIRD DIVISION**

**[ A.M. No. MTJ-08-1720 (Formerly A.M. OCA IPI No. 02-1267-MTJ), November 25, 2008 ]**

**LOLITA ANDRADA, COMPLAINANT, VS. HON. EMMANUEL G. BANZON, PRESIDING JUDGE, MUNICIPAL TRIAL COURT, MARIVELES, BATAAN, RESPONDENT.**

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

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

Lolita Andrada filed an administrative complaint charging respondent Hon. Emmanuel G. Banzon, Presiding Judge, Municipal Trial Court (MTC) in Mariveles, Bataan, with grave misconduct, grave abuse of authority, oppression, and gross ignorance of the Rules on Contempt under Rule 71 of the Rules of Court. The Court referred the case to Court of Appeals Justice Rosmari D. Carandang "for investigation, report and recommendation."

On June 22, 1999, Nestor Soria filed an ejectment case against complainant Lolita Andrada and her spouse Faustino Andrada. The case, docketed as Civil Case No. 99-830, was raffled off to the sala of respondent Judge Emmanuel G. Banzon. After summary proceedings, the case was resolved in favor of Soria and the spouses Andrada were ordered to vacate the premises. This judgment was affirmed in *toto* by the Regional Trial Court, Branch IV, in Balanga, Bataan. After finality of the decision, the records of the case were remanded to the MTC for execution.

The first writ of execution dated January 16, 2001 was returned unsatisfied because the spouses Andrada refused to vacate the premises. An alias writ of execution was issued by Judge Banzon on August 6, 2001. The second alias writ was returned executed but the spouses Andrada put up temporary structures in front of Soria's house, preventing him from entering the premises. This prompted Soria to file a "Motion to Cite Defendants in Contempt."

Judge Banzon issued an Order dated June 5, 2002 granting the motion, but did not cite the Andradas in contempt of court and merely gave them a period of five (5) days to vacate the premises. Lolita Andrada filed a notice of appeal. Judge Banzon refused to accept the notice of appeal. Consequently, Lolita Andrada filed the instant administrative complaint against respondent Judge for grave abuse of authority, oppression, and gross ignorance of the Rules on Contempt under Rule 71 of the Rules of Court.

In his comment, respondent Judge admitted that he issued the assailed June 5, 2002 Order. However, he denied the allegation that he refused to accept Andrada's appeal. He informed her that she could not appeal from the Order of June 5, 2002 since it is interlocutory in character. He further asserted that even if his assailed

order could be appealed, the notice of appeal could not be entertained since Andrada failed to pay the required appellate docket fee.

### **Findings and Conclusion of the Investigating Justice**

This investigating Officer finds that the complainant failed to adduce sufficient and convincing evidence to substantiate the charge that respondent Judge Emmanuel G. Banzon committed grave abuse of authority, oppression and gross ignorance of the law.

In charging respondent judge, complainant primarily based her claim on the alleged refusal of respondent judge to accept her notice of appeal of the Order dated June 5, 2002 granting the motion to cite them in contempt of court. She averred that the notice of appeal is a proper remedy to assail the questioned Order pursuant to Section 11, Rule 71 of the Rules of Court.

To be liable for grave abuse of authority and oppressive conduct, it must be sufficiently shown that the judge deals with lawyers and litigants in a cavalier and arrogant attitude. It should likewise be shown that the judge used intemperate, harsh and disparaging language indicative of his lack of courtesy and civility, and not a desire to instill proper decorum and discipline.

In this case, respondent judge denied the allegation that he refused to accept complainant's notice of appeal. Yet, he admitted that he *informed* complainant that she could not appeal from an interlocutory order but she refused to believe relying on the erroneous advice of her counsel. The actuation of respondent judge in merely "*informing*" complainant that a notice of appeal is not the proper remedy can in no way be indicative of grave abuse of authority nor oppressive conduct on the part of respondent judge. Moreover, the record is bereft of evidence that respondent judge informed or instructed complainant of the erroneous notice of appeal in a discourteous manner with the intemperate use of cruel language.

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Anent the charge of gross ignorance of the law, the same should likewise fail. To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, more importantly, he must be moved by bad faith, fraud, dishonesty or corruption. For to hold a judge administratively accountable for every erroneous ruling or decision he renders, would be intolerable.

In the instant case, there is nothing to show that respondent judge was prompted by malice or corrupt motive in refusing to accept the notice of appeal nor is there clear evidence that respondent judge is ignorant of the law, as a notice of appeal is indeed not the proper remedy to question the Order of June 5, 2002.