

## THIRD DIVISION

[ A.M. No. MTJ-03-1505, September 25, 2007 ]

**MAMASAW SULTAN ALI, COMPLAINANT, VS. HON. BAGUINDA ALI PACALNA, PRESIDING JUDGE, HON. PUNDAYA A. BERUA, ACTING PRESIDING JUDGE, HADJI IBRA DARIMBANG, CLERK OF COURT AND MANDAG U. BATUA-AN, COURT STENOGRAPHER, ALL OF THE MUNICIPAL CIRCUIT TRIAL COURT, MUNICIPALITY OF BALINDONG, PROVINCE OF LANA DEL SUR, RESPONDENTS.**

### DECISION

**YNARES-SATIAGO, J.:**

In a verified complaint<sup>[1]</sup> filed on January 30, 2003 before the Office of the Court Administrator (OCA), complainant Mamasaw Sultan Ali charged respondents Judge Baguinda Ali Pacalna, Judge Pundaya A. Berua and Clerk of Court Hadji Ibra Darimbang with grave abuse of discretion, dishonesty, gross ignorance of the law, grave misconduct and conduct prejudicial to the best interest of the service in connection with Election Case No. 2002-10-M.

The records show that on January 18, 2002, complainant and other residents of different *barangays* in Madalum, Lanao Del Sur filed 20 petitions for inclusion in the permanent list of voters docketed as Election Case Nos. 2002-01-M to 2002-20-M.

Complainant was the petitioner in Election Case No. 2002-10-M which, together with the other petitions, was assigned to the Municipal Circuit Trial Court (MCTC), Balindong, Lanao Del Sur, presided by respondent Judge Pacalna.

In their petitions, complainant and the other petitioners alleged that during the general registration of voters on December 26, 2001, they personally appeared at the designated registration center for the purpose of enlisting as voters for the upcoming *barangay* elections. However, they were not able to register due to the lack of registration forms and were thus advised by the Assistant Election Officer, Amerogong Tumara,<sup>[2]</sup> to list down their names so that a certification may be issued that would enable them to file a petition for inclusion later on.<sup>[3]</sup> Complainant and the other petitioners did as they were told and Tumara signed the list certifying that their failure to register was "through no fault of their own".<sup>[4]</sup>

Thereafter, complainant and the other petitioners filed the aforementioned petitions for inclusion before the MCTC on January 18, 2002. The notice of hearing stated that the petitions will be submitted for consideration of the court on "FEBRUARY \_\_\_\_\_, 2002 at 9:00 A.M. or as soon thereafter as they may be heard".<sup>[5]</sup> Copies of the petitions were served on Tumara on January 17, 2002.

Judge Pacalna did not issue any order relative to the petitions from the time that these were filed until the first week of May 2002. Except for a motion to transfer

venue filed by complainant's lawyer, Atty. Masorong, no other event transpired with respect to the pending petitions. It was only on May 6, 2002 that Judge Pacalna issued an order setting the petitions for hearing three days later.<sup>[6]</sup>

During the hearing on May 9, 2002, Judge Pacalna announced that the purpose of the proceeding was to ascertain the authenticity of Tumara's signature appearing on the certified list. Atty. Masorong manifested that this was not necessary considering that Tumara never assailed the authenticity of his signature despite receipt of the petitions as early as January. Tumara did not appear during the hearing. He instead sent a letter requesting that the hearing be reset because his wife purportedly fell ill.

During the May 9, 2002 hearing, Atty. Superman A. Usop also appeared as counsel for the incumbent Municipal Mayor of Madalum, Soraida M. Sarangani. Complainant alleged that Judge Pacalna irregularly recognized the appearance of Atty. Usop even if no motion for intervention was filed by the latter and allowed him to participate in the proceedings over the vigorous objection of complainant's counsel. Atty. Usop even demanded the resetting of the hearing to May 23 and 24, 2002.

Prior to the scheduled hearing, complainant and the other petitioners went to Judge Pacalna's residence where the latter allegedly suggested that only two (2) representatives from the opposing camps should appear at the hearing. Judge Pacalna also told complainant that since the hearing was only for ascertaining whether the signature appearing on the certified list was truly that of Tumara's, the parties should come without their respective counsels.

Meanwhile, Atty. Usop filed a Motion for Intervention with Motion to Dismiss on May 13, 2002 which was set for hearing on May 23, 2002. Complainant received a copy of the motion on May 20, 2002.

As suggested earlier by Judge Pacalna, Atty. Masorong did not attend the hearing on May 23, 2002. Instead, complainant's camp was represented by Nora A. Alim, Licayan M. Aragasi and Allan Sharief L. Azis. On the other hand, Atty. Usop attended the hearing in which Tumara answered questions propounded by Judge Pacalna. Tumara allegedly stated that he was forced into signing the certificate because he feared for his life.

Tumara then submitted a letter to Judge Pacalna which contained the statements he made during the hearing. Judge Pacalna read the letter in open court but did not show the same to complainant's representatives despite the request of Azis. To this day, complainant and the other petitioners have not seen the letter, contrary to assurances made by Judge Pacalna that a copy would be made available to them.

On May 27, 2002, complainant and the other petitioners, through Atty. Masorong, filed three consecutive motions for the urgent resolution of the "pending issue" regarding Tumara's signature. They also prayed that the hearing of the petitions be scheduled at once in view of the proximity of the *barangay* elections. Complainant intended to run as *punong barangay* and the deadline for filing a certificate of candidacy was on June 10, 2002.<sup>[7]</sup>

According to complainant, it soon became apparent that Judge Pacalna was

unnecessarily delaying the proceedings to prevent the petitioners from being registered as voters. The petitioners were allies of complainant and were not willing to support Mayor Sarangani's re-election bid in 2004. Atty. Masorong thus filed a motion for the inhibition of Judge Pacalna on June 4, 2002.<sup>[8]</sup> On the same day, however, Atty. Masorong received an order of the trial court dated May 31, 2002 dismissing all the petitions for inclusion.<sup>[9]</sup>

Judge Pacalna relied on the May 23, 2002 testimony of Tumara that he signed the certificate under duress. Quoted in the order of dismissal was the letter of Tumara, marked as Exhibit "1" for the intervenor Mayor Sarangani, stating that he was constrained to sign the certificate because of imminent danger to his life. Additionally, Judge Pacalna held that the petitions should be dismissed for not having complied with jurisdictional requirements under pertinent COMELEC rules, since the petitions were not brought against an order of the Election Registration Board (ERB) disapproving petitioners' application for registration.

Meanwhile, the representatives of complainant during the May 23, 2002 hearing separately executed affidavits insisting that Tumara did not testify on any duress, threat or intimidation.<sup>[10]</sup> Atty. Masorong also requested for a copy of the transcript of stenographic notes taken during the hearing.<sup>[11]</sup> However, the court stenographer, Mandag U. Batua-an, could not provide Atty. Masorong with a copy of the transcript since the custodian of the records, Clerk of Court Darimbang, was allegedly not present in the office. Atty. Masorong thus requested that he instead be allowed to listen and reproduce the tape recording of the proceedings. His request was likewise denied because according to Batua-an, the tape was not in the office but in his residence.<sup>[12]</sup>

On June 6, 2002, Atty. Masorong filed a Notice of Appeal<sup>[13]</sup> from the order dismissing the petitions. Thereafter, Atty. Masorong once again demanded from Batua-an that he be furnished a copy of the May 23, 2002 transcript but was denied, allegedly upon the instructions of Judge Pacalna that no records relative to the election cases would be released until he (Judge Pacalna) returns from Manila. Atty. Masorong requested Batua-an to issue a certificate stating this fact.<sup>[14]</sup>

On June 14, 2002, the MCTC forwarded the records of the election cases to the Regional Trial Court (RTC) of Marawi City<sup>[15]</sup> where it was raffled to Branch 8 presided by Judge Santos B. Adiong. Included in the transmittal was the May 23, 2002 transcript as well as the tape recording of the proceedings. Meanwhile, Tumara was required to comment on complainant's appeal memorandum within three days from receipt of notice.<sup>[16]</sup> Mayor Sarangani was not similarly notified since her motion for intervention was still pending.

Since the transcript of stenographic notes of the May 23, 2002 hearing was unsigned, Atty. Masorong moved for inspection of the cassette tape on June 27, 2002. But when the tape was played before the RTC, it contained only music on both sides. Atty. Masorong thus verbally moved to strike out the May 23, 2002 transcript from the records of the case.<sup>[17]</sup> In the meantime, Tumara failed to file his comment within the period given by the court.

On July 1, 2002, the RTC rendered a decision reversing the judgment of the MCTC.

[18] It ordered the transcript of the May 23, 2002 proceedings stricken off the records and held that there was no clear and convincing evidence to support a finding that Tumara signed the certificate under duress. Moreover, complainant and the other petitioners were not given the opportunity to cross-examine Tumara on his alleged testimony. Neither was Tumara's letter offered in evidence nor examined by the petitioners.

The RTC also held that Tumara's failure to supply petitioners with the application forms for registration is tantamount to a denial of their application. Thus, when Tumara signed and issued the certificate, the same was deemed substantial compliance with jurisdictional requirements for filing the petitions. Tumara was categorically found to have voluntarily and freely signed the certificate. [19]

The RTC then remanded the election cases to the MCTC for further hearing on the merits. Meanwhile, Judge Pacalna was ordered to inhibit himself from further hearing the cases. [20]

On the same day that the RTC's decision was promulgated, Tumara belatedly filed his appeal memorandum. [21] Mayor Sarangani, although not so required, followed suit. [22]

Subsequently, respondent Judge Berua was designated as Acting Presiding Judge of the MCTC-Balindong for the purpose of hearing the election cases. Judge Berua immediately caused the service of notice to Mayor Sarangani to appear on July 5, 2002 for the hearing of her Motion for Intervention. Another notice was sent to Tumara and the other parties to appear on July 8 and 9, 2002 for the formal hearing of the petitions for inclusion. [23]

On July 5, 2002, for failure of the opposing counsels to appear, Judge Berua issued an order directing the petitioners, through Atty. Masorong, to file a comment on Mayor Sarangani's motion for intervention within two days from receipt of notice. Atty. Usop was likewise given two days from receipt of petitioners' comment to file a reply in behalf of Mayor Sarangani. [24] Petitioners filed their comment [25] while Mayor Sarangani failed to file a reply. Instead, the latter through counsel filed a Motion to Dismiss. [26]

On July 8, 2002, Judge Berua issued an order granting Mayor Sarangani's motion for intervention. [27] However, Judge Berua's order was solely anchored on an alleged order [28] dated May 23, 2002 issued by Judge Pacalna granting Mayor Sarangani's motion for intervention. The petitioners were surprised by the ruling because at no instance did they receive copy of Judge Pacalna's May 23, 2002 Order granting Mayor Sarangani's motion for intervention. Moreover, Judge Pacalna did not conduct any hearing on the motion for intervention and the alleged order granting the same was not even part of the records elevated to the RTC on appeal.

Complainant and the other petitioners thus theorized that Judge Berua caused the insertion of the said order in the records of the case when, during the hearing, he unbound and rearranged the records for allegedly being in disarray. That the order was fabricated was further bolstered by the fact that Mayor Sarangani's counsel did not manifest that their motion for intervention was granted when the same was set

for hearing by Judge Berua on July 5. Even the alleged transcript of the May 23, 2002 proceedings did not mention any hearing conducted on the motion for intervention or of the granting thereof by the trial court.

Noting that the *barangay* elections was to take place on July 15, Judge Berua nevertheless proceeded to examine the petitioners regarding their qualifications as voters and were thereafter cross-examined by Atty. Usop. The following day, Judge Berua once again called upon Tumara to testify on his alleged involuntary signing of the certificate.

On July 11, 2002, a decision was rendered dismissing the petitions for the second time on the ground of lack of jurisdiction.<sup>[29]</sup> Judge Berua observed that the petitions were not filed against the order of the Election Registration Board denying the registration of petitioners, as required under COMELEC Resolution No. 4164.<sup>[30]</sup> Petitioners also did not formally offer their testimonial evidence during the trial, as a consequence of which their testimonies could not be considered.

Complainant and the other petitioners again appealed the decision of Judge Berua to the RTC-Marawi City. Notably, Mayor Sarangani did not submit an appeal memorandum despite the order of the RTC to do so. In due course, the RTC rendered a decision dated August 9, 2002 ordering the Board of Election Inspectors (BEI) to include the names of the petitioners in the permanent list of voters. The RTC held that the May 23, 2002 order granting Mayor Sarangani's motion for intervention was of doubtful legal existence; that the grounds cited by the trial court for dismissing the petitions were already passed upon when the cases were first brought on appeal; and that the trial court's reliance on the rules on formal offer of evidence was misplaced, considering that it was Judge Berua who elicited the testimonial evidence from the petitioners in a proceeding that was supposed to be summary in nature.<sup>[31]</sup>

The foregoing decision of the RTC was delivered to the election officer on election day itself. As a result, complainant's name was not timely included in the master list, and he was not considered a candidate for barangay chairman, thus depriving him of his right to vote and be voted.

Thus aggrieved, complainant filed the instant administrative complaint against respondents for dishonesty, gross ignorance of the law and grave misconduct.

Respondents uniformly alleged that the true complainant in this case is complainant's counsel, Atty. Masorong. They deny having purposely delayed the inclusion proceedings in favor of the incumbent municipal mayor and contend that the delay was in fact the fault of Atty. Masorong since he did not specify a hearing date for the petitions.

Judge Pacalna also claims that Atty. Masorong's wife personally requested him to set the petitions for hearing at a later date. Mrs. Masorong allegedly intended to run as municipal mayor in 2004 and all the petitioners were her supporters. She claims that she needed time to raise money for the election cases since she would be shouldering the expenses in behalf of the petitioners. She allegedly told Judge Pacalna that her husband would file the necessary motion to set a hearing date once she is ready with the money.<sup>[32]</sup>