

EN BANC

[A.M. NO. MTJ-05-1579, October 11, 2005]

EDUARDO C. DAYUNO, COMPLAINANT, VS. JUDGE HECTOR B. BARILLO, AND LUCIA L. TANGERES, CLERK OF COURT II, RESPONDENTS.

R E S O L U T I O N

PER CURIAM:

This administrative matter stemmed from the affidavit-complaint dated June 10, 2002^[1] filed by complainant **Eduardo C. Dayuno** with the Office of the Court Administrator (OCA) charging respondents **Judge Hector B. Barillo** and **Ms. Lucia L. Tangeres**, Acting Judge and Clerk of Court, respectively, of the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental with grave misconduct and conduct prejudicial to the best interest of the service, among other offenses.

As gathered from the basic complaint, the separate comments thereon of respondents, with their respective annexes, other pleadings and documents on file, the antecedent facts of the case, originally docketed as OCA IPI No. 02-1277- MTJ, are as follows:

Complainant's father, Juanito Dayuno, was a holder of emancipation patents over two (2) parcels of agricultural land situated in Brgy. Bulado, Guihulngan, Negros Oriental and covered by OCT Nos. 2071 and 2073. Both parcels used to form part of the estate of the late Federico Sumogod over which respondent Lucia L. Tangeres serves as administratrix.

Owing to advancing age, Juanito assigned his rights over the said parcels of land in favor of complainant, who then assumed and continued with the corresponding monthly amortizations therefor. Complainant eventually completed payment and the Land Bank accordingly issued him separate "Certificate[s] of Full Payment of Land Amortization".^[2]

On March 2, 2000, a certain Evelyn Anotado, one of respondent Tangeres' overseers of the Sumogod estate, filed a criminal complaint for qualified theft against herein complainant, who was allegedly caught unlawfully gathering coconuts worth P800.00 within the Sumogod estate. The case was docketed as Criminal Case No. 2-00-019 of the MTC of Guihulngan, Negros Oriental, presided by respondent Judge Hector B. Barillo. Parenthetically, another overseer of respondent Tangeres earlier filed a similar complaint^[3] against the son of another agrarian reform awardee.

Finding, in a preliminary investigation conducted on June 27, 2000, a *prima facie* against complainant for the crime charged, respondent judge immediately issued a warrant of arrest. On July 31, 2000, complainant was arrested and detained until August 21, 2000 when he was able to post bail for his provisional liberty.

Upon review of the resolution on preliminary investigation, the Office of the Provincial Prosecutor of Negros Oriental, on the finding that complainant has adequately shown proof of ownership over the land on which the coconuts were harvested, dismissed the criminal complaint for want of probable cause. The dismissal, embodied in resolution dated September 15, 2000,^[4] would be reiterated in an order of October 20, 2000.^[5]

The dismissal action, instead of easing ill-feelings one main protagonist may have harbored against the other, appeared to have heightened the animosity between them. Complainant apparently could not shake off the belief that, as stated in his complaint, the Anotado-initiated criminal case, was an instance of malicious prosecution instigated by respondent Tangeres who used her position as clerk of court and the court as instruments in perpetrating her evil designs and fabricating offenses.

Complainant alleges that when he harvested and sold the G-melina trees he planted on his awarded area, respondent Tangeres demanded half of the proceeds, adding that he was forced to accede when the demand was accompanied by a threat of imprisonment. Upon further reflection, however, on the propriety of the demand, he wrote respondent Tangeres asking for the return of P1, 500.00 she had received, only to be told that she would only act in accordance with the order of Judge Barillo.

Complainant further avers that respondent Tangeres, in violation of his right to have access to records of public concern, rejected his letter-request^[6] for copies of the complaint in, and the supporting affidavits of, Criminal Case No. 3-00-019.

Turning his sight against the other respondent, complainant alleges that, on May 29, 2002, respondent Judge Barillo issued, purportedly in relation with the case between complainant and respondent clerk of court, a notice for conference, requiring him to appear before his sala on June 5, 2002 when no case has been filed against him.^[7] To complainant, respondent judge's actuation was "*designed to protect and defend the interest of respondent Clerk of Court*", a clear manifestation of partiality and bad faith, with the end in view of harassing him.

In his comment dated August 22, 2002,^[8] respondent judge tags the instant administrative complaint as an off-shot of the actions he took in connection with Criminal Case No. 3-00-019, which, he was quick to explain, were in accordance with the pertinent provisions of the Revised Rules on Criminal Procedure. Continuing, respondent judge also avers that, on August 1, 2000, Clerk of Court Tangeres issued to complainant a subpoena notifying him of the filing of Criminal Case No. 2-00-019 and directing him to file his counter-affidavit and that of his witnesses. He pointed out, however, that complainant did not comply with the directive, a failure which, according to respondent judge, prompted him, owing to the limited jurisdiction of MTCs, to forward the entire records of the case to the Office of the Provincial Prosecutor.

Lastly, respondent judge declared his clerk of court to be without involvement, directly or indirectly, with said case.

Respondent Tangeres, in his August 27, 2002 comment, stated that she is adopting

Judge Barillo's comment and then proceeded to allege additional facts which, to her, argue against complainant's claim of ownership over the parcels of land whence he feloniously harvested coconuts. Her other pertinent allegations:

One day in February 2000, Eduardo Dayuno . . . appeared and harvested coconuts growing in the cultivation of the late Ceriaca Malahay . . . (sic) As this parcel of land is part of the more-than-50-hectare coconut plantation, and not that parcel of land covered by PD 27, the overseers filed a case against Eduardo Dayuno (CrC No. 3-00-019 not 2-00-019) for Qualified Thief, which on October 20, 2000 was easily dismissed by the public prosecutor considering that accused Eduardo Dayuno was able to present xerox copies of land titles. xxx

xxx xxx xxx

4) On the issue of G-melina trees: - Some, if not all the tenants in the lot covered by PD 27 planted their areas with these trees. The first one to have the trees growing in the lot waived by Juanito Dayuno cut was Eduardo Dayuno. Naturally, the overseers demanded for the 50% of the proceeds of the sale because the overseers and the undersigned respondent were of the belief that the parcel of land apportioned to Juanito Dayuno had already been paid and returned to the Sumogods. Undersigned denies the allegation that she threatened him to be imprisoned if he did not give in to her demand. xxx. What she told him was the fact that he could be imprisoned for cutting the trees without permit from the DENR. xxxx.

If it is true that respondent has a primary objective of harassing and prosecuting the lowly, weak and ignorant tenants . . . to be able to get more shares from them why did she not force other tenants to give shares of their proceeds also to the estate . . .? xxxx

xxx xxx xxx

5) It is true that he wrote a letter demanding to return the money and another letter requesting to furnish him copies of the complaint and supporting affidavits in Criminal Case No. 3-00-019 but he went personally to the office also and they had a short talk. Respondent told him these: "Good that you are here because I am planning to return the money to you not because of your demand letter but because I happened to think that it is not good or bad luck to receive money which is illegally earned.xxx. Judge Barillo advised also to return it to you. But this money will be returned to you after our conference as Judge would investigate the matter first." She further explained to him that Judge had to investigate it because the tone of his letter was threatening that should she fail to return the money this will reach in court or in any administrative bodies. Judge further commented that this is detrimental to the integrity of the court and that he has the obligation to investigate, the respondent being his subordinate. Complainant Eduardo went to the office on May 31, 2002 and she reminded him that the date for the conference was June 5, 2002. The return of the notice of conference shows that he signed said notice on June 2, 2002. June 5 had passed but

he never appeared until now. It was not a subpoena being issued but notice of conference xxx.

6) On copies of complaint and affidavits not given to Eduardo Dayuno: Record shows that he was furnished completely copies of complaint and other supporting documents. xxx.

xxx xxx xxx

Section 5, Rule 110 of the Revised Rules on Criminal Procedures provides among other things that the authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. So, if a case is already forwarded and received by the Provincial Prosecution Office the first level court loses its jurisdiction over said case. It is in the light of the foregoing rule that our office (MTC) adopted an SOP that once the case has already been forwarded to the Provincial Prosecution Office or is already lodged in the RTC, we do not cater to court users asking for another copies of documents which they had been furnished before. xxx.

xxx xxx xxx.^[9]

In a letter of May 13, 2003,^[10] the OCA required respondent judge to comment on the allegation that "*[he is] using his public office to protect and defend the interests of [his] Clerk of Court [Tangeres] as evidenced by a Notice for Conference*".

In his letter-comment,^[11] the respondent judge dismissed, as baseless, the particular allegation adverted to. He, however, made the following clarificatory statements:

2. In commenting/clarifying the Notice for Conference between MTC Clerk of Court Lucia L. Tangeres and Eduardo C. Dayuno, the undersigned states that:

- a. Said Eduardo C. Dayuno has inquired/requested the copies of the case records in [Criminal Case No. 3-00-019];
- b. The records on file of the case could not be located . . . ;
- c. Said Clerk of Court was directed to produce the records . . . on June 5, 2002, the date of the Conference;
- d. The Clerk of Court could not produce the above copies of the records and Eduardo C. Dayuno did not appear on June 5, 2002;
- e. Since undersigned is not the [record] custodian . . . [he] insisted or requested that a certain court personnel be directed to obtain copies of the above records in the Provincial Prosecutor's Office;
- f. Undersigned upon knowing the obtained records, contended the impossibility for conducting the alleged investigation about the G-Melina [tree] transaction between the Clerk of Court and Eduardo C.

Dayuno as there was no civil or criminal case filed in court involving that kind of transaction. xxx (Words in bracket added)

Upon the OCA's recommendation, the basic affidavit-complaint was re-docketed as a regular administrative matter.

In June 2004, complainant submitted, as directed by the Court, his consolidated reply to respondents' separate comments.

The OCA finds both respondents culpable for grave misconduct in office arising from the highly irregular call for a judicial conference and the issuance of the corresponding "Notice For Conference"^[12] addressed to complainant. Accordingly, the OCA recommends that both respondents be meted the penalty of dismissal from the service.

Save for the recommended penalty, the OCA's findings and the premises holding them together are well taken.

The time-honored rule is that a judge, as dispenser of justice in the light of applicable statutes and jurisprudence, should not only act fairly, independently and honestly, but should also be perceived to be fair, independent and honest.^[13] To borrow from an old adage, a judge, like Caesar's wife, must not only be above suspicion, but he must also appear to be above suspicion. It thus behooves every member of the bench, be he a judge of a lower court or a justice of a collegiate or appellate court, to avoid at all times any impression of impropriety.^[14]

In the case at bench, respondent judge, in a gesture irresistibly suggesting manifest bias for respondent clerk of court, but bias against complainant, officially issued a notice of conference, complete with a case title, *i.e.*, "*Ms. Lucia L. Tangeres, Plaintiff, versus Eduardo Dayuno, Defendant*", requiring, to stress, complainant to appear before his sala for a conference concerning what turned out to be a non-existing case. Understandably, the notice led complainant to believe that the notice partakes of a subpoena and that the intended meeting with respondent judge's clerk of court was court-related. By affixing his signature on the notice, respondent judge opened himself - and justifiably so - to suspicion of misusing the prestige of his office to enhance the personal interest of his clerk of court and harass the complainant. As aptly observed by the OCA in its report:

In this case, the complainant was called to a conference (Annex "G", Complaint) concerning the sale of the G-Melina trees even if there was no pending case on the said transaction. As the court had no jurisdiction over the subject matter, the conference was clearly intended for no other purpose than to harass or intimidate the complainant. It was designed to discourage the complainant from demanding the return of the P1,500.00 from the clerk of court representing 50% of the proceeds from the sale of G-Melina trees. This inference is supported by the fact that respondent Clerk of Court engaged the services of a policeman in serving the notice on the complainant (Annex "4", Comment of Tangeres). The use of a policeman in serving the simulated court notice was a ploy calculated to dishearten the complainant from pursuing his claim for a refund from the Clerk of Court.