

EN BANC

[A.M. NO. P-06-2104, January 31, 2006]

**JUDGE JOSELITO S. SALVADOR, COMPLAINANT, VS. ROMANCITO
M. SERRANO, CLERK OF COURT III, MTCC, BRANCH II, SAN
FERNANDO CITY, PAMPANGA, RESPONDENT.**

D E C I S I O N

PER CURIAM:

The instant administrative case arose from the affidavit-complaint ^[1] dated 27 August 2002 of complainant Judge Joselito S. Salvador, Presiding Judge of the Municipal Trial Court in Cities (MTCC), Branch 4 of the City of San Fernando, Pampanga, charging respondent Romancito Serrano, Clerk of Court III of Branch 2 of the same court, with Tampering the Records of Civil Case No. 8114 entitled, "Rosalina O. Ng, doing business under the name and style, Goldstar Hardware & Aluminum Supply v. Jorolan," by concealing that an *ex parte* proceeding took place on 15 March 2002 and that an Order dated 16 April 2002 was issued declaring defendant in default, and by allowing the posting of a bond in the absence of the accused and of the presiding Judge.

The facts of the case are as follows:

On 13 March 2002, plaintiff filed in Civil Case No. 8114 a motion to declare defendant in default which was set for hearing on 15 March 2002. Despite being notified of said hearing, defendant failed to appear causing respondent to hear plaintiff's evidence *ex parte*.

On 16 April 2002, Judge Rodrigo Flores issued an Order, ^[2] which reads:

Acting on the motion to declare defendant in default filed by Atty. Joseph J.M. Miranda, counsel for the plaintiff, and finding the reasons alleged therein to be tenable, the same is hereby granted.

WHEREFORE, as prayed for, the defendant is hereby declared in default and judgment be rendered in accordance with the prayer in the complaint pursuant to Section 3, Rule 9 of the 1997 Rules on Civil Procedure.

City of San Fernando (P), April 16, 2002.

[Signed]
Rodrigo R. Flores
Judge

On 06 May 2002, Presiding Judge Rodrigo Flores went to the United States, and complainant Judge Joselito S. Salvador, Branch IV of the same Court, took over as

the pairing judge.

On 09 May 2002, complainant signed a similar Order [3] in same Civil Case No. 8114 declaring defendant in default and setting the reception of evidence on 22 May 2003. On said date, counsel for plaintiff informed Judge Salvador that the motion to declare defendant in default had already been acted upon by then Presiding Judge Rodrigo Flores and, in fact, evidence was already presented *ex parte*. At this juncture, Judge Salvador became apprehensive and suspicious and ordered a verification of the records of the case.

Verification disclosed that the previous order of default dated 16 April 2002, signed by Judge Flores, was kept in a separate file and that when Judge Salvador signed his Order, he was fully unaware that there was already a previous order of default until he was informed by plaintiff's counsel on 22 May 2002 during the scheduled *ex parte* reception of the plaintiff's evidence.

Further verification also disclosed that the evidence *ex parte* was received by respondent Clerk of Court who is not a lawyer.

In another case, it also appeared that respondent allowed the posting of bail for an accused who was *in absentia*, thru the latter's cousin.

Respondent, by way of exculpation, interposed forgetfulness and heavy workload. He asserted that his failure to disclose to complainant that there had been previously a reception of evidence *ex parte* was not deliberate but was a result of forgetfulness. He claimed to be depressed, attributing the cause thereof to his child's illness and his own sickness. Further, it was Judge Flores who directed him to re-word the subject order and that the latter even dictated the corrections which he wrote on the carbon copy of said order. [4] Judge Flores even instructed him to refer any matter which required immediate action to complainant as he was then leaving for abroad. He was not certain if Judge Flores detached the questioned order from the records of the case. He added that it was only after two weeks that he recalled the instructions of Judge Flores to rephrase and re-word the order. He consulted another clerk of court before preparing the questioned order. He pointed out that complainant signed the questioned order after it was re-worded.

Respondent added that he was on leave on 22 May 2002, the day set for the *ex parte* presentation of evidence. He admitted that Angelina Lapiceros, a stenographer, told him that an order was already issued but denied that the latter informed him that there had been an *ex parte* presentation of evidence. He further disclaimed that he detached the questioned order from the records of the case and claimed that it was only an honest mistake as he had nothing to gain from it.

As to the cash bond, he insisted that it was the person's own volition to deposit the money with the Office of the Clerk of Court. He added that he advised the person to present the accused, but the latter was persistent in depositing the money; thus, he signed the deposit acceptance when presented to him.

The case was referred to the Office of the Court Administrator (OCA). Due to conflicting claims and contentions, however, the case was referred [5] to the Executive Judge of the Regional Trial Court (RTC) of San Fernando, Pampanga.

On 11 June 2004, Executive Judge Adelaida Ala-Medina submitted her report, recommending that respondent be found guilty of the offenses of dishonesty for concealment of facts relative to Civil Case No. 8114 and inefficiency and incompetence in the performance of his duties for allowing the posting of bail in the absence of the accused and be meted the penalty of dismissal from service for dishonesty and the penalty of suspension of six (6) months and one (1) day for inefficiency and incompetence. Quoted hereunder are substantial portions of Judge Ala-Medina's findings from which she based her recommendations, thus:

Atty. Josep J.M. Miranda, counsel for the plaintiff in Goldstar, testified that he had already presented evidence ex parte (on March 15, 2002), when he received the order signed by complainant directing plaintiff Goldstar to so present its evidence. Miranda made his presentation, "actually just a marking of exhibits," initially before respondent. Judge Flores arrived later but did not take part therein as he busied himself with other things.

Miranda disclosed that he told complainant that he had already presented evidence ex parte and so could not be asked to do so again. He said he searched for the order signed by Judge Flores in the case records but could not find it. However, the stenographic notes were attached to said records. A stenographer showed Miranda a copy of the missing order.

Meanwhile, Angelina Lapiceros, stenographer of MTCC-Branch 2, testified that in the morning of April 26, 2002, respondent instructed her to retype the order issued by Judge Flores dated April 16, 2002, relative to the case of Goldstar. She was told to change the date of the order, from April 16, 2002 to May 16, 2002, as well as the contents thereof. Lapiceros said she reminded respondent that there had already been presentation of evidence ex parte in that case and showed him the minutes thereof. Respondent allegedly replied, "hindi excessive." Lapiceros wrote these words on her copy of the order signed by Judge Flores. She likewise wrote thereon the date and time that she spoke with respondent. Lapiceros then kept the order in another file for safekeeping.

Lapiceros said that respondent took said order from her on May 23, 2002 and did not return it. She asked respondent for the order later that same day, but respondent told her "it is part of the records." Lapiceros stated that she was the one who accompanied Atty. Miranda to the office of complainant when the former inquired with the court as regards the conflicting orders issued in Goldstar. She then affirmed before complainant that presentation of evidence ex parte had already been done in the case, and this was corroborated by Gloria Dimarucut, another stenographer, who was summoned by complainant to help shed light on the matter.

During the investigation of this case, Dimarucut testified that she was the stenographer on duty when the presentation of evidence ex parte was done. Present therein, according to her were respondent and Atty. Miranda. Judge Flores arrived midway through the proceedings. Dimarucut added that respondent later on made corrections on her notes

taken during the proceedings.

Dimarucut said she handed over her notes to respondent and asked him what order she should type. Corrections were then made by respondent on then notes. Respondent allegedly told Dimarucut that he had not yet prepared an order for typing. About three weeks to a month later, Dimarucut asked respondent again for the order to be typed. Respondent did not answer and instead took the records and gave it to Candelaria Mangulabnan, the court interpreter.

According to Dimarucut, her stenographic notes were already attached to the records on May 22, 2002, and she showed the same to complainant to prove that there had already been ex parte presentation of evidence in Goldstar.

Juanita Flores, clerk of court of the MTCC, also testified in this case. She stated that on May 6, 2002, respondent asked her regarding a motion to declare a defendant in default, without mentioning a particular case. She told him the motion must be set for hearing and a date must be set for the presentation of plaintiff's evidence ex parte. She advised respondent to also consult complainant, which he did. She heard complainant give respondent the same answer as she did. At that time, according to Flores, her table was just a few steps away from complainant's.

Flores corroborated complainant's narration as regards the exchange between him and respondent when complainant confronted respondent about the missing order, i.e., that respondent gave different answers when pressed by complainant concerning the missing order.

x x x x

On May 25, 2004, respondent submitted his formal offer of evidence, way beyond the ten-day period, reckoned from February 3, 2004, given to him by the undersigned. Hence, the evidence adduced by respondent as stated in his formal offer was no longer considered by the undersigned in the preparation of this report. Moreover, the affidavit executed by Judge Flores, aside from being part of the formal offer that was filed late, was also not considered since Judge Flores failed to appear for cross-examination, despite several subpoenas issued to him. Respondent also did not submit his memorandum as required in the order issued by the undersigned on February 3, 2004.

The undersigned finds the following facts to have been duly established:

1. In the case of *Goldstar v. Jorolan*, Judge Rodrigo Flores, former presiding judge of MTCC-Branch 2, issued an order that declared defendant in default;
2. Respondent admittedly wrote down the intercalations that appear on said order;

3. The words "*hindi excessive*," written by Lapiceros on the upper right hand corner of the order of Judge Flores, came from respondent, as he himself admitted;
4. Prior to the order of complainant dated May 16, 2002 setting a date for *ex parte* presentation of evidence in *Goldstar*, such a proceeding had already been held on March 15, 2002, as testified to by plaintiff's counsel and by the stenographer who took down the notes during the proceedings;
5. Respondent was present at the *ex parte* presentation of evidence on March 15, 2002, as shown by the transcript of stenographic notes.

Complainant's version of the incidents surrounding the missing order of Judge Flores dovetails with those of the other court personnel who testified in this case. Respondent's version, on the other hand, is replete with inconsistencies.

Judge Flores issued an order on April 16, 2002 concerning the case of *Goldstar*. However, this order was not in the records when, a month later, complainant issued a similar order directing the plaintiff in said case to present evidence *ex parte*. As it turns out, such a presentation of evidence had already been done, and respondent was present therein.

Confronted with this discovery, respondent at first denied any knowledge thereof but later on alleges that Judge Flores had asked one of the stenographers to remove the subject order from the records. During his testimony, he also alleges that he had forgotten all about the presentation of evidence, hence his denial thereof when asked by complainant.

First, the undersigned could not believe that respondent would not remember the *ex parte* presentation of evidence when asked about it. Assuming *arguendo* that respondent had forgotten about it, his memory would have been triggered by complainant's reference thereto.

Second, respondent's claim that he had forgotten about the proceedings is inconsistent with the established fact that he asked clerk of court Juanita Flores about the procedure to follow when a defendant in a case is declared in default. While respondent did not mention any particular case, it was in the case of *Goldstar* that a defendant had recently been declared in default. At the time that respondent asked Flores about this matter sometime in May, it had been more than a month after the presentation of evidence *ex parte* was done on March 15, 2002, and almost a month after the April 16, 2002 order of Judge Flores.

Moreover, respondent himself testified that he asked Juanita Flores about the matter to be sure about the contents of Judge Flores' order. The undersigned notes that this was after Judge Flores had