

SECOND DIVISION

[A.M. No. RTJ-03-1799 [Formerly OCA IPI No. 01-1268-RTJ], September 12, 2003]

**MARIA CRISTINA OLONDRIZ PERTIERRA, COMPLAINANT, VS.
JUDGE ALBERTO L. LERMA, PRESIDING JUDGE, RTC, BRANCH
256, MUNTINLUPA CITY, RESPONDENT.**

RESOLUTION

QUISUMBING, J.:

Two complaints^[1] were filed by complainant Maria Cristina Olondriz Pertierra, on September 27, 2001 and on June 20, 2002, against respondent Judge Alberto L. Lerma, Presiding Judge of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, for (1) gross ignorance of the law, and (2) conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary.

It appears that on September 14, 1999, Arturo B. Pertierra, husband of the complainant, filed a petition for declaration of absolute nullity of marriage. The case, docketed as Civil Case No. 99-266, was raffled to Branch 256 of the RTC of Muntinlupa City, presided over by Judge Lerma.

According to the complaint^[2] dated September 27, 2001, respondent judge manifested gross ignorance of the law in granting petitioner Pertierra's urgent motion^[3] in said Civil Case to allow the disposition of the complainant's share in the Manila Polo Club valued at P3.15 million pesos. Complainant asserted that respondent judge should not have granted said motion since the Manila Polo Club share did not form part of the conjugal property, but was part of her inheritance from her late father. Moreover, said complainant, respondent judge failed to order petitioner Pertierra to render an accounting of the proceeds of the sale.

Complainant further averred that after she received a copy of the Resolution^[4] granting said motion, she immediately filed on August 8, 2000, a motion for reconsideration.^[5] However, despite the lapse of more than a year, the respondent failed to resolve her motion for reconsideration. Instead, he set the case for pre-trial on September 5, 2001^[6] without first referring the case to the Office of the Public Prosecutor or the Office of the Solicitor General (OSG) for investigation as required by Article 48^[7] of the Family Code.

The complainant averred that the reason for respondent judge's favorable action on petitioner's urgent motion, before referring the case to the Office of the Public Prosecutor or the OSG, was that the respondent judge was a "close golfmate" of petitioner's counsel, Atty. Felisberto L. Verano, Jr.

In his letter-comment^[8] dated December 20, 2001, respondent judge denied any

irregularity surrounding the issuance of the resolution granting the urgent motion to dispose of the Manila Polo Club share. He claimed that he granted said motion only after duly considering the pleadings and evidence presented. He averred that although the complainant opposed the motion, she did not offer any evidence to support her claim that she inherited the property from her father. Neither did she offer to shoulder the expenses of the drug rehabilitation of their children despite clearly being in a better financial position to do so. The respondent judge stated that since the share was in petitioner Arturo B. Pertierra's name and the proceeds of the sale were to redound to the benefit of the spouses' children, he granted the motion.

As to the complainant's motion for reconsideration, the respondent judge explained that his failure to resolve said motion was due to the complainant's failure to secure the services of another lawyer after her counsel of record withdrew his appearance on August 20, 2001. ^[9] He denied that Atty. Felisberto L. Verano, Jr. was a "close golfmate."

On June 20, 2002, Maria Cristina Olondriz Pertierra filed another complaint,^[10] this time charging the respondent judge with conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary. This complaint alleged that on June 19, 2002, she arrived at 12:30 p.m. in the courtroom of Branch 256 for her hearing scheduled at 1:00 p.m. and chanced upon the respondent judge talking and having lunch with Atty. Felisberto L. Verano, Jr., counsel for her estranged husband, Arturo B. Pertierra. The respondent judge was shocked to see her, and despite not having finished his lunch, the respondent judge stood up to head for his chambers. Atty. Verano, Jr., for his part, left the courtroom with his face down.

Upon the recommendation of the Office of the Court Administrator (OCA), this Court resolved on July 31, 2002 to admonish the respondent judge for his failure to act on the complainant's motion for reconsideration despite the lapse of more than one (1) year from its filing on August 8, 2000. This Court also required the respondent judge to resolve said motion within ten (10) days from notice of the Resolution and to take appropriate steps towards a strict compliance with Article 48 of the Family Code and to report his compliance. The complainant's administrative action for gross ignorance of the law was considered premature, and hence dismissed, for lack of cause of action since there was yet no finding from an appellate court that the respondent judge erred or gravely abused his discretion in issuing the questioned Resolution. Finally, this Court required the respondent judge to comment on the complaint dated June 20, 2002.

In two (2) separate comments^[11] filed by way of compliance with the foregoing Resolution of this Court, the respondent judge claimed that by Order^[12] dated August 7, 2002, he had granted complainant's motion to inhibit. The records of Civil Case No. 99-266 were already transmitted to the Office of the Clerk of Court for re-affle. Thus, he no longer had authority to resolve the motion for reconsideration.

As to the charge of conduct unbecoming a judge, bias, partiality, impropriety, and lack of integrity to continue as a member of the judiciary, respondent judge explained that Atty. Verano, Jr.'s presence in the courtroom on June 19, 2002, was due to the invitation of the Branch Clerk of Court to come and share in the celebration of the birthdays of two court personnel, namely, Lawrence Panganiban